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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): Rebuttal 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 rebuttal submission regarding whether the U.S. Department of Commerce (the "Department") should continue to treat the Socialist Republic of Vietnam ("Vietnam") as a non-market economy ("NME") country under the antidumping duty law.[1] 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 rebuttal comments are timely filed.[2]

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 discussed below, SSA continues to believe that 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").[3] SSA previously submitted comments on this matter on December 21, 2023.[4] In these rebuttal comments, SSA specifically addresses comments filed by the Government of Vietnam ("GOV"), as as well as the Vietnam Association of Seafood Exporters and Processors ("VASEP") (collectively, the

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[1] 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").

[2] 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 Rebuttal Comments," A-552-833 (Jan. 5, 2024).

[3] See 19 U.S.C. § 1677(18)(B).

[4] Letter from the Southern Shrimp Alliance, "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," A-552-833 (Dec. 21, 2023) ("SSA Comments").

Vietnamese Parties).[5] SSA also adopts and incorporates by reference the rebuttal comments submitted by Wiley Rein LLP and Kelley Drye & Warren LLP on behalf of other domestic industries.[6]

As explained in SSA's comments, 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.[7] Moreover, the Department has repeatedly found that Vietnamese producers and exporters sell their seafood products into the U.S. market at dumped prices.[8] This pattern of unfair trade hurts

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[5] Letter from the Ministry of Industry and Trade for the Socialist Republic of Vietnam, "Raw Honey from the Socialist Republic of Vietnam: Initiation of Changed Circumstances Review Comments of Government of Viet Nam," A-552-833 (Dec. 21, 2023) ("GOV Comments"); Letter from the Vietnam Association of Seafood Exporters and Producers, "Changed Circumstances Review (CCR) of the Socialist Republic of Vietnam's Status as a Non-Market Economy," A-522-833 (Dec. 21, 2023) ("VASEP Comments").

[6] See Letter from Wiley Rein LLP, "Raw Honey from the Socialist Republic of Vietnam – Rebuttal Comments on Changed Circumstances Review of the Socialist Republic of Vietnam's Status as a Non-market Economy Country," A-552-833 (Feb. 1, 2024); 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 – Rebuttal Comments" A-552-833 (Feb. 1, 2024).

[7] See SSA Comments at 7-11.

[8] See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 Fed. Reg. 37,116 (Dep't Commerce June 23, 2003) (notice of final determination of sales at less than fair value) ("Fish Fillets Final Determination"); Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 Fed. Reg. 47,909 (Dep't Commerce Aug. 12, 2003) (antidumping duty order); Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 87 Fed. Reg. 55,996 (Dep't Commerce Sept. 13, 2022) (final results of antidumping duty administrative review); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 70 Fed. Reg. 5,152 (Dep't Commerce Feb. 1, 2005) (notice of amended final determination of sales at less than fair value and antidumping duty order); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 75 Fed. Reg. 47,771 (Dep't Commerce Aug. 9, 2010) (final results and partial rescission of antidumping duty administrative review); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 79 Fed. Reg. 15,309 (Dep't Commerce Mar. 19,

American workers and communities. 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.

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.[9] 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

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2014) (final results of reconducted administrative review of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. and intent not to revoke; 2008-2009); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 76 Fed. Reg. 56,158 (Dep't Commerce Sept. 12, 2011) (final results and final partial rescission of antidumping duty administrative review); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 77 Fed. Reg. 55,800 (Dep't Commerce Sept. 11, 2012) (final results and final partial rescission of antidumping duty administrative review); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 79 Fed. Reg. 57,047 (Dep't Commerce Sept. 24, 2014) (final results of antidumping administrative review, 2012-2013); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 82 Fed. Reg. 39,565 (Dep't Commerce Aug. 21, 2017) (notice of court decision not in harmony with final results of administrative review and notice of amended final results); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 81 Fed. Reg. 62,717 (Dep't Commerce Sept. 12, 2016) (final results of antidumping duty administrative review, 2014-2015); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 82 Fed. Reg. 11,431 (Dep't Commerce Feb. 23, 2017) (final results of antidumping duty administrative review, 2015-2016); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 83 Fed. Reg. 46,704 (Dep't Commerce Sept. 14, 2018) (final results of antidumping duty administrative review, 2016-2017); and Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 84 Fed. Reg. 64,457 (Dep't Commerce Nov. 22, 2019) (final results and final determination of no shipments of antidumping duty administrative review; 2018-2019).

[9] 19 U.S.C. § 1677(18).

merchandise."[10] 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;
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> (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,
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> (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,
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> (iv) the extent of government ownership or control of the means of production,
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> (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and
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> (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,[11] and has not revisited that determination until this CCR proceeding.

II. CONVERTIBILITY OF CURRENCY

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 may evaluate a number of measures, including whether a country's currency is fully convertible for transactions involving trade, income, and profit remittances (i.e., current account purposes) or

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[10] Id. § 1677(18)(A).

[11] 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 Fish Fillets Final Determination, 68 Fed. Reg. at 37,116.

transactions involving international investment and lending activities (i.e., capital account purposes), as well as restrictions within the country's foreign exchange rate regime.[12]

On the first metric, the Department previously found that, "{d}espite positive advances in currency convertibility that evidence a gradual movement toward liberalization, . . . {t}he dong is not fully convertible for current or capital account transactions."[13] The GOV contends that Vietnam "has undertaken its {International Monetary Fund ("IMF")} Article VIII obligations and removed restrictions on the convertibility of its currency for current and capital account purposes through implementation of new laws since the 2002 Determination{,}" and therefore, "Viet Nam's dong is effectively convertible for trade and investment purposes, i.e., current and capital accounts."[14] However, the question before the Department is not whether Vietnam's currency is "effectively" convertible, but whether it is fully convertible. As the Department previously found in its 2002 determination, the answer continues to be "not fully convertible."[15]

In its most recent Annual Report on Exchange Arrangement and Exchange Restrictions, the IMF found that, although "Vietnam relaxed restrictions on foreign ownership limits on {foreign direct investment} and inward portfolio investment" with respect to controls on capital transactions, Vietnam also "tightened the repatriation requirement by specifying a timeline to repatriate all profits and other incomes earned from overseas investment to Vietnam."[16] Further,

[12] See Fish Fillets Memorandum at 9-11.

[13] Id. at 11.

[14] GOV Comments at 11-12 (emphasis added).

[15] Fish Fillets Memorandum at 11.

[16] International Monetary Fund, "Annual Report on Exchange Arrangements and Exchange Restrictions Overview," at 51 (2022) (**Exhibit 1**).

the IMF found that Vietnam continues to impose restrictions on twelve of thirteen categories of capital account transactions.[17] In its 2017 analysis of the People's Republic of China's ("China") status as an NME, the Department similarly evaluated the IMF's 2016 Annual Report on Exchange Arrangement and Exchange Restrictions and found that "{w}hile China has relaxed some restrictions and reduced regulatory burdens over time, restrictions remain on twelve of thirteen categories of capital account transactions."[18]

Moreover, in its recent Country Commercial Guide for Vietnam, the Department reports that the State Bank of Vietnam ("SBV") "has imposed exchange control mechanisms designed to limit foreign currency outflows."[19] For instance, although foreign currency may be purchased "to finance current and capital transactions and other allowed transactions,"[20] such transactions are only permitted through certain authorized banks, i.e., "licensed credit institutions."[21] These restrictions have recently been highlighted as a source of significant concern by financial and legal observers. For instance, HSBC, an international bank, recently reported that one-way overseas payment from Vietnam can only be carried out for certain reasons and under onerous government reporting requirements.[22] Similarly, PwC, an international accounting firm, reported

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[17] Id. at 84 (**Exhibit 1**).

[18] Department Memorandum, "China's Status as a Non-Market Economy," A-570-053 at 13 (Oct. 26, 2017) (internal citation omitted) ("China NME Memorandum").

[19] The International Trade Administration, "Vietnam – Country Commercial Guide," (Dec. 15, 2022) (**Exhibit 2**).

[20] Id. (**Exhibit 2**).

[21] Id. (**Exhibit 2**); see also GOV Comments at 8 ("Investors in Viet Nam can purchase foreign currencies for legal transactions of capital accounts at licensed credit institutions.").

[22] HSBC, "Frequently Asked Questions: One-way Overseas Payment from Vietnam," (**Exhibit 3**).

that Vietnam's exchange controls are extensive, as "{a}ll buying, selling, lending, and transfer of foreign currency needs to be made through credit institutions and other financial institutions authorised by the {SBV}," outflows of foreign currency must be for authorized purposes, and "{a}ll monetary transactions in Vietnam must be undertaken in Vietnamese dong," with few exceptions.[23] Mayer Brown LLP also reported in connection with private credit markets in Vietnam that "{t}he Vietnam Dong (VND) is not a freely convertible currency," that many types of transactions "are generally not available in Vietnam," and that many types of transactions involving conversion require lengthy government negotiation.[24]

Likewise, Morgan Stanley Capital International ("Morgan Stanley") "classifies Vietnam as a frontier market, primarily due to {foreign ownership limits} as well as deficiencies related to equal rights for foreign investors, information flow, foreign exchange liberalization, and market infrastructure."[25] In ranking Vietnam as a frontier market, as opposed to an emerging or developed market, Morgan Stanley gave Vietnam negative marks for its "Foreign Exchange Market Liberalization Level," finding that "{t}here is no offshore currency market and there are constraints on the onshore currency market (e.g., foreign exchange transactions must be linked to security transactions)."[26] Morgan Stanley further noted:

In Developed Markets, the standard is the existence of a fully convertible currency,

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[23] PwC, "Vietnam: Corporate – Other Issues," (Apr. 3, 2023) (**Exhibit 4**).

[24] David Harrison, Pierre Dzakpasu, and Qin Sue Koh, "Primer for Private Credit in Vietnam – Top 10 Issues," (Feb. 13, 2023) (**Exhibit 5**).

[25] U.S. Department of State, "2023 Investment Climate Statements: Vietnam," at Section 6 ("Investment Climate Statement") (**Exhibit 6**). See also Morgan Stanley Capital International, "Global Market Accessibility Review," at 45 and 60 (June 2023) ("Morgan Stanley Review") (**Exhibit 7**).

[26] Morgan Stanley Review at 45 and 60 (**Exhibit 7**).

> which includes an active offshore deliverable currency market. Developed Markets investors are used to the simultaneous execution of all their FX trades with the counterparty of their choice, based on best execution. The absence of an offshore currency market leads to a negative assessment, as it forces parties to transact onshore at a higher cost, very often through a limited choice of intermediaries, and therefore often not on the basis of best execution. Currency shortages are also problematic.[27]

Thus, despite certain alleged reforms,[28] it is widely recognized that significant restrictions remain that prevent Vietnam's currency from being considered "fully convertible."

On the second metric of the Department's analysis under the first factor, restrictions within the country's foreign exchange rate regime, the GOV contends that "the SBV has had minimal interventions into the FX market, and its interventions have been limited for the purposes of maintaining market stability."[29] The GOV further highlights comments from the U.S. Department of Treasury ("Treasury") and the IMF "welcom{ing} {Vietnam's} steps toward increased exchange rate flexibility and encourag{ing} more efforts in this direction."[30] VASEP also highlights statements from the U.S. Trade Representative that commitments made by the SBV to Treasury "provide a satisfactory resolution" of Vietnam's alleged currency manipulation.[31]

However, as discussed at length in SSA's comments,[32] the Department should reach a similar conclusion here as it did in 2002 that:

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[27] Id. at 6 (**Exhibit 7**).

[28] See GOV Comments at 7-12.

[29] Id. at 11.

[30] Id. at 10 (citations omitted).

[31] VASEP Comments at 3.

[32] SSA Comments at 16-21.

> 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 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.[33]

As previously discussed, a key factor in the Department's earlier determination was the GOV's direct control of the foreign exchange market through the SBV, facts that have not changed.[34] Further, 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."[35] As has been found by the Department and other USG agencies in various contexts, the GOV, through the SBV, manages its exchange rate for purposes of gaining an unfair competitive advantage for Vietnam's export-oriented industries.[36] In addition, the World Trade Organization ("WTO") has also recognized that "{t}o keep the exchange rates within the predetermined band around the target, the SBV intervenes in the market through its reserve accumulation/decumulation, in addition to adjusting interest rates in the interbank market."[37]

In summary, the objective evidence clearly demonstrates that, contrary to the position of the Vietnamese Parties,[38] Vietnam's currency is not fully convertible.

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[33] Fish Fillets Memorandum at 11.

[34] See SSA Comments at 17; Fish Fillets Memorandum at 9.

[35] 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) (**Exhibit 8**).

[36] See SSA Comments at 17-21.

[37] World Trade Organization, "Trade Policy Review, Report by the Secretariat: Viet Nam," at 19 (July 9, 2021) ("WTO Trade Policy Review – Vietnam") (**Exhibit 9**).

[38] See GOV Comments at 3-12; VASEP Comments at 3-4.

III. WAGE RATES SUBJECTED TO FREE BARGAINING BETWEEN LABOR AND MANAGEMENT

Under the second factor under section 771(18)(b) of the Act (the extent to which wage rates in the foreign country are determined by free bargaining between labor and management), the Vietnamese Parties argue that there is "no governmental intervention in wage bargaining in Vietnam, except for the minimum wage regulation."[39] Indeed, the GOV asserts that they have upheld the right to join trade unions and engage in collective bargaining since 2012.[40] However, contrary to these claims, evidence indicates that government intervention in Vietnam's labor market extends beyond minimum wage regulation, and there is little bargaining between labor and management. The situation in Vietnam is not unique and mirrors the state of affairs in China, as outlined in the Department's evaluation of China's NME status:

> While China has expanded legislation to protect workers' legal rights, these developments have not reduced restrictions on collective bargaining. Workers do not have the legal right to strike or organize independently, and as such, have no meaningful freedom of association. All trade unions are affiliates of the government-controlled {All-China Federation of Trade Unions} ACFTU and its branches at the local and enterprise level. The legal and institutional relationship with the government inhibits unions from acting as true advocates of workers' rights and as a meaningful counterweight to management.[41]

China maintains a single, government-sanctioned trade union, the All-China Federation of Trade Unions ("ACFTU"), while Vietnam operates under a similar framework with the General Confederation of Labor ("VGCL"), both being the sole legally recognized trade union in

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[39] VASEP Comments at 4.

[40] See GOV Comments at 14.

[41] China NME Memorandum at 30-31.

their respective countries.[42] The independence and effectiveness of trade unions in Vietnam are hampered by the state's overarching control, particularly through the VGCL, which is "subordinate to the government and the ruling Communist Party of Vietnam, so it is unable to struggle for workers' interests independently."[43] Vietnam's 2021 Labor Code, while offering certain flexibilities, fails to legalize independent trade unions.[44] Notably, Vietnam has imposed media censorship in which "Vietnamese language media rarely, if ever, declare that independent trade unions exist."[45] This undermines the credibility of the assertions made by the Vietnamese Parties regarding the existence of free bargaining between labor and management in Vietnam.

Although "Vietnam has long been a member of the International Labor Organization (ILO) and has ratified 25 of its conventions,"[46] the core issue for market economy status lies in the effective implementation and enforcement of these conventions. Despite committing to human rights improvements at the United Nations Universal Periodic Review in 2019, Vietnam "did nothing to fulfill its pledges" regarding the implementation of due process, fair trials, and

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[42] See id. at 26; see also Joe Buckley, "Vietnam's Labour Reforms: Drivers and Implications," Yusof Ishak Institute at 3 (Jan. 19, 2022) ("Buckley – Labor Reforms") (**Exhibit 10**).

[43] Buckley – Labor Reforms at 3 (**Exhibit 10**).

[44] See id. ("Vietnam has not legalised independent trade unions at all. The VGCL remains the only legal trade union federation. Independent unions are still illegal.") (**Exhibit 10**); see also Fiona Webster and Stephanie Rosseau, "Vietnam approves Labor Code changes," Mercer (Dec. 12, 2019) (reporting that the 2021 Labor Code introduced changes such as "a phased-in increase to the normal retirement age, fewer types of employment contracts, an expanded probationary period and revised overtime arrangements") (**Exhibit 11**).

[45] Joe Buckley, "The Limits of Vietnam's Labor Reforms," DIPLOMAT at 1 (Jan. 2022) (**Exhibit 12**).

[46] VASEP Comments at 4.

religious freedom, which are fundamental human rights which underpin labor rights.[47] In Vietnam, the gap between ratification and implementation of labor rights, highlighted by issues such as the delay of key labor reforms, suggests that they are more symbolic than effective, and these devolopments have not reduced restrictions on collective bargaining between labour and management.[48]

In sum, the Department should reject the Vietnamese Parties' claims that wage rates in Vietnam are determined by free bargaining between labor and management.

IV. FOREIGN INVESTMENT RESTRICTIONS

Under the third factor under section 771(18)(b) of the Act (the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country), the Vietnamese Parties assert that foreign-owned companies in Vietnam operate freely.[49] However, contrary to these assertions, Vietnam actively regulates and directs foreign direct investment ("FDI") as part of its broader economic development strategy, with a focus on the State-Owned Enterprise ("SOE") sector.[50] The Vietnamese Parties falsely conclude that Vietnam permits free foreign investment because "a foreign investor can invest in any sector on the same basis as a domestic investor if the investment does not go to the limited sectors designated by the 'negative list' under the Law of Investment."[51] This list cited by the

[47] Human Rights Watch, "Vietnam: Rights Reforms Urgently Needed," (Oct. 3, 2023) (**Exhibit 13**).

[48] See David Hutt, "Two steps forward, one step back for Vietnam's labor rights," Deutsche Welle (Feb. 22, 2021) (**Exhibit 14**).

[49] See GOV Comments at 31.

[50] See Investment Climate Statement at Section 7 (**Exhibit 6**).

[51] VASEP Comments at 5 (citation omitted).

Vietnamese Parties comprises a total of 84 business categories that are either prohibited or restricted for foreign investment.[52] These categories encompass a diverse range of sectors, including state-monopoly trades, border-gate transfer of goods, e-commerce, tourism, and fisheries.[53] The level of restriction on foreign investment contradicts the GOV's claim that "Viet Nam permits all forms of foreign investment."[54]

In addition, the Vietnamese Parties contend that the increase in FDI into Vietnam signifies an improvement in the country's investment environment, which bears little revelance to the argument under consideration.[55] While FDI inflow indicates foreign investor interest in a particular market, it is not a direct measure of the level of freedom present in a country's foreign investment policies. Moreover, official data indicates that China is the largest foreign investor in Vietnam as a result of a significant increase of Chinese investments over recent years.[56] Since the rise in FDI in Vietnam is primarily attributed to the surge of Chinese investments into Southeast Asian countries, it is reflective of China's global political and economic strategies, rather than a result of Vietnam's own FDI policies.[57]

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[52] See World Bank Group, "Investment Policy And Regulatory Review," at 13 (2022) (noting that the Prohibited List comprises 25 categories of business activities, while the Restricted List contains 59, making up a total of 84 business activities that are prohibited or restricted for foreign investment) (**Exhibit 15**).

[53] Id. (**Exhibit 15**).

[54] GOV Comments at 18.

[55] See VASEP Comments at 5.

[56] See Francesco Guarascio, "China's investments to Vietnam boom as Xi visits Hanoi, US spending down," Reuters (Dec. 7, 2023) (**Exhibit 16**).

[57] See id. (**Exhibit 16**).

The Vietnamese Parties also claim that the use of The Organization for Economic Cooperation and Development ("OECD") Services Trade Restrictiveness Index ("STRI") has "little meaning"[58] in Vietnam's NME status evaluation. They argue that Vietnam's 44th ranking in the 2022 STRI only indicates its relative standing to top global economies, and that the Department has granted market economy status to many countries that are not included in the STRI analysis.[59] The Vietnamese Parties' arguments oversimplify the implications of the STRI. The STRI is a unique, evidence-based tool designed to assess and compare the regulatory environment of the service sector across 50 major economies, which collectively account for more than 80% of global trade in services.[60] The STRI provides relevant and substantial data crucial for evaluating Vietnam's NME status, contrary to the Vietnamese Parties' claim of its limited relevance. Therefore, Vietnam's ranking at 44th place should not be dismissed as merely being lower than top economies, but rather a meaningful indicator of its policy environment and integration into the global economy. Indeed, this position indicates that Vietnam is among the more restrictive countries in the world in terms of relative FDI restrictions.

Moreover, as discussed above, in its evaluation of market access for foreign investors, Morgan Stanely ranks Vietnam as a "frontier market" in part because of Vietnam's restrictions

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[58] VASEP Comments at 5; see also OECD, "Services Trade Restrictiveness Index (STRI): Viet Nam," (2022) (**Exhibit 17**).

[59] See VASEP Comments at 5.

[60] See OECD, "Services Trade," (**Exhibit 18**).

on foreign owernship and lack of equal rights for foreign investors.[61] In its analysis, Morgan Stanley gives Vietnam negative marks with respect to several metrics:

> Foreign Ownership Limit Level: Companies in certain conditional and sensitive sectors are subject to foreign ownership limits ranging from zero to 51 percent. These limitations still affect more than ten percent of the Vietnamese equity market.
>
> Foreign Room Level: The equity market is significantly impacted by foreign room issues. More than one percent of the {Morgan Stanley} Vietnam IMI is impacted by low foreign room.
>
> Equal Rights to Foreign Investors: Some company related information is not always readily available in English. In addition, the rights of foreign investors are limited as a result of the stringent foreign ownership limits imposed on both total as well as individual foreign investors.
>
> Market Regulations: Not all regulations can be found in English.
>
> Information Flow: Stock market information is not always disclosed in English and occasionally is not detailed enough.[62]

In sum, the Department should reject the Vietnamese Parties' claims with respect to the free operation of foreign investors.

V. GOVERNMENT OWNERSHIP OR CONTROL OF MEANS OF PRODUCTION

The Vietnamese Parties argue that the recent increase of privatization of the Vietnamese economy and liberalization of land use throughout the country contribute to a market economy finding.[63] The Department should reject these arguments and continue to find that Vietnam is a non-market economy.

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[61] See Investment Climate Statement at Section 6 (**Exhibit 6**); Morgan Stanley Review at 45 and 60 (**Exhibit 7**).

[62] Morgan Stanley Review at 45 (**Exhibit 7**).

[63] See GOV Comments at 35-46, VASEP Comments at 6-7.

When analyzing the fourth factor of section 771(18)(B) to determine if a country should be considered a market economy, there are two key elements the Department must consider for Vietnam.[64] These include "(1) the extent and pace of privatization of enterprises, and (2) the lack of any private land ownership and the role of land-use rights in the Vietnamese economy."[65] While the GOV argues that "{l}and usage in Viet Nam has … been largely liberalized,"[66] private land ownership is not permitted in Vietnam.[67] As the Department previously found, "{t}he right to own private property is fundamental to the operation of a market economy."[68] Equal rights to land access and land use is not the same as the right to own private property, as even the GOV acknowledges the land "technically belongs to the State."[69] Similarly, in China, individuals, firms, and other entities may "own land-use rights," but cannot privately own land.[70] The Department cited this as a factor for China's non-market economy determination in 2017.[71]

Further, the GOV argues in favor of market economy status due to the increasingly smaller share of SOEs in the economy.[72] However, the examination of existing SOEs is only one

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[64] See Fish Fillets Memorandum at 22.

[65] Id.

[66] GOV Comments at 35.

[67] SSA Comments at Exhibit 27, Art. 53.

[68] Fish Fillets Memorandum at 22.

[69] GOV Comments at 35.

[70] China NME Memorandum at 116.

[71] See id.

[72] See GOV Comments at 36-41.

element of the Department's analysis of factor four.[73] As established above, the inability to own land negatively affects an individual's ability to create and propagate private industry in Vietnam, and therefore should result in a non-market economy finding.

Lastly, VASEP questions the relevance of considering the existence of SOEs and the government's ownership of real estate.[74] The argument VASEP presents is meritless, as the consideration of these factors is in accordance with section 771(18)(B) of the Act.[75] Further, the Department has found that the "right to own private property is fundamental to the operation of a market economy, and the scope and extent of private sector involvement in the economy often is an indicator of the extent to which the economy is market-driven"[76] Therefore, these elements should be considered in determining the market status of a country's economy.

VI. GOVERNMENT CONTROL OVER ALLOCATION OF RESOURCES OR PRICE AND OUTPUT DECISIONS

The GOV argues that widespread price liberalization, as well as the performance of the private sector as an engine of growth, support market economy status for Vietnam.[77] However, the banking sector in Vietnam continues to operate as an arm of the GOV and should therefore remain considered a non-market economy.

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[73] See Fish Fillets Memorandum at 22 (noting the two key elements under this factor for Vietnam are (1) the extent and pace of privatization of enterprises, and (2) the lack of any private land ownership and the role of land-use rights in the Vietnamese economy).

[74] See VASEP Comments at 6.

[75] Section 771(18)(B) of the Act requires the Department to take into account six factors including, "{t}he extent of government ownership or control of the means of production{.}" 19 U.S.C. § 1677(18)(B)(iv).

[76] Fish Fillets Memorandum at 22.

[77] See GOV Comments at 46-47.

The Department previously recognized that the degree to which a government is involved in the allocation of capital is an important measure of government control over production decisions and the allocation of resources.[78] When analyzing this factor, there are three main issues to consider. These issues are "(1) the extent of price liberalization, (2) the status of commercial banking reform, and (3) the degree to which individuals and businesses can engage in entrepreneurial activities."[79] In regards to these issues, the GOV claims (1) Vietnam has increased the "liberalization of prices throughout the economy," (2) the Vietnamese commercial banking sector has become "far more liberalized in the past two decades," and (3) the private sector in Vietnam is "vibrant and contributes importantly to the country's economy."[80] VASEP also argues in favor of market status, stating that "there is no doubt … the Government of Vietnam has no significant control over the allocation of resources or private enterprises' price determinations or output decisions."[81] Nevertheless, the Vietnamese government maintains price controls across the economy as well as preferential policies for certain industries.[82] For instance, 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."[83] 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

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[78] See Fish Fillets Memorandum at 30. See also SSA Comments at 26.

[79] Fish Fillets Memorandum at 30.

[80] GOV Comments at 47, 59, and 66,

[81] VASEP Comments at 7.

[82] See SSA Comments at 27-30.

[83] Id. at 29 and Exhibit 30.

operating in forestry and aquatic production and processing industries."[84] Further, in terms of reform, Vietnam reported to the WTO that "the SBV intends to replace administrative allocation of credit with market-based mechanisms over the medium term."[85] In other words, Vietnam asks the Department to put the cart before the horse and consider reforms that have not yet actually taken place. The Department cannot rely on the intentions of a country's government to become a market economy at some future point in time. Rather, the agency must evaluate how the country's economy is actually operating. Here, SBV's public expression of a desire to institute reforms in the future is an indisputable indication that Vietnam is not currently a market economy.

The Department has previously determined that policy-directed lending is a prominent mechanism through which a government can influence the allocation of resources, as was the case for the Department's non-market economy finding for China in 2017.[86] Indeed, in its 2002 decision, the Department found that despite the government's steps in restructuring the banking sector in conjunction with the IMF, the slow pace of commercial banking sector reform and the continued significant government presence are causes for concern.[87] The same remains true today. By virtue of its control of the financing and banking sector, the Department should continue to find that Vietnam remains a non-market economy.

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[84] Id. at Exhibit 30.

[85] WTO Trade Policy Review – Vietnam at 18 n.10 (emphasis added) (**Exhibit 9**).

[86] China NME Memorandum at 178.

[87] See Fish Fillets Memorandum at 39.

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

List of Exhibits

Exhibit #	Title
1	International Monetary Fund, "Annual Report on Exchange Arrangements and Exchange Restrictions Overview," (2022)
2	The International Trade Administration, "Vietnam – Country Commercial Guide," (Dec. 15, 2022)
3	HSBC, "Frequently Asked Questions: One-way Overseas Payment from Vietnam"
4	PwC, "Vietnam: Corporate – Other Issues," (Apr. 3, 2023)
5	David Harrison, Pierre Dzakpasu, and Qin Sue Koh, "Primer for Private Credit in Vietnam – Top 10 Issues," (Feb. 13, 2023)
6	U.S. Department of State, "2023 Investment Climate Statements: Vietnam"
7	Morgan Stanley Capital International, "Global Market Accessibility Review," (June 2023)
8	The Office of the U.S. Trade Representative, "Section 301 Investigation: Report on Vietnam's Acts, Policies, and Practices Related to Currency Valuation," (June 15, 2021)
9	World Trade Organization, "Trade Policy Review, Report by the Secretariat: Viet Nam," (July 9, 2021)
10	Joe Buckley, "Vietnam's Labour Reforms: Drivers and Implications," Yusof Ishak Institute (Jan. 19, 2022)
11	Fiona Webster and Stephanie Rosseau, "Vietnam approves Labor Code changes," Mercer (Dec. 12, 2019)
12	Joe Buckley, "The Limits of Vietnam's Labor Reforms," DIPLOMAT (Jan. 2022)
13	Human Rights Watch, "Vietnam: Rights Reforms Urgently Needed," (Oct. 3, 2023)
14	David Hutt, "Two steps forward, one step back for Vietnam's labor rights," Deutsche Welle (Feb. 22, 2021)
15	World Bank Group, "Investment Policy And Regulatory Review" (2022)
16	Francesco Guarascio, "China's investments to Vietnam boom as Xi visits Hanoi, US spending down," Reuters (Dec. 7, 2023)

17	OECD, "Services Trade Restrictiveness Index (STRI): Viet Nam," (2022)
18	OECD, "Services Trade"