I. The Dong Is Not Fully Convertible for Current or Capital Account Purposes

A. Summary of Comment

The Government of Vietnam maintains significant controls on currency convertibility that limit Vietnam's integration into the world market. The Vietnamese central bank is not independent of the government and allocates foreign reserves to further government policies. The Vietnamese government also maintains significant controls on capital account transactions.

B. The Department's Standard

Under Section 771(18)(B)(i), of the Tariff Act, in determining whether a country has a market or non-market economy, the Department must consider the extent to which the country's currency is convertible into the currency of other countries. Of particular significance is the convertibility of the country's currency for current account purposes, i.e., whether the currency can be freely converted to other currencies to finance import and export flows of goods and services.[1] A country's acceptance of the currency convertibility obligations specified in Article VIII of the International Monetary Fund's Articles of Agreement is also an important factor in the Department's evaluation of

[1] See, e.g., Antidumping Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Hungary – Market vs. Non-Market Economy ("NME") Analysis Memorandum (Feb. 23, 2000) at 6 (hereinafter "Hungary NME Memo"); Antidumping Duty Investigation of Certain Steel Concrete Reinforcing Bars from Latvia – Request for Market Economy Status (Jan. 10, 2001) at 6 (hereinafter "Latvia NME Memo"). Department memoranda in other NME status inquiries, which are referenced throughout this submission, are Respondent's Request for Revocation of Poland's NME Status (June 21, 1993) (hereinafter "Poland NME Memo"); Antidumping Duty Determinations on Cold-Rolled Carbon-Quality Steel Products from the Slovak Republic – Market vs. Non-Market Economy Analysis (Oct. 13, 1999) (hereinafter "Slovakia NME Memo"); Antidumping Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard Line and Pressure Pipe from the Czech Republic: Non-Market Economy ("NME") Country Status (hereinafter "Czech NME Memo"); Antidumping Duty Investigation of Silicomanganese from Kazakhstan – Request for Market Economy Status (Mar. 25, 2002); and Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law (June 6, 2002) (hereinafter "Russia NME Memo").

currency convertibility.[2] In addition, the Department has examined whether there are foreign exchange surrender requirements and whether the currency is convertible for investment purposes.[3] As the Department has noted, "a country's integration into world markets is highly dependent upon the convertibility of its currency," and the greater the integration of a nation's economy with the world market, "the more market-based domestic prices tend to be."[4] The situation in Vietnam does not indicate a market-driven economy.

C. Analysis

Restrictions on the convertibility of the Vietnamese dong (VND) significantly reduce the linkage between prices in Vietnam and world market prices. Vietnam remains one of the few countries that has not agreed to IMF Article VIII, and it has thus far only reduced, but not eliminated, surrender requirements and discriminatory exchange rate practices.[5] Further, little progress has been made on lifting capital account restrictions, which stifle the establishment of private businesses. As a result, the VND is not freely convertible for the full range of transactions required by domestic and foreign entities involved in commercial activities in Vietnam. The Vietnamese government's limits on currency convertibility have a significant impact on the ability of demand and supply forces to determine domestic market prices in Vietnam.

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[2] See, e.g., Hungary NME Memo at 6; Kazakhstan NME Memo at Section 1.

[3] See, e.g., Slovak NME Memo at 5; Czech NME Memo at 5; Latvia NME Memo at 6.

[4] See Russia NME Memo at Section 1.

[5] See "Socialist Republic of Vietnam Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding," June 3, 2002, at http://www.imf.org/external/np/loi/2002/vnm/01/index.htm (hereinafter "Letter of Intent").

1. The Vietnamese Dong Is Not Fully Convertible for Current Account Purposes

Vietnam has not fully liberalized its exchange rate regime, and many restrictions and exchange control procedures remain on current account transactions.[6] A currency is deemed "fully convertible" by the IMF for current account purposes when all restrictions on current account payments and discriminatory currency practices are removed. Article VIII of the IMF Articles of Agreement defines fundamental guidelines for currency convertibility and acceptance of its obligations is an important indicator of current account convertibility, as the Department has recognized in previous NME inquiries.[7] The three key sections of Article VIII, Sections 2-4, address restrictions on current payments, discriminatory currency practices, and the convertibility of foreign-held balances. Stumbling blocks to Vietnam's acceptance of Article VIII obligations include foreign exchange surrender requirements of 30 percent on current account transfers,[8] discriminatory currency practices, such as a tax on profit and dividend remittances by foreign investors,[9] and limits on the availability of foreign exchange to pay for imports of certain commodities.[10] As noted above, however, Vietnam is one of the few member countries that has not agreed to assume Article VIII obligations.[11]

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[6] Current account transactions relate to the convertibility of currency to finance foreign goods and services. See, e.g., Polish NME Memo at 10.

[7] See, e.g. Kazakhstan NME Memo at Section 1; Russia NME Memo at Section 1.

[8] See Letter of Intent.

[9] See Annual Report on Exchange Arrangements and Exchange Restrictions, International Monetary Fund (2001) at 1010-1011 (hereinafter "Exchange Arrangements"), attached at Exhibit 1-1. See also Letter of Intent.

[10] See Exchange Arrangements at 1009. See also Vietnam: Second Review Under the Three Year Arrangement Under the Poverty Reduction and Growth Facility and Request for Waiver of Performance Criteria, International Monetary Fund Staff Report (July 2002), at 41; at http://www.imf.org/external/pubs/ft/scr/2002/cr02151.pdf.

[11] See Annual Report 2002, International Monetary Fund at 115-116, attached at Exhibit 1-2. The full report is available at http://www.imf.org/external/pubs/ft/ar/2002/eng/index.htm. 152 of the IMF's 184 member countries have agreed to Article VIII obligations.

While Vietnam has instituted some currency reforms, for example permitting foreign invested enterprises to convert dong into foreign currency and transfer profits abroad, "these changes do not carry with them a guarantee of availability and the State Bank of Vietnam (the national central bank and monetary authority) continues to maintain significant foreign exchange controls."[12] The Vietnamese government itself admits that while "the inflow of foreign currency into Vietnam is generally welcomed with minimal restrictions," "the transfer of foreign currency out of the country is still controlled."[13]

Importantly, the State Bank of Vietnam (SBV) remains under state control, and for certain operations, including the management of foreign currency reserves, SBV actions are subject to approval by the prime minister.[14] The Department has considered central bank independence from the government a relevant factor in evaluating the degree of currency convertibility in previous NME inquiries,[15] as foreign currency availability can be used as a political tool to control the volume and composition of imports and can

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[12] See U.S. Foreign Commercial Service, Country Commercial Guide Vietnam FY 2002 at 67 (hereinafter "Country Commercial Guide"), at http://www.usatrade.gov. The report notes that the SBV allocates foreign currency reserves to those end-users that need it, who are most often the state-owned-enterprises that cannot generate hard currency themselves to cover their offshore import needs. For example, in a separate analysis of foreign direct investment in Vietnam by build-operate-transfer (BOT) enterprises, a weakness identified as discouraging investment is the availability, or lack thereof, of foreign currency. In spite of decrees giving BOTs the right to exchange VND for foreign currency, "lenders and foreign investors seek assurances or guarantees from the SBV that foreign currency will be available when it is needed and on their rights to convert dong into foreign currency." Ellen Kerrigan Dry and Sesto Vecchi, "Problems and Prospects for Build-Operate-Transfer Projects in Vietnam," in World Infrastructure Development, World Bank (May 2001) at 52, at http://www.pharmabriefing.com/businessbriefing/pdf/infrastructure2001/reference/8/pdf.

[13] See http://www.vietnamembassy-usa.org/business/forex.php3; accessed Sept. 24, 2002.

[14] See Country Commercial Guide at 88.

[15] See, e.g., Russia NME Memo at Section 1.

significantly reduce the integration between a country's internal fiscal and monetary policies, its external balance, and exchange rates.[16]

Three aspects of SBV intervention illustrate how the Vietnamese government continues to control currency convertibility. First, although Vietnam has moved to a "managed float" exchange rate regime, the official dong exchange rate is allowed to move only within a narrow band of 0.25 percent per day.[17] Second, as noted above, the SBV continues to require that 30 percent of foreign currency earned in current account transactions be exchanged for VND. This requirement distorts the supply and demand balance for VND relative to foreign currency and, thus, the exchange rate. Third, the SBV has currency surrender requirements in order to "increase its reserve of hard currency so that it can allocate the currency to enterprises that need it."[18] These enterprises are generally importers or end-users, which are often state-owned enterprises.[19] Thus, it "may be assumed that an enterprise may need to have 'rights' to access foreign currency," although there is "no implied assurance of availability."[20] In fact, the SBV allocates foreign exchange based on priorities according to the type of import, with the highest priority assigned to critical imports such as petroleum and the lowest priority to imports that compete with domestically-produced goods.[21]

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[16] See Francisco L. Rivera-Batiz and Luis A. Rivera-Batiz, International Finance and Open Economy Macroeconomics, at 419, attached at Exhibit 1-3. Transitions to floating rate regimes require some central bank independence. See Christopher L. Gilbert et al., "International Financial Architecture, Capital Account Convertibility and Poor Developing Countries" at 4, at http://www.odi.org.uk/speeches/gilbert/pdf.

[17] See "Central Bank Sits Firm on Dollar-Dong Trading Band," ICB News Online, Aug. 2002, attached at Exhibit 1-4.

[18] Country Commercial Guide at 90-91.

[19] See id.

[20] Id.

[21] See UNCTAD Trade Analysis and Information System, Report on Vietnam (Apr. 2001), at http://www.unctad.org/trains/2001%20Vietnam.htm.

Thus, although the law may nominally permit free convertibility and individual foreign investors may not experience any difficulties if there are sufficient foreign currency reserves, in reality the SBV can manipulate both the exchange rate and the allocation of reserves according to specified policy priorities.[22] In fact, the acting head of the SBV exchange management department recently characterized the Vietnamese economy as "hard-currency-strapped." Even though commercial banks were calling for the SBV to widen the restrictive dong-dollar trading band, he stated that the SBV would not consider such a move until at least the end of the year, and only after any policy change was carefully considered and had "100% backing by the central government."[23]

Finally, Vietnam also maintains discriminatory currency practices such as a tax on profit and dividend remittances by foreign investors,[24] as well as limits on the availability of foreign exchange for payments related to imports of certain commodities.[25]

2. The Vietnamese Government Severely Restricts Capital Account Transactions.

All capital account transactions, which relate to the convertibility of currency to finance capital investment, including investment in fixed assets, land, and portfolio (stock market) investment, are subject to restrictions in Vietnam. Many transactions are simply

[22] Vietnam's 1998 Decree No. 63-1998-ND-CP on foreign exchange controls, which nominally gives rights to purchase foreign currency in Article 13, also states, in Article 34, that exchange rates are based on "supply of and demand for foreign currency in the market as regulated by the State." (emphasis added)

[23] "Central Bank Sits Firm on Dollar-Dong Trading Band" at Exhibit 1-4. Under a freely floating currency, shortages of foreign "hard-currency" in relation to the VND would result in a depreciation of the VND. The SBV's control over currency conversions appears to be artificially propping up the value of the VND, causing distortions to the level and pricing of imports, and consequently home market price levels.

[24] See Annual Report on Exchange Arrangements at 1010, at Exhibit 1-1.

[25] See id. at 1009. See also Vietnam: Second Review Under the Three-Year Arrangement Under the Poverty Reduction and Growth Facility and Request for Waiver of Performance Criteria – Staff Report, International Monetary Fund (July 2002) at 41, at http://www.imf.org/external/pubs/ft/scr/2002/cr02151.pdf.

prohibited or are subject to SBV approval.[26] While restrictions on currency conversions to finance capital account transactions sometimes occur in market economies,[27] Vietnam's capital account restrictions are applied to all types of transactions, including its nascent stock and bond market, foreign direct investment, and land.[28] This is in sharp contrast to Russia, for example, where the Department found that the ruble is convertible for capital account purposes.[29]

With respect to the stock market, Vietnam limits the percentage of shares and bonds that can be purchased locally by non-residents.[30] The SBV recently issued regulations, effective September 28, 2002, governing currency flows of foreign individual and institutional investors into the Vietnam stock exchange.[31] Although the new regulations allow a foreign investor to repatriate profit, dividend, and bond interest with no time restrictions, the original investment cannot be repatriated (i.e., converted from VND to another currency) for one year from the time the money was deposited in a VND account.

In sum, as the discussion above makes clear, the Vietnamese dong is not freely convertible. The Vietnamese government continues to exert significant control over the

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[26] See Annual Report on Exchange Arrangements at 1011-1013, at Exhibit 1-1.

[27] Such restrictions typically occur during periods of financial crisis to halt severe capital flight and/or to partially insulate the domestic economy from external financial crises. As noted in a conference report sponsored by the Overseas Development Institute, distinctions need be made between controls on capital flows that hinder efficient international financial intermediation, and those that are prudent and designed to contain risks associated with international capital flows. See Conference on Capital Account Convertibility: A Developing Country Perspective, June 21, 2000, at 7, at http://www.odi.org.uk/speeches/capital-account.html.

[28] See David Dollar, "Reform Growth and Poverty in Vietnam," World Bank (May 2002) at 16, at http://econ.worldbank.org/files/15033_wps2837.pdf. Dollar characterizes Vietnam's capital account as "relatively closed."

[29] See Russia NME Memo at Section 1.

[30] Id.

[31] See "State Bank Lays Down Rules for Stock Market Investment by Foreigners," ICB News, Sept. 16-20, 2002, attached at Exhibit 1-4

exchange rate, currency convertibility, and access to foreign currency, resulting in distortions to domestic prices. Therefore, the Department cannot find that Vietnam operates as a market economy under this provision.