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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, we hereby provide rebuttal comments regarding the nonmarket economy status of the Socialist Republic of Vietnam.¹ As discussed in these comments, Petitioners submit that information on the record of this proceeding demonstrates

¹ These rebuttal comments are submitted in accordance with the Department's request for comments. 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).

conclusively that Vietnam is properly considered a nonmarket economy (“NME”) country pursuant to Section 771(18) of the Tariff Act of 1930, as amended.

Given the extensive and detailed written comments and materials previously filed with respect to Vietnam’s nonmarket economy status, Petitioners’ rebuttal comments seek to briefly address the key claims of the Government of Vietnam (“GOV”), the Vietnam Association of Seafood Exporters and Producers (“VASEP”), and other parties who have submitted comments alleging Vietnam’s market economy status. As an initial matter, however, several introductory comments are in order.

First, it is important for the Department to recognize that many of the economic reform measures cited by the GOV and VASEP as evidence of a sufficiently transitioned economy are either not yet effective or do not reflect the de facto conditions that presently exist in Vietnam. For example, none of the amended Labor Law provisions, cited by the GOV in support of its claim that wage rates are determined through free bargaining, are actually in effect.² Similarly, the GOV cites the Law on the State Bank of Vietnam for the proposition that the State Bank is independent of the government,³ but, in fact, Vietnam’s banking system is “heavily controlled” by the Vietnamese government.⁴

Second, the reform measures that have been implemented clearly reveal the Vietnamese government’s intent to permit the growth of export-oriented industries while, at the same time,

² See Law on Amendments of and Additions to a Number of Articles of the Labor Code, at <http://www.usvtc.org/Labor/LwAmndgLabourCode.pdf>.

³ See Willkie Farr & Gallagher Oct. 2, 2002 Submission at 83.

⁴ EIU, Country Commerce Vietnam, Apr. 2002, at 50.

carefully shielding Vietnam's domestic markets from foreign competition. Economic reforms, to the extent they have occurred, clearly do not effect the Vietnamese economy as a whole. For example, while the Vietnamese government has undertaken measures which have encouraged foreign enterprises to establish manufacturing facilities in Vietnam, foreign-invested enterprises ("FIEs") are limited in their investments, and Vietnamese economic policy ensures that such foreign enterprises remain largely export-oriented. In addition, the Vietnamese government has set higher minimum wage rates for foreign enterprises than for domestic enterprises, thereby making it difficult for FIEs to compete with their domestic counterparts. Domestic prices for a variety of goods and services are also higher for foreigners than for domestic consumers, ensuring that domestic purchasers of inputs such as electricity remain more competitive in the domestic market than foreign purchasers. Similarly, foreign investors remain saddled with the requirement to pay a tax on profit and dividend remittances, and the draft competition law permits the government to exempt key industries from the law or restrict competition in order to protect domestic enterprises. All of these measures, discussed in detail in Petitioners' submission, evidence the extent to which the Vietnamese government continues to heavily protect Vietnamese domestic enterprises from foreign competition and world economic conditions.

Third, in an attempt to downplay the undeniable fact that Vietnam remains a Communist country, committed to Communist principles, the GOV requests the Department not to examine "extraneous and preconceived political issues or allegations."⁵ Such an analytical approach,

⁵ Willkie Farr & Gallagher Oct. 2, 2002 Submission at 9.

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however, clearly contravenes Congressional intent in defining nonmarket economy countries,⁶ and ignores the fact that Vietnam's doi moi reforms, discussed by the GOV and VASEP in detail, remain "constrained by the dilemmas created by the Communist Party's ideology of rule."⁷ Petitioners, therefore, respectfully reiterate that the Department must consider Vietnam's Communist government and the accompanying implications for state involvement in its economy to be an integral part of Vietnam's nonmarket economy analysis.⁸

Finally, the GOV's claim that the Department may find Vietnam to be a market economy country despite all of its "distortions" is simply incorrect.⁹ The Department's reference to "distortions" in its determination on Russia's nonmarket economy status was in the context of recognizing that market economy prices need not be "perfect measures of value."¹⁰ In other words, certain, limited distortions to a "perfect" market are found in every market economy. The GOV, however, has apparently interpreted this statement to mean that any and all "distortions" are permissible. This is simply not the case. The "distortions" in Vietnam's economy are so extensive that the Department cannot reasonably determine that prices and costs in that country

⁶ See Trade Remedies Reform Act of 1984, Pub. L. No. 98-725, 1984 U.S.C.C.A.N. 5181-5182 (Additional views of Bill Archer, Bill Gradison, Barber B. Conable, and Bill Frenzel, stating that an original provision in the relevant legislation "would have replace the complex existing procedures whereby prices in a non-market, or communist, country are compared to prices in a market country with a similar level of economic development.") (emphasis added), attached as **Exhibit 1**.

⁷ Martin Painter, "State Capacity, Institutional Reform and Changing Asian Governance," presented at Asia Development Forum, Governance and Decentralization Workshops, Bangkok, Thailand, June 12-14, 2001, at 8, available at <http://www.worldbank.org/html/extdr/offrep/eap/eapprem/govpaperpainter.pdf>.

⁸ This issue also is discussed in the Oct. 2, 2002 submission of Akin Gump, at VI-1 to V-3.

⁹ Willkie Farr & Gallagher Oct. 2, 2002 Submission at 10.

¹⁰ Russia NME Memo at 6 (emphasis added).

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are determined based on market principles, and represent a reasonable foundation for its less than fair value analysis.

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Petitioners' rebuttal comments are set forth in the attached pages, numbered to correspond with the statutory criteria relevant to the Department's inquiry.

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

Respectfully Submitted,

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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