30 September, 2002 Case No. A 552-801

Mr. Bernard T Carreau
Acting Assistant Secretary for Import Administration
US Department of Commerce
Pennsylvania Avenue and 14th Street N.W.
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Dear Mr. Carreau

Re: Request for Comments on Vietnam's Status as a Market or Non-market Economy.

On behalf of the Vietnamese business community, the Vietnam Chamber of Commerce and Industry (VCCI), we would like to express warmest greeting to you. We have always highly appreciated the goodwill, cooperation and efforts made by the United States Department of Commerce in the normalization of the bilateral trade relations of our two countries and especially in the preparation, conclusion and implementation of the Vietnam-US Bilateral Trade Agreement over the past years.

However, we have recently been concerned about the emerging barriers to our trade relations, particularly with regard to the tremendous difficulties placed on the export of Vietnamese goods into the US market during the very first years of implementing this Bilateral Trade Agreement. One of the most worrying examples of these is obviously the lawsuit case filed by the Catfish Farmers of America (CFA) against the Vietnamese fish exporters for the alleged dumping of tra and basa fish in the US market.

In this regard, we would like to express the opinion of VCCI as follows:

I. The current business environment in Vietnam

It has been widely known that the reform process in the agricultural sector has been progressing in Vietnam since 1981 with the delegation of economic autonomy to households and then the introduction on a national scale since 1986 of a comprehensive reform that officially implemented this autonomy in the whole economy. The fundamental changes brought about by the agricultural reform allow the farmers to have durable and stable land use rights and autonomy in their production choices and sales.

As a result, Vietnam now has over 12 million peasant households that are working independently in all stages from production to marketing and sales of their fishing or agricultural products, contributing to about 98% of the total agricultural GDP of the nation.

Since the late 1980s, in addition to the abolition of the State control regime over the distribution and fixing of commodity prices, whilst allowing the free flow of goods and services, the household economies and the private sector were also recognized and encouraged to develop. This fact has evidently, over time, helped to establish a market economy in Vietnam. In terms of policy and institutional framework, there are legal documents, such as the Company Law and the Private Enterprise Law, released in 1990 to evidence this. Also, the people's title over the production and the people's freedom to do business were also well stated in the State Constitution of 1992. In order to meet the demands of the economy and to continue the completion of the legal framework in support of the business sector, the two above-mentioned laws were replaced with the Enterprise Law in 2000. Also in November 2001, the Government issued Decree 90/2001/ND-CP on Promotion of Small-and Medium-Sized Enterprises (SMEs). The results of all these efforts were the development of over 82,000 businesses working in the private sector and some 2.3 million off-farm business households that are operating actively in the market, representing the largest economic force in Vietnam.

The reform in the State-owned Enterprises (SOEs) sector was also initiated rather early, around 1979, with a full-scale implementation since 1987[1]. By the early 1990s, the number of SOEs was reduced more than 50% (from over 13,000 to about 6,000). In the mid 1990s, the "equitization" of SOEs was piloted and the process is now accelerating[2]. Basically, most of the SOEs, excluding some public utilities, have their business autonomy and operate according to the commercial principles and rules of contracts and competition. The Government has largely terminated any subsidies to this business sector.

The reform process in Vietnam is also a process of expanding the country's trade relations and economic cooperation with all the nations and territories in the world. The prevailing trading system in Vietnam now is a liberalized one with the termination of the state monopolies in foreign trade, the abolition of the licensing system for most of the country's exports and the deregulation of the licensing for the majority of imports, plus the expansion of rights to conduct import and export businesses to enterprises in all economic sectors, including the private and foreign investment sectors in Viet Nam. Since 1989, together with the removal of the dual pricing system, the exchange rates between Vietnamese currency and hard currencies are also market driven. As a result, the

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[1] Decision 217/HDBT by the Council of Minister in 1987
[2] Decree 64/2002/ND-CP by the Government in 20012

import and export activities in Vietnam increased strongly at about 20% per year during the 1990s. The Law on Foreign Investment was promulgated in 1987 and further amendments were subsequently made to make the Law even more open and attractive. So far, Viet Nam has attracted some 3,700 FDI projects with the total value of over US$ 40 billion in all business sectors.

With regard to the international economic integration, the Government of Vietnam has made great efforts to promote regional and international cooperation, as well as participating in the regional institutions of ASEAN and APEC. It is also important to underscore that Vietnam is engaging in various negotiations for entry into the World Trade Organization (WTO). Similarly, Vietnam has concluded a number of agreements on trade promotion, investment protection and double taxation avoidance with various countries and territories. The commitments under such agreements on reducing tariff and removing non-tariff barriers are being seriously implemented and respected by the Government.

The Government of Viet Nam has always attached a high priority to the preservation of the effectiveness of the state legislative system. For example, in order to ensure a full and proper implementation of the Enterprise Law, the Government has set up a Working Group (WG) with members from various stakeholder groups, including the business sector to supervise the implementation of the law on a nationwide basis. The WG reports directly to the Government and is expected to ensure compliance and propose solutions in case of non-compliance. Similarly, the Vietnam Chamber of Commerce and Industry has for years kept the tradition of hosting dialogue meetings between the Prime Minister and the domestic businesses. Such fora are aimed to provide a good environment for the businesses to express their concerns and make proposals to improve the business legal and policy conditions and for the Government to engage in a direct and frank dialogue with the enterprises, listen to their voices and discuss with them ways to solve the problems and create a healthy and sound business environment. Under the Government's current regulations, all legal documents relating to enterprises are required to obtain business comments before their official release. In the same way, the business community has always maintained a close coordination with the media to support the reform process, to enhance policy transparency and to promote the capacity building for better legal enforcement.

In brief, after 16 years of reform, the business environment in Viet Nam has been transited from a centrally planned economy to a market economy. Given the enterprises freedom to do business, the market-based process of setting the prices of commodities, and the high levels of competition in all business sectors, Vietnam could be considered as a market economy. This perspective has been strongly supported by the former World

Bank Country Director - Mr. Andrew Steer, who said "in terms of pricing, Viet Nam has adequately met all criteria of a market economy"[3].

[3] http://vnexpess.net visited 12 September 2002

II. The current market mechanisms in Viet Nam:

1. The convertibility of Vietnamese dongs (VND) into foreign currencies:

Given the current level of economic development in Vietnam, the VND is clearly not yet a widely convertible currency. However, the current regulations ensure that VNDs are freely convertible in current account transactions. With regard to the capital account transactions, as in many developing countries, restrictions are applied to the extent that they do not go against international practices. Specifically, investors are entitled to repatriate the invested capital from Vietnam to a foreign country after fulfilling their tax obligations and completing necessary procedures to wind up their subsidiaries in Viet Nam[4]. This regulation, in comparison with that of some other Asian neighbouring market economies, could be seen as much more flexible and liberal.

Under the current regulations on the foreign exchange management[5], Vietnamese citizens and foreigners are entitled to own and hold foreign currencies transferred from abroad through bank accounts or with direct immigration. For legal entities or companies, the Government requires them resell 30% of their revenue from the current account transactions for VND[6]. However, this regulation is expected to be removed later this year based on an agreement between the Government and the IMF.

Current regulations of the Government also provide that VNDs are convertible into foreign currency without having to secure clearance from the State Bank of Vietnam for the sake of commercial transactions relating to foreign currency payments such as:

(1) Payment of the contract for foreign partners
(2) Refunding foreign loans
(3) Investing abroad
(4) Making payment to organizations whose business operations cover foreign currency trading
(5) Performing other tasks in compliance with the Prime Minister's decisions.

[4] Decree No. 63/1998/ND-CP and Decree No. 05/2001/ND-CP of the Government on foreign exchange management.
[5] Circular No. 01/1999/TT-NHNN of the State Bank on implementation of Decree No. 63/1998/ND-CP
[6] Decree No. 05/2001/ND-CP of the Government and Decision No. 61/2002/QD-TTg of the Prime Minister.

2. Wages:

According to the Labour Code promulgated in 1994, and subsequently amended in 2002, the employees' wages are set on a contractual basis upon negotiation with the concerned employers. As the wages are decided by the supply-demand relationship in the labour market, no influence can be exerted by the Government with regard to such contractual agreements. The Vietnam Chamber of Commerce and Industry has set up an Employers' Office to work with the concerned Government agencies and the labour unions to settle all problems relating to labour relationships in Viet Nam.

3. Foreign Investment Area

Since 1987, Viet Nam has started to open the national economy integrating it into the regional and global market. The Foreign Investment Law has been amended four times to better promote and ensure investors' rights. Forty one (41) investment protection agreements and thirty eight (38) double taxation avoidance agreements were concluded with various countries and territories. The Government allowed foreign investors to make direct investment in Viet Nam in all forms, including the 100%-foreign-owned companies, in all sectors not prohibited by the Government.

With regard to the sectors where there are constraints (such as communications, crude oil exploitation, telecommunications), investors are entitled to make joint investment with local partners. The Government, on the other hand, only exerts prohibitions of foreign investment in sectors that are deemed harmful and threatening to (i) the national culture, (ii) the national security, (iii) public social benefits, and (iv) the environment[7].

Currently, more than four hundred (400) American companies are operating very efficiently in Vietnam. They are present in various sectors, including the manufacture of consumption goods with well-known names like Coca-Cola or P&G or in the service and industry sectors like Price WaterhouseCooper, Citibank, AIA, IBM, HP/Compaq and Microsoft. Many of them were initially established as joint venture businesses and now have successfully become 100% foreign-owned enterprises.

[7] Decree No. 24/2000/ND-CP

4. Government's control and ownership over the means of production:

It is clear that the majority of the means of production in Vietnam are owned by the private sector. Like many other countries at similar levels of development, the Government only takes ownership of industries that play a key role in national development. The Government's share of the ownership of the means of production definitely, in no way, implies that Vietnam is running a non-market and non-competition economy. Instead, it could be easily seen that there exists a lively competition even in sectors of large State ownership with competitors, in many cases, including foreign companies. Besides, there is an increasing private participation in sectors of past State monopoly such as banking, air services, pharmaceuticals and education. Another trend that is also emerging could be seen in the large number of equitized or privatized SOEs and in the thousands of other SOEs that are doing joint business with their foreign partners in compliance with the Vietnam Foreign Investment Law.

Therefore, while 40% of GDP is represented by the state-owned sector, structurally, we can see that these figures are from only a few key industries with high value outputs like electricity, telecommunications or oil exploitation. Also, as mentioned earlier, players in such sectors are not merely the SOEs, but also foreign investors who are venturing in joint businesses or production-sharing contracts, or the local private enterprises in a role of suppliers or sub-contractors. This analysis might well show that the real impact of the Government over the market and the economy is restricted and much smaller its share of GDP. This is increasingly supported by the fact that there now exists an equal and increasingly strong representation of other business sectors in the GDP that play a relevant and sound role and effectively compete with the traditional State sector, namely the private and foreign investment sector that make up 43.3% and 12.7% of the country's total GDP respectively.

In terms of the price controls of goods and services, this trend is increasingly fading out in Vietnam. Currently, it is applied only to a few products that are considered sensitive to the national economic development and enjoying a natural monopoly. It is, however, the monopoly and weak competitiveness of the concerned SOEs that has resulted in the controlled prices being actually higher than the global market price.

5. State control over resources allocation:

The Vietnamese Government plays the same role as Governments in other market economies with regard to the allocation of national resources. In particular, this role is performed in the following ways:

- Allocation of financial resources: The Government exerts supervision over the implementation of the Law on Bank and Credit Institutions and regulates the financial market through interest rate setting instruments. The State Bank of Vietnam is currently introducing free interest policy and using the basic interest rate only as a reference to consider lending to the commercial banks. At present, in addition to four State-owned commercial banks, there are more than forty (40) joint stock banks and twenty (20) branches of foreign banks operating in Vietnam together with a large number of people's credit unions and the stock market to provide a capital supply channel for the economy.

- Allocation of water, energy and other essential resources for production: Supply and prices of these resources are decided based on the market demand. Currently, as there are more foreign investors and private enterprises participating in the supply markets for power, water and other production factors, the prices of such resources are increasingly driven by the market signals.

- Allocation of land resources: The prevailing Land Law stipulates that land is owned by the people and managed by the State, which is very similar to the regulation of some other developed economies including Australia and the former Hong Kong where land is declared to be under the management of the Queen. According to the current law, individuals are entitled to land use rights, which are legally recognized as a tradable commodity. The land use rights can also be used for mortgage and inheritance[8]. Over the recent years, the real estate market in Vietnam has developed to a level that engages an increasing participation of foreign investors. The establishment of the Vietnamese Association of Real Estate Businesses is evidence of such development.

Generally speaking, it could be clearly seen that the role played by the private sector and dominance of market rules in the distribution and allocation of resources are much more in Vietnam than in many other developed nations. Given the condition of a developing economy with limited ready-developed infrastructure, a significant number of enterprises have to resort to the market for such investment inputs as electricity generators or water pumps. It should be acknowledged then that the market availability of such goods with main supplies from the private sector has effectively contributed to the development of

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[8] Land Law 2001 and Decree No. 24/2000/ND-CP

small- and medium-sized enterprises that represent some 90% of the total business entities in Vietnam now.

6. Other factors

In an attempt to further strengthen the economic achievements and accelerate the integration process, Vietnam has embarked on a strong reform plan of the commercial dispute settlement system. Such a reform is aimed toward greater assurance of the independence and impartiality of dispute settlement bodies. To this extent, the functions of the former economic arbitration system under the direct management of the Government has now been transferred and integrated into the economic and labor dispute settlement mission of the People's Court system[9]. The organization of the court system at all levels[10] has also been strengthened to achieve synchronization and uniformity. Regulations have been made to govern the establishment and operations of non-governmental arbitration bodies when Vietnam acceded in 1995 to the New York Convention 1958 on the Recognition and Enforcement of Foreign Arbitration Decisions.

Besides, the Government has issued a number of regulations to promote and facilitate private and foreign investment in highly professional service sector such as legal, auditing, etc. services.

[9] Court organization law 1994
[10] Court organization law 2002

III. Conclusion:

Based on all the above reasoning, we strongly believe that there are sufficient grounds to evidence the market status of the Vietnamese economy. Therefore, it would be totally unfair for Vietnamese businesses and fish farmers as well as American consumers, if the US Department of Commerce supports the CFA and does not consider Vietnam as a market economy. Such a standing and decision would definitely also go against the free trade policy that the US Government has advocated and pursued all along.

We look forward to your positive and fair conclusion over this issue related to our economy's status.

We would appreciate your comments

Yours truly,

Pham Chi Lan
Vice Executive President