

## **VI. Other Factors Confirm that Vietnam Is a Nonmarket Economy Country.**

### **A. Summary of Comment**

Factors such as Vietnam's Communist government control over Vietnam's economy, general international recognition of Vietnam as a nonmarket economy country, Vietnam's slow progress toward opening its markets for purposes of WTO accession, significant protectionist tariff and non-tariff barriers to market access, underdevelopment of the Vietnamese legal system, lack of transparency, and strong ties to other nonmarket economy states all contribute to Vietnam's nonmarket economy status.

### **B. The Department's Standard**

In addition to the five factors delineated in the statute, the Department may take into account other factors that it considers appropriate in its analysis of Vietnam's economic status.<sup>1</sup> In past Department analyses, factors such as whether a country's political system supports a market economy<sup>2</sup> and whether a country has made significant steps toward acceding to the WTO, such as through reducing tariffs and tariff rate categories,<sup>3</sup> have influenced the Department's evaluation of nonmarket economy status.

### **C. Analysis**

#### **1. Vietnam Is Controlled by the Communist Party and Communist Party Principles**

Vietnam's Constitution guarantees the supreme role of the Communist Party and Communist Party principles in Vietnam. These principles, however, by their very nature are incompatible

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<sup>1</sup> 19 U.S.C. § 1677(18)(B)(vi).

<sup>2</sup> See, e.g., Slovakia NME Memo at 13-14.

<sup>3</sup> See Russia NME Memo at 46.

and inconsistent with the concept of a market economy and preclude the Department from finding that the Vietnamese economy is not state-controlled.

In previous NME inquiries, the Department has examined the political reform process as an adjunct to the development of a market economy. For example, in the Slovakia inquiry, the Department noted that there were “signs that a growing number of people . . . realize that political freedoms . . . are critically important for achieving long-term economic prosperity,” and that the “consequent strengthening of political freedoms . . . in Slovakia can only serve to deepen and bolster the economic freedoms that necessarily underlie a market economy.”<sup>4</sup> In its inquiry into Hungary’s NME status, the Department noted “critically important institutional and political reforms,” which had “no doubt revitalized and reinforced a strong entrepreneurial and market-oriented mind-set in the Hungarian people and institutions” that would ensure the strength and permanency of Hungary’s economic reforms.<sup>5</sup>

In contrast, the Government of Vietnam has not exhibited a commitment to political liberalization. Although the Vietnamese government’s rhetoric supports certain economic reforms, in reality, “suspicion of private enterprise remains entrenched in the bureaucracy, political circles, and at many financial institutions. In practice, reform efforts inch along, while officials continue the tradition of state interference in business activity.”<sup>6</sup>

Furthermore, even the Vietnamese government recognizes that Vietnam currently remains a NME country – the Vietnamese Communist Party plans to develop a “multi-sectoral market

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<sup>4</sup> Slovakia NME Memo at 13-14.

<sup>5</sup> Hungary NME Memo at 17.

<sup>6</sup> See Economist Intelligence Unit, Country Commerce Vietnam, Apr. 2002, at 11.

economy under . . . State management in the direction of socialism”<sup>7</sup> and to establish “the institutions of a socialist-oriented market economy” by 2010.<sup>8</sup> Unlike Russia, which had a stated goal of establishing “a full-fledged market economy,”<sup>9</sup> Vietnam claims to pursue a socialist-oriented market economy, described in Article 15 of the Vietnamese Constitution as a “multi-component commodity economy functioning in accordance with market mechanisms under the management of the State and following a socialist orientation.” {emphasis added} The Communist government of Vietnam has, therefore, not relinquished state-control of its economy and has no plans to do so. Unlike in its Slovakia and Hungary determinations, the Department cannot conclude in the case of Vietnam that the Vietnamese political system supports economic reform. Rather, Vietnam’s Communist ideology actively hinders the development of a market economy in that country.

## **2. The U.S. Government, International Organizations, and Other Importing Countries Consider Vietnam to Be a Nonmarket Economy Country.**

Various agencies and bodies of the U.S. government consider Vietnam to be a nonmarket economy country. For example, because of the Communist nature of Vietnam’s government, the Department, itself, has previously recognized that Vietnam is a NME country.<sup>10</sup> 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

<sup>7</sup> Excerpts from Draft Report to Congress VIII: Socialism, Feb. 2, 2001, at <http://www.vietnamembassy-usa.org/news/newsitem.php3?datestamp=20010202103315>.

<sup>8</sup> Strategy for Socio-Economic Development 2001-2010, Presented by the Central Committee, 8<sup>th</sup> Tenure, to the 9<sup>th</sup> National Congress, Apr. 20, 2001, at <http://www.vietnamembassy-usa.org/news/newsitem.php3?datestamp=20010420010319>.

<sup>9</sup> Russia NME Memo at 7.

<sup>10</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.”).

trade agreement ever negotiated with a non-market economy country.”<sup>11</sup> The Congressional Research Service also labeled Vietnam as a NME country,<sup>12</sup> as did the U.S. Trade Representative (“USTR”) in its request for public comments on the negotiation of the BTA.<sup>13</sup>

Other U.S. agencies have also recognized Vietnam’s NME status. For example, the Central Intelligence Agency’s World Factbook notes that the Asian financial crisis “highlighted the problems existing in the Vietnamese economy but, rather than prompting reform, reaffirmed the government’s belief that shifting to a market oriented economy leads to disaster.”<sup>14</sup> At the time Russia was graduated to market economy status in June 2002, a Commerce Department official noted that Vietnam was one of the countries, along with China and many former Soviet bloc countries that remains a nonmarket economy country under U.S. antidumping law.<sup>15</sup> The State Department describes Vietnam as a country in transition to a market economy, also pointing out that decisive structural economic reforms have lagged because the country’s leadership “has chosen to follow a less ambitious, slow-paced reform program. Overall systemic economic reform has been limited by both Vietnam’s communist ideology and a bureaucracy which views reform as a threat to the status quo.”<sup>16</sup>

Moreover, institutions such as the World Bank and the International Monetary Fund, while encouraging Vietnamese economic development, note that Vietnam remains in the process of

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<sup>11</sup> H.R. REP. NO. 107-198, at 2 (Sept. 5, 2001).

<sup>12</sup> See Mark E. Manyin, Congressional Research Service, “The Vietnam-U.S. Bilateral Trade Agreement,” Sept. 15, 2000.

<sup>13</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>14</sup> See 2001 CIA World Factbook, Vietnam, at <http://www.cia.gov/cia/publications/factbook/geos/vm.html>.

<sup>15</sup> See “US Announces Market Economy Status for Russia,” Agence France Presse, June 6, 2002, attached as **Exhibit 6-1**.

<sup>16</sup> U.S. State Department, “Background Note: Vietnam,” July 2001, at <http://www.state.gov/r/pa/ei/bgn/4130.htm>.

transitioning from a centrally-planned economy to a market-oriented economy.<sup>17</sup> And in antidumping investigations regarding Vietnamese products, the governments of Colombia, Canada, Poland, and the EU have all based their margin calculations on surrogate (or “analogue”) country values due to Vietnam’s nonmarket economy status.<sup>18</sup>

### **3. Vietnam Bars Free Trade, Restricts the Impact of World Market Prices on Domestic Prices, and Has not Established Sufficient Market Reforms to Enable the Country to Accede to the World Trade Organization.**

Vietnam has moved slowly in its bid to accede to the World Trade Organization (“WTO”). Although WTO membership is not dispositive of market economy status,<sup>19</sup> steps taken in preparation for accession may be indicative of a government’s commitment to “market openness and its integration into world markets, both of which help support market forces.”<sup>20</sup> For example, the Department favorably cited Russia’s reduction of tariff rate categories from seven to four, ranging from 5 percent to 20 percent, as part of its preparations for WTO accession as a relevant factor in the Department’s analysis of Russia’s NME status.<sup>21</sup> Vietnam’s progress towards WTO accession is much less advanced, however. Despite ongoing negotiations with foreign governments, the WTO officially “tabled” Vietnamese membership only in April 2002.

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<sup>17</sup> See, e.g., Liesbet Steer & Markus Taussig, “A Little Engine that Could . . . : Domestic Private Companies and Vietnam’s Pressing Need for Wage Employment,” World Bank Policy Research Paper Working Paper 2873, Aug. 2002, at 26 ¶ 63, at [http://econ.worldbank.org/files/16767\\_wps2873.pdf](http://econ.worldbank.org/files/16767_wps2873.pdf); “World Bank Vice-President Visits Vietnam To Introduce New Country Director To Senior Government Officials,” World Bank Press Release, Sept. 11, 2002, at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20067676~menuPK:34463~pagePK:34370~piPK:34424~theSitePK:4607,00.html>

<sup>18</sup> See “Country Paper – Vietnam Business Implications of WTO Trade Remedies,” at [http://www.intracen.org/worldtradenet/docs/whatsnew/colombo\\_workshop\\_may2002/country\\_papers/country\\_paper\\_vietnam.pdf](http://www.intracen.org/worldtradenet/docs/whatsnew/colombo_workshop_may2002/country_papers/country_paper_vietnam.pdf).

<sup>19</sup> See Czech Republic NME Memo at 16.

<sup>20</sup> Kazakhstan NME Memo at 16.

<sup>21</sup> Russia NME Memo at 46.

<sup>22</sup> See Vu Cuong, “The Long and Winding Road to the WTO,” Vietnam Investment Review, Apr. 15, 2002, attached as **Exhibit 6-1**.

and accession is unlikely to occur before 2005, at the earliest.<sup>23</sup> Additionally, Vietnam's commitment to the ASEAN Free Trade Agreement to reduce tariffs does not come into effect until 2015.<sup>24</sup>

Further, Vietnam remains wedded to tariff and non-tariff barriers, insulating it from integration into the world economy. Through its high tariff rates, Vietnam maintains a level of protectionism that slows its economic integration into the world trading system. Vietnam's average tariff rate is in the range of 19 percent – higher than that of other nonmarket countries such as China (15.7 percent), Uzbekistan (15 percent), and Bulgaria (12.4 percent).<sup>25</sup> In contrast in several previous NME graduation inquiries the Department found low average tariff rates of approximately 4 percent.<sup>26</sup>

Vietnam also maintains numerous non-tariff barriers that restrict the impact of world market forces on domestic prices.<sup>27</sup> Non-tariff barriers, including quotas, special sales taxes on luxury goods, foreign exchange restrictions, and outright import prohibitions, are more damaging to the efficient allocation of a country's resources and economic performance than tariffs, in part

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<sup>23</sup> See Nguyen Vu, "Uphill Climb to Join WTO: Burghardt," Vietnam Investment Review, Sept. 23, 2002, attached as **Exhibit 6-1**.

<sup>24</sup> See Ben Rowse, "UN Says Vietnam Needs to Speed up Economic Reforms," Agence France Presse, Sept. 10, 2002 (also noting that Vietnam began doi moi in 1986, "but its gradual transition to a socialist-leaning market economy has been bogged down by corruption, reluctance from party hardliners and the 1997-1998 Asian financial crisis"), attached as **Exhibit 6-1**.

<sup>25</sup> 2002 Index of Economic Freedom (Washington, D.C.: The Heritage Foundation and The Wall Street Journal, 2002), 127, 149, 409, 413, attached as **Exhibit 6-4**. The full report is available at <http://www.heritage.org/research/features/index/2002/chapters/pdf/2002Index.pdf>. See also Economist Intelligence Unit, Country Report Vietnam, July 2002, at 23.

<sup>26</sup> See, e.g., Slovakia NME Memo at 14; Czech NME Memo at 15; Latvia NME Memo at 18.

<sup>27</sup> See Center for International Economics, World Bank, "Non-Tariff Barriers in Vietnam – A Framework for Developing a Phase-Out Strategy," Sept. 1999, at <http://www.intecon.com.au/pdf/Vietnam%20NTB%20report-%20version%20for%20Web%20site.PDF>. This document provides a comprehensive analysis of the nature of the non-tariff barriers existing in Vietnam as of 1999 and the consequences for the Vietnamese economy. Although Vietnam has made changes since that time, the study provides a good baseline for the extent and type of non-tariff barriers in Vietnam in 1999.

because their existence and effects are not as transparent.<sup>28</sup> Vietnam's non-tariff barriers also include significant restrictions on the convertibility of foreign exchange, discussed in Commerce I. In addition, quantitative restrictions exist on imports of many goods,<sup>29</sup> and the Ministry of Planning and Investment is authorized to impose ad hoc temporary quantity controls on imports. Some imports that are considered threats to state industries, such as the automobile industry, require licenses. Vietnam can prohibit imports of what it deems as "reactionary materials" and children's toys that "detrimentally influence personality, education, social order, and safety."<sup>30</sup> In fact, explicit non-tariff trade barriers affect 40 percent of Vietnamese imports, and a much greater percentage is also affected by less transparent non-tariff barriers.<sup>31</sup> The IMF lists numerous Vietnamese non-tariff barriers, including import licenses that prohibit importation of certain items and quotas that are set on an ad-hoc basis by the Ministry of Planning and Investment, noting that "a broad range of additional non-tariff measures"<sup>32</sup> also protect the Vietnamese economy.

Vietnam's efforts to reduce tariff and non-tariff barriers are moving glacially, in accordance with the government's economic plan. With regard to WTO accession, Vietnamese Deputy Prime Minister Nguyen Manh Cam, Chairman of the National Committee of International Integration, noted that the "roadmap to open our market to the world must be taken with rational and gradual

<sup>28</sup> See *id.* As noted at xii, "tariffication" of non-tariff barriers has the advantage of making the impact and effect of the restriction transparent.

<sup>29</sup> International Monetary Fund, *Annual Report on Exchange Arrangements and Exchange Restrictions 2001* {hereinafter IMF, Exchange Arrangements} at 1009, attached as **Exhibit I-1**.

<sup>30</sup> IMF, Exchange Arrangements at 1009. See also "Vietnam's Ruling Communist Party Affirms Strict Censorship," [http://www.usvtc.org/News/April%202002/vietnam's\\_ruling\\_communist\\_party.htm](http://www.usvtc.org/News/April%202002/vietnam's_ruling_communist_party.htm).

<sup>31</sup> See Center for International Economics, World Bank, "Non-Tariff Barriers in Vietnam – A Framework for Developing a Phase-Out Strategy," Sept. 1999, at <http://www.intecon.com.au/pdf/Vietnam%20NTB%20report-%20version%20for%20Web%20site.PDF>.

<sup>32</sup> See IMF, Exchange Arrangements at 1007.

moves.”<sup>33</sup> As such, even measures intended to boost Vietnam’s WTO membership chances are moving at a slow pace, unlike steps taken by Kazakhstan and Russia when the Department found them to no longer be nonmarket economy countries prior to their WTO accession.<sup>34</sup>

#### **4. The Vietnamese Rule of Law Is Underdeveloped.**

Vietnam has failed to reform its legal system, which remains incompatible with a functioning market economy. As the Department explained in its analysis of Slovakia’s NME status, the rule of law is “critically important for achieving long-term economic prosperity,” which serves to “deepen and bolster the economic freedoms that necessarily underlie a market economy.”<sup>35</sup> In contrast, the “single biggest challenge facing Vietnam in its transition to a market economy is the establishment of institutions to protect the legal and investment rights of companies,”<sup>36</sup> without which economic reform cannot progress.

There are several significant obstacles to legal reform in Vietnam. First, the Vietnamese Communist Party controls the Vietnamese legal system,<sup>37</sup> and Vietnamese judges are selected primarily for their political convictions.<sup>38</sup> Additionally, prosecutors must refrain from prosecuting cases in which Party members are involved, particularly cases involving corruption.<sup>39</sup> Foreign companies rarely use the courts in Vietnam, as the courts offer little protection for the few rights that the Vietnamese government has granted to them.<sup>40</sup>

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<sup>33</sup> Ngo Hong Hanh, “Nation Identifies Hurdles to WTO Membership,” Vietnam Investment Review, May 13, 2002.

<sup>34</sup> See Russia NME Memo at 20-21; Kazakhstan NME Memo at 16.

<sup>35</sup> Slovakia NME Memo at 13-14.

<sup>36</sup> Ben Rowse, “World Bank Says Vietnam Must Reform Institutions to Stay on Track,” Agence France Presse, Sept. 11, 2002, attached as **Exhibit 6-1**.

<sup>37</sup> 2002 Index of Economic Freedom (Washington, D.C.: The Heritage Foundation and The Wall Street Journal, 2002) at 414.

<sup>38</sup> Id.

<sup>39</sup> Economist Intelligence Unit, Country Report Vietnam, Apr. 2002 at 13.

<sup>40</sup> Id.

Second, Vietnam's legislative process and the interpretation of laws by the courts lack transparency. There is no history available to explain the rationale behind Vietnamese laws, nor are there documents that support agencies' or courts' prior interpretations of law.<sup>41</sup> In addition, enacted laws can be, and have been, changed by ministries in the form of legally-binding circulars, and the National Assembly and ministries are not bound to uphold their own earlier enactments or interpretations of law.<sup>42</sup> The lack of transparency and public accountability reflected in the government's control over the press, too, ensures that information such as customs valuation of imports, which has a direct impact on the price of imported goods and prices in the domestic market, is not sufficiently available.<sup>43</sup> Furthermore, the Vietnamese government's lack of transparency extends even to SOEs listed on the Vietnamese stock exchange and Vietnamese privately-owned enterprises; they are reluctant to adopt internationally accepted business practices regarding disclosure of financial information to potential investors. This lack of transparency increases the costs and risks of doing business in Vietnam, while reducing the success of both foreign and private enterprises in the Vietnamese market.

Finally, the World Bank notes that development of institutions, including legal institutions, to reform Vietnam's economy would take a decade if work began immediately through "a disciplined month-by-month, year-by-year implementation of reforms in banking, state enterprises, and the private sector . . . complemented by a very serious effort to develop the leg

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<sup>41</sup> Peter N. Sheridan, "Getting Started – An Insider's Guide to Starting a Business in Vietnam," [at](http://www.vvg-vietnam.com/i_g1.htm) [http://www.vvg-vietnam.com/i\\_g1.htm](http://www.vvg-vietnam.com/i_g1.htm).

<sup>42</sup> Id.

<sup>43</sup> See 2002 Index of Economic Freedom (Washington, D.C.: The Heritage Foundation and The Wall Street Journal, 2002) at 413, attached as **Exhibit 6-4**.

<sup>44</sup> "Communist Vietnam's Stock Market Slows After Roller-coaster First Two Years," Associated Press, July 25, 2002, [at](http://www.usvtc.org/News/July%2002/communist_vietnam.htm) [http://www.usvtc.org/News/July%2002/communist\\_vietnam.htm](http://www.usvtc.org/News/July%2002/communist_vietnam.htm).

system and reform the public administration system.”<sup>45</sup> As this is not a currently ongoing process, the Vietnamese legal system is unlikely to provide support for a functioning market economy in Vietnam in the foreseeable future.

## **5. Vietnam Maintains Strong Political and Trade Ties to Other Nonmarket Economies**

As part of its commitment to Communism, the Vietnamese government fosters close relations with other entrenched nonmarket economy countries. Vietnam maintains close political and economic ties to both North Korea and Cuba, and recent high level exchanges between Vietnamese government officials and their Cuban and North Korean counterparts have reaffirmed the “commitment to keeping the flame of communism burning.”<sup>46</sup>

The Vietnamese Communist Party General Secretary and the President of Vietnam visited Cuba in 1999 and 2000, respectively, which, according to the Vietnamese Ministry of Foreign Affairs “contributed much to the unshakable and loyal comradeship between Vietnam and Cuba, bringing relations between the two to a higher plane.”<sup>47</sup> Moreover, when Vietnamese Foreign Minister Nguyen Dy Nien and Cuban Foreign Minister Felipe Perez Roque met in Vietnam in February 2002, they committed to “further consolidate and strengthen the fraternal solidarity, friendship and co-operation between their Parties, States and people,” while Foreign Minister Nien “reiterated the Vietnamese Party, State and people's consistent [sic] support for fraternal Cuba's just cause in the construction and defense of a socialist country under the leadership of

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<sup>45</sup> Ben Rowse, “World Bank Says Vietnam Must Reform Institutions to Stay on Track,” Agence France Presse, Sept. 11, 2002 (citing outgoing World Bank Vietnam Director Andrew Steer), attached as **Exhibit 6-1**.

<sup>46</sup> “Vietnam, Cuba Reaffirm Ties, Vow to Keep Communist Flame Alive,” Agence France Presse, July 10, 2002 (citing Vietnamese state media), attached as **Exhibit 6-1**.

<sup>47</sup> “Vietnam, Cuba Seek to Further Boost Ties,” at <http://www.mofa.gov.vn:8080/Web+server/LDBNG.nsf/27f066a380705ed8c725692100085014/34e48b9c6617c3aac7256a0200116e81?OpenDocument>.

President Fidel Castro.”<sup>48</sup> In discussions with his Cuban counterpart, Foreign Minister Nien “affirmed that Vietnam was persisting with comprehensive socialist-oriented reforms.”<sup>49</sup> While in Vietnam, Foreign Minister Roque also held talks with Vietnamese Defense Minister Pham Van Tra, who noted that the visit had been “a step forward in expanding friendship and cooperation between [the Cuban and Vietnamese] armed forces.”<sup>50</sup> Vietnamese President Tra Duc Luong also visited North Korea in May 2002, at which time he and President Kim Jong Il signed treaties on extradition, double taxation, water transportation, trade, and investment.<sup>51</sup> Vietnam’s strengthening and expansion of its bilateral relationships with Cuba and North Korea reveal its continuing commitment to a Communist system.

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<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> “Vietnam, Cuba Reaffirm Ties, Vow to Keep Communist Flame Alive,” Agence France Presse, July 10, 2002, attached as **Exhibit 6-1**.

<sup>51</sup> See Economist Intelligence Unit, Country Report Vietnam, July 2002, at 15.