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The Honorable Donald Evans
Secretary of Commerce
U.S. Department of Commerce
Central Records Unit, Room 1870
14th Street and Constitution Avenue, NW
Washington, DC 20230

Re: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam

Dear Mr. Secretary:

These comments are respectfully submitted in response to the Department's August 9th, 2002 call for Public Comments under the Tariff Act of 1930 (as amended) (hereinafter referred to as the "Act").

American businesses know a market economy when they see it, and Vietnam is just as much a market economy as many of the economies the United States classifies as market economies. It is still developing, but compared to other countries in light of the six factors listed in section 771(18)(B) of the Act, it is clear that Vietnam should not be designated a non-market economy ("NME") for purposes of the Act.

Our comments do not purport to be official pronouncements of law or policy, rather they reflect the economic realities faced by our 700+ members in their daily business operations.

General Background to Vietnam's Transition to a Market Economy

15 Years of Reforms – Economic Transition

Since reform accelerated in 1987, the agricultural sector has been largely placed in private hands with freedom to plant and sell at market prices.[1] Prices are now generally formed by supply and demand. Interest rates are above inflation, which is low. In

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[1] Economic information for this paper was sourced from (1) the World Bank's Vietnam Economic Monitor, Spring 2002; (2) Professor David Dapice, Economist, Tufts University and (3) James Riedel, Professor of International Economics, School of Advanced International Studies, Johns Hopkins University. Legal analysis was provided by Baker & McKenzie, Vietnam.

industry, there is about a 40% share of state-owned industry, and this has been steadily declining. With the passage of the Enterprise Law in 2000, there has been a doubling in the number of formal domestic private firms as the ease of becoming formally registered has risen while the costs of registration have fallen.

The number of state owned firms has been reduced by more than one-half to about 5000. The state-owned commercial banks are operating in an ever-more commercially-oriented manner. As a result, more than 60% of their loans now go to private firms. In addition, as provinces vie for private investment, it has become much easier to acquire (rented) land for operations, which had previously been difficult.

The general economic situation today is one in which the private sector is growing rapidly and gaining share relative to the state sector. There is competition among both private and state enterprises in most lines of business, including food processing.

15 Years of Reforms – Changing Legal System

The last 15 years have witnessed a fundamental change in the basic principles underlying the organization of the economy. Specifically, Vietnam has become "a market economy with socialist orientation."[2] In this context, the term "socialist orientation" state does *not* mean a centrally planned economy, but something more along the lines of a welfare state.[3] The amendments to the Constitution of 1992 and 2001 show how this concept has been clarified in law:

- **Constitution (1992)**: the State will build a multi-sectoral market economy, in which the state and collective sectors were the foundations. The private sector was granted freedom to operate "in accordance with the law."[4]

- **Constitution (2001)**: all sectors (including the private and foreign-invested sectors) are "important parts" of the national economy. All sectors are allowed to do business as far as law does not prohibit them.[5]

Following on the 2001 amendments to the Constitution, the private sector (both local and foreign-invested) is now officially encouraged to develop in almost all fields.[6]

Complementing its domestic legal reforms, Vietnam's participation in a growing number of bilateral and multilateral agreements binds it to the principles of National Treatment and non-discrimination that are fundamental to a market economy. These obligations include its membership in the Asian Free Trade Area (AFTA), the United States-Vietnam Bilateral Trade Agreement (effective 10 December 2001), and other bilateral agreements.

[2] Constitution 1992 (Amended in 2001), Art. 16.
[3] A COUNTRY OF "*dan giau, nuoc manh, xa hoi cong bang van minh*" (affluent people, strong state, equal and civilized society). See Article 3 of the Constitution 1992 (Amended in 2001).
[4] Constitution 1992, Arts. 15 and 22.
[5] Constitution 1992 (Amended in 2001), Art. 16.
[6] Constitution 1992 (Amended in 2001), Arts. 19 and 25.

Vietnam's commitment to implement the principle of non-discrimination in international trade is also reflected in its market access offer to the World Trade Organization.

Against this general background we turn to the Department's factors.

1. Convertibility of Foreign Currency

The Vietnamese Dong (VND) is freely convertible for current account transactions. For capital account transactions, foreign investors have a legal right to repatriate invested capital, subject only to payment of taxes owed and the proper winding up of their subsidiaries in Vietnam. Again, this is not different from most countries in Asia, and more liberal than some. Some countries, such as Malaysia, have stricter controls on capital account transactions.

Specifically, Vietnamese and foreign citizens are allowed to keep foreign exchange remitted from abroad.[7] Companies are currently required to sell 30% of their foreign exchange revenues from current account transactions to banks for VND,[8] but this requirement is scheduled to be phased out by the end of the year in accordance with Vietnam's agreement with the IMF.

VND can be converted into foreign exchange without approval from the State Bank of Vietnam (SBV) for commercial transactions.[9] This includes the following purposes: (1) payment for all forms of international contracts (purchases of goods or services, leases, etc.), (2) repayment of foreign exchange loans, (3) investment overseas or profit remittance, (4) payment to organizations authorized to receive foreign exchange, and (5) other purposes as determined by the Prime Minister.[10]

Vietnam citizens can bring US$3,000, US$5,000 or US$10,0000 abroad without SBV approval, depending on the purpose. [11]

2. Wage Rates

Wages are determined through bargaining between employers and employees,[12] but the wage cannot be lower than the legal minimum wage (which is US$45 per month in Hanoi and Ho Chi Minh City, before mandatory benefits).[13] This minimum wage is well above the poverty level, which is approximately US$180/year. In addition to the wage, employers and employees must contribute to social insurance, health insurance and unemployment insurance programs. Enterprises with more than twelve workers are required to have a union, whose representative is elected by the workers, to represent

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[7] Circular No. 01/1999/TT-NHNN dated 1 April 1999 (Circular No. 01), Section 1, Chapter III, Part II.
[8] Decree No.05/2001/ND-CP dated 17 January 2001 and Decision No. 61/2002/QD-TTg dated 15 May 2002.
[9] Decree No. 63, Art. 13.
[10] Section II.3.2, Part II of Circular No. 01/1999/TT-NHNN (17 April 1999).
[11] Decision No. 1437/2001/QD-NHNN dated 19 November 2001.
[12] Labor Code, Art. 55.
[13] *Decision No. 708/1999/QD-BLDTBXH* (Decision No. 708) dated 15 June 1999.

them in wage negotiations. Such unions automatically become part of the National Federation of Trade Unions.

3. Scope for Foreign Investment

Vietnam allows foreign direct investment in all sectors of the economy except for limited areas that are specifically restricted or prohibited. Moreover, entirely foreign-owned companies are allowed in all areas, again subject to the "negative lists" of sensitive areas.

American consumer products companies such as Coca-Cola, which were once joint ventures, have become 100% US-owned subsidiaries pursuant to amendments to the *Law on Foreign Investment (2000)* that liberalized the forms in which foreign companies may chose to invest. These same rules apply in areas ranging from financial services (accounting firms, banks and insurance companies such as PricewaterhouseCoopers, Citibank, and American International Group), to IT (IBM, Motorola, HP/Compaq) to downstream petroleum (Mobil, Shell), to legal services (Baker & McKenzie, White & Case, Coudert Brothers) to advertising (J. Walter Thompson), etc. This situation is more liberal than that found in many countries in Asia that the US deems to be "market economies".

Where a foreign investor chooses the joint venture form, it may select a private partner or a state-owned one. Only in certain restricted areas would a State-owned partner be mandatory (e.g., media, crude oil exploitation and telecommunications). Prohibited areas are only those that are offensive to Vietnamese culture, or threatening to national security, the public interests or the environment. Other fields such as travel services and domestic telecommunication services are allowed subject only to partnering with a local company.[14]

Foreign investment has been encouraged in the food processing industry, making this one of Vietnam's most market-driven and dynamic sectors. This encouragement takes the form of expedited licensing procedures for 100% foreign owned factories, and streamlined customs procedures for imported raw materials and components used in exported products.

4. Government Control and Ownership of the Means of Production

Anyone doing business in Vietnam will verify that it is a country that has developed fundamentally beyond the Cold War images of 30 years ago. The means of production are widely held, private enterprise is thriving (though not without challenges), and the State's remaining participation is in a few core industries that were monopolies in most countries at similar stages of development. Production by the non-State sector is rapidly catching up with that of the "State-owned" sector, which itself is more often than not subject to competitive dynamics.

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[14] Decree No. 24/2000/ND-CP dated 31 July 2000 implementing the Law on Foreign Investment in Vietnam (Decree No. 24), Annex 2.

State-ownership is not equivalent to the absence of competition, nor does it define a non-market economy. Even in those areas where State-owned businesses still predominate there are usually at least several competitors who compete vigorously. In other sectors that were once reserved for the State, such as banking and insurance, aviation and medicine and tertiary education, private participation is allowed and is growing rapidly. Many former State-owned enterprises have been wholly or partially privatized.

GDP statistics do not give the full picture of the State's diminishing share of the broader economy. These statistics indicate that the State-owned sector already accounts for less than one half of GDP. But this does not reflect some important facts.

First, the areas where the State dominates are limited to a few, discrete, but highly profitable areas of business (e.g., international telecommunications, oil and gas exploitation, etc.). Therefore, their impact on the market oriented nature of the overall economy is limited.

Second, there is a tremendous informal economy in Vietnam that is increasingly determining demand for goods and services on a purely market oriented basis. Even so underestimated, the non-state sector's official share of GDP is growing at approximately 20%/year.

Third, price controls have been abandoned for several years, except for a few items sensitive to the consumer. Price controls do not generally affect industrial or agricultural inputs.

Finally, even where State owned companies are the majority in a given industry, the plethora of "owners" of those state owned companies (e.g., national, provincial or local entities across more than twenty functional areas) ensures that they compete vigorously with each other.

5. Government Control over Allocation of Resources

The Government's role in the allocation of resources is implemented in a manner not dissimilar from that in the US and other "market" economies.

Capital allocation is increasingly influenced through interest rates (there are no longer interest rate caps in Vietnam).

Energy, water and other important factors of production are available for industrial users at rates largely determined by supply and demand. With foreign investors now participating in Vietnamese power plants and water purification facilities, there is more and more private participation in public utilities.

Land is owned by the "People" and "administered by the State" but as in other many other market-economies there is a market for land use rights, which may be bought and sold, mortgaged and inherited under Vietnam's new Land Law.[15] In substance, this system is not much different from the systems in places ranging from Queensland Australia (the "Torrance system") to Hong Kong (where until recently all land was owned by the Crown), to most of Hawaii and many other places.

a. Output Decisions of Enterprises

Pricing decisions are largely up to commercial enterprises.[16] The Government issued a *Pricing Ordinance* in April 2002, but its main purpose is not to set prices but to prevent unfair competition, such as dumping, price fixing, and other matters that the US regulates through antitrust laws.[17]

b. Pricing Controls

Under the *Pricing Ordinance*, the State may regulate prices for certain goods and services by means of standard price levels, price brackets or maximum and minimum prices. Such goods and services are limited to the following:

(i) Land, water surface and important natural resources (all of which are owned by the People and administered by the State);

(ii) State properties that are sold or leased;

(iii) Monopoly commodities and services; and

(iv) Commodities and services that are vital for National policies and people's welfare.

Such controls related to public resources and other shared items are common in market economies and do not indicate government control of the economy.

Vietnam has eliminated discriminatory pricing as between foreign and local companies in most areas except air transport, advertising and some categories of electrical usage, but it has undertaken phase out schedules for these areas as well.

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We would welcome the opportunity to participate in any public hearing on this issue that the Department may deem necessary.

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[15] Land Law (as amended on 29 June 2001) and Decree No. 24/2000/ND-CP dated 31 July 2000.
[16] Enterprises Law dated 12 June 1999.
[17] Pricing Ordinance dated 26 April 2002. The objectives of this Ordinance are: (1) to stabilize the market prices of important or essential goods and services, control inflation; (2) to set prices for assets or services controlled by the state such as land, oil and gas, public transportation etc.; (3) to appraise State assets for transfer or capitalization purposes; (4) to regulate monopoly prices; (5) to prohibit anti-dumping sales; and (6) to combat anti-competitive pricing activities.

Sincerely yours,

Walter Blocker
Chairman
American Chamber of Commerce, Vietnam

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