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**PUBLIC DOCUMENT**

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**VIA MESSENGER**

The Honorable Donald L. Evans  
Secretary of Commerce  
Attn: Import Administration  
Central Records Unit, Room 1870  
U.S. Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

**Re: Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam**

Dear Secretary Evans:

On behalf of the Catfish Farmers of America and individual U.S. catfish processors, Petitioners in the above-referenced investigation (“Petitioners”), we hereby provide comments regarding the nonmarket economy status of the Socialist Republic of Vietnam in response to the Department’s August 14, 2002 request for comments.<sup>1</sup> As discussed in these comments,

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<sup>1</sup> See Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Opportunity to Comment on Petitioner’s Allegation that Vietnam has a Non-Market Economy, 67 Fed. Reg. 52942 (Aug. 14, 2002).

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Petitioners submit that Vietnam is a nonmarket economy (“NME”) country in accordance with Section 771(18) of the Tariff Act of 1930, as amended.

While Petitioners separately address in this submission each of the factors that the Department must take into account when evaluating Vietnam’s economy, Petitioners respectfully submit that the Department must consider, at the outset, the significance of the fact that unlike other countries as to which the Department has recently performed its NME analysis, Vietnam remains a Communist country and its government is committed to Communist ideals and dogma. This has several important implications for the Department’s analysis.

First, the Department has never deemed a Communist country to be a market economy country. Vietnam was first established as a Communist country on September 2, 1945 under the leadership of the Vietnamese Communist Party and its founder, Ho Chi Minh, and is one of the few remaining Communist countries in the world.<sup>2</sup> To date, the supreme role of the Communist Party is explicitly provided for in Article 4 of the Vietnamese Constitution, which states:

The Communist Party of Vietnam, the vanguard of the Vietnamese working class, the faithful representative of the rights and interests of the working class, the toiling people, and the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh’s thought, is the force leading the State and society.<sup>3</sup>

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<sup>2</sup> See, e.g., <http://www.vietnamembassy-usa.org/learn/history.php3>.

<sup>3</sup> See Constitution of the Socialist Republic of Vietnam, <http://www.vietnamembassy-usa.org/learn/gov-constitution.php3>.

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Indeed, because of Vietnam's Communist government, the Department itself has previously recognized that Vietnam is a NME.<sup>4</sup> Moreover, various U.S. government entities have considered Vietnam to be a NME. For example, in its deliberations on the recent bilateral trade agreement between the United States and Vietnam ("BTA"), the U.S. House of Representatives Committee on Ways and Means carefully reviewed the political and economic status of Vietnam and stated the BTA was "the most comprehensive trade agreement ever negotiated with a non-market economy country."<sup>5</sup> The Congressional Research Service also labeled Vietnam as a NME country,<sup>6</sup> as did the U.S. Trade Representative ("USTR") in its request for public comments on the negotiation of the BTA.<sup>7</sup>

Second, Communism and Marxism-Leninism by their very nature are incompatible and inconsistent with the concept of a market economy. The "Political Programme" of the Communist Party of Vietnam, for example, which "provides directions for all the activities of [the] Party at present and over the next decades,"<sup>8</sup> specifically states that the Party's goal for Vietnam is to

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<sup>4</sup> See Carbon Steel Wire Rod from Poland, 49 Fed. Reg. 6768 (Prelim. Determination Feb. 23, 1984) (stating that "[b]etween the member states of the Council of Mutual Economic Assistance (CMEA), which include Bulgaria, Czechoslovakia, Hungary, Rumania, Poland, Mongolia, Cuba, Vietnam, USSR and East Germany (all of which are nonmarket economies), trade is conducted in transferable rubles, which have no interrelation with the U.S. dollar rate of exchange.").

<sup>5</sup> H.R. REP. NO. 107-198, at 2 (Sept. 5, 2001).

<sup>6</sup> See Mark E. Manyin, Congressional Research Service, "The Vietnam-U.S. Bilateral Trade Agreement," Sept. 15, 2000.

<sup>7</sup> Request for Public Comments on the Negotiation of a Bilateral Trade Agreement Between the United States and the Socialist Republic of Vietnam, 61 Fed. Reg. 59920, 59921 (Nov. 25, 1996) (stating that the bilateral trade agreement will be subject to the terms of Title IV of the Trade Act of 1974, as amended . . . , which defines the terms of trade relations with non-market economies").

<sup>8</sup> See Communist Party of Vietnam website at <http://www.cpv.org.vn/cpv/politicalprogram/contents.htm>.

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“transition to socialism” by “bypassing the capitalist system.”<sup>9</sup> This “Political Programme,” as it currently appears on the Communist Party of Vietnam’s website, goes on to state that “[t]he socialist society that our people aim to build is one: in which the working people are the masters; with a highly developed economy based on modern productive forces and on public ownership of the principal means of production. . . .”<sup>10</sup>

Third, because of the Communist Party’s control over Vietnam’s single-party,<sup>11</sup> Communist National Assembly, the Department must view any laws promulgated by the National Assembly with skepticism. In a country where the dominant role of the Communist Party is guaranteed by the Constitution and support for a multi-party system can lead to imprisonment,<sup>12</sup> Vietnam’s National Assembly merely serves as a “rubber stamp” for the Communist Party.<sup>13</sup> In this regard, because the laws promulgated by the Vietnamese National Assembly are not based on public debate or on democratic principles but, rather, simply reflect the current agenda of the Communist Party, such laws can easily be replaced when and if a different agenda is adopted. Moreover, the mere passage of laws or regulations has little relevance to the actual status of Vietnam’s economy, if such laws are not implemented or enforced. As discussed in the comments provided below, observers of Vietnam’s economy acknowledge that in fact acceptance of the spirit

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<sup>9</sup> See id. at <http://www.cpv.org.vn/cpv/politicalprogram/political02.htm>.

<sup>10</sup> See id. (Emphasis added).

<sup>11</sup> See Vietnam Claims Massive Turnout in Election for New National Assembly, The Associated Press, May 19, 2002 (reporting that all candidates for Vietnam’s National Assembly must “demonstrate allegiance to the government and the Communist Party”), provided at **Exhibit A**.

<sup>12</sup> See id.

<sup>13</sup> See UN Says Vietnam Needs to Speed up Economic Reforms, Agence France Presse, Sept. 10, 2002, provided at **Exhibit A**.

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of deregulation that may be contained in the language of legislation “remains patchy, as line ministries and provincial, district and commune authorities remain reluctant to relinquish control over business activities.”<sup>14</sup>

Finally, and of extreme importance, because the Vietnamese government controls the flow of information from and concerning Vietnam, the Department must also recognize that there is not the same degree of extensive, independent, third-party data regarding Vietnam’s economy that the Department has been able to examine in considering the status of other countries. As the Congressional Research Service has noted, even information regarding Vietnam released by international organizations “rely heavily on anecdotal evidence and incomplete information that often are compiled by the Vietnamese government.”<sup>15</sup> The Department must, therefore, be extremely cautious in its evaluation of information provided for its inquiry and keenly aware of data that is not available. The pitfalls of attempting the analysis that the Department seeks to undertake for a country still under Communist rule have not been present in other assessments and should be carefully taken into account.

As Petitioners have previously indicated to the Department, it would be entirely appropriate for the Department to continue to treat Vietnam as a nonmarket economy country for

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<sup>14</sup> John Gillespie, Margin Painter and Bob Warner, “Vietnam and Australia, Report of the Governance Sector Strategic Review,” (Prepared for AusAID), April 2002, at 10. Available at [http://www.usaid.gov/pressroom/publications/pdf/vietnam\\_governance\\_review.pdf](http://www.usaid.gov/pressroom/publications/pdf/vietnam_governance_review.pdf).

<sup>15</sup> Mark Manyin et al., CRS Report for Congress, “Vietnam’s Labor Rights Regime: An Assessment,” Mar. 23, 2001, at 3, provided at **Exhibit 2**.

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purposes of this investigation.<sup>16</sup> However, given that the Department has chosen to undertake this assessment, it is important for the Department to recognize the significance and implications of the fact that Vietnam remains a Communist country. Moreover, assuming, *arguendo*, that a government commitment to Communist ideals is not in itself sufficient to preclude a finding of market economy status, the Department in its assessment must be sure to distinguish between any economic progress that may have been made through the various claimed reforms versus the actual economic conditions that currently exist in Vietnam. In other words, the relevant inquiry is not whether laws have been or may be passed but, rather, whether, in fact, the current economic conditions in Vietnam are such that the Department may rely on prices and costs in Vietnam in order to conduct meaningful analyses under the U.S. trade laws. Petitioners submit that such economic conditions clearly do not, at this point, exist in Vietnam.

As noted by a World Bank economist in May 2002, although Vietnam experienced some economic growth and improvements in policy during the 1990s, such growth and improvements must be viewed in context; i.e., Vietnam's starting point was as "an extremely poor country with extremely poor policies."<sup>17</sup> In addition, with respect to its resource allocation, Vietnam "is ranked among the lowest of the countries rated" being "far less competitive than China," with the financial and labor markets being singled out as being particularly weak. Regarding trade, "the

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<sup>16</sup> See Letter from Akin Gump Strauss Hauer & Feld LLP to the U.S. Department of Commerce, September 23, 2002, Case No. A-552-801.

<sup>17</sup> See, "Reform, Growth, and Poverty in Vietnam," May 2002, David Dollar (Development Research Group, World Bank). Full report available at [http://econ.worldbank.org/files/15033\\_wps2837.pdf](http://econ.worldbank.org/files/15033_wps2837.pdf).

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country still has significant barriers,”<sup>18</sup> and the reduction in foreign direct investment over the past few years is attributable to deficiencies in the investment climate, which in turn were the result of institutional weaknesses “concerning the protection of property rights and efficient regulation of markets, the supervision of the financial system, and the policy framework for infrastructure development.”<sup>19</sup>

Accordingly, Petitioners respectfully submit that Vietnam remains a nonmarket economy country in accordance with Section 771(18) of the Tariff Act of 1930, as amended, and have provided comments in this regard pursuant to the instructions set forth in the Department’s August 14, 2002 notice. Specifically, each comment (addressing a single criterion under section 771(18)(B)) begins on a new page. Also, each comment is introduced by a summary of the comment not exceeding three sentences. Supporting documentation is provided in the attached exhibits, except where the document at issue is readily available on the worldwide web; in those instances, an electronic address is provided in the citation. Petitioners would, of course, be pleased to provide hard copies upon request.

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<sup>18</sup> Id. at 17.

<sup>19</sup> Id. at 18.

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If you have any questions regarding this submission, please do not hesitate to contact the undersigned.

Respectfully Submitted,

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Counsel to the Catfish Farmers of America;  
America's Catch, Inc.; Consolidated Catfish Co., L.L.C.;  
Delta Pride Catfish, Inc.; Harvest Select;  
Heartland Catfish; Pride of the Pond;  
Simmons Farm-Raised Catfish; Southern Pride Catfish