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October 15, 2002

Case No. A-552-801

Total Pages: 6

Investigation

PUBLIC DOCUMENT

The Honorable Donald L. Evans
Secretary of Commerce
U.S. Department of Commerce
Central Records Unit – Room 1870
14th Street and Constitution Ave., N.W.
Washington D.C. 20230

Attn: Albert Hsu; George Smolik; Shauna Lee-Alaia; Alex Villanueva

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

Dear Secretary Evans:

On behalf of the Vietnam Association of Seafood Exporters and Producers (“VASEP”) and its individual members, we respectfully submit this rebuttal to the October 2, 2002 comments regarding Vietnam’s status as either a market-economy or non-market economy country, filed on behalf of the Catfish Farmers of America and individual U.S. catfish processors (“Petitioners”). For the Department’s convenience, VASEP’s five comments are numbered and captioned as follows.

1. Petitioners Obfuscate The Issues

Petitioners attempt in their October 2, 2002 comments on Vietnam’s economic status to make up in Cold War rhetoric what their arguments lack in substance. Having failed to demonstrate that Vietnam should be treated as a non-market economy (“NME”) country based upon a fair and objective analysis of the statutory factors that the Department must consider under Section 771(18) of the Tariff Act of 1930 (as amended (“the Act”), Petitioners instead go to extraordinary length to revive Cold War cliches in a thinly-veiled effort to distract the Department from conducting what should be a fact-based, objective analysis. For instance, Petitioners cite in footnote 4 of the cover letter to

their October 2 comments (“cover letter”) a 1984 antidumping investigation of carbon steel wire rod imports from Poland in which the Department linked Vietnam to Russia’s trade in transferable rubles, a type of Soviet currency once used to denominate trade between the Soviet Union and its trading partners. In reaching back to the Cold War, Petitioners try to obfuscate the issues that the Department must address in its assessment of Vietnam’s economic development in light of the factors specified in Section 771(18) of the Act. But the Cold War has been over for a long time.

VASEP submits that the Department must firmly reject the analytical approach suggested by Petitioners because it undermines the considerable progress in US-Vietnam relations achieved over the last fifteen years by three US Administrations, including the current Bush Administration, with the support of a strong bipartisan policy consensus in Congress. The US-Vietnam Bilateral Trade Agreement (the “BTA”) is the culmination of these efforts. In the BTA, the US and Vietnam created a partnership to promote, among other objectives, normal trade relations between the US and Vietnam, the integration of Vietnam into the mainstream of international trade, and Vietnam’s eventual accession to the WTO. Against this background, VASEP submits that the Department’s consideration of the appropriate treatment of Vietnam’s economy should focus solely on the level of Vietnam’s economic development and the factors specified in Section 771(18) of the Act.

Given the progress and the international commitments that Vietnam has made in the structural reform of its economy, market economy treatment for Vietnam will be an extremely significant step in fulfilling the promise of the BTA. VASEP hopes that the Department will take this step. Not to do so would seem, in the closing words of the letter of Mr. Ernest Z. Bower, President of the US-ASEAN Trade Council, filed with the Department on October 2, 2002, “... to convey a message that Vietnam is not doing enough to reform the economy, even though it is fully abiding by the reform schedule it committed with the other ASEAN nations, the IMF, and the United States.”¹

2. The Legal Reform Program Is A Critical Component Of Vietnam’s Reform Agenda

In their cover letter, Petitioners assert that the mere passage of laws or regulations has little relevance to the actual status of Vietnam’s economy, if such laws are not implemented or enforced. This is a serious misapprehension. As discussed in the VASEP submission, the legal reform program is a critical component of Vietnam’s reform agenda and Vietnam has received a great deal of multilateral (including the World Bank, UNDP and the ADB) and bilateral (including Denmark, Sweden and Japan) support in need assessment as well program formulation and implementation. Indeed, the US and Vietnam entered into a Memorandum of Understanding on June 19, 2002 to establish a framework for USAID funded assistance to the Government of Vietnam in the

¹ <http://ia.ita.doc.gov/download/vietnam-nme-status/comments/usaseanbc/usaseanbc-vietnam-nme-status-cmt.pdf>

implementation of the BTA. Thus, Petitioners in effect question the efficacy of these broad based multilateral and bilateral efforts. And they are wrong to do so.

3. There Is Extensive, Independent, Third-Party Data Regarding Vietnam's Economy

In their cover letter, Petitioners urge the Department to "recognize that there is not the same degree of extensive, independent, third-party data regarding Vietnam's economy that the Department has been able to examine in considering the status of other countries." Citing a Congressional Research Service study, Petitioners comment that even the information regarding Vietnam that is released to international organizations relies heavily on anecdotal evidence and incomplete data that often are compiled by the Vietnamese Government. Again, Petitioners obfuscate an issue described in their cover letter as one of extreme importance: their assertion is unsupported by the public record and takes the quote from the Congressional Research Service out of context.

The VASEP comments filed with the Department on October 2, 2002, rely extensively on data and analysis compiled by the World Bank, the IMF and the ADB. Each of these organizations is a highly respected multilateral institution in which the US plays a crucial role as a principal member state. These institutions do not typically monitor and report on their respective programs around the world, including significant programs in Vietnam, on the basis of anecdotal evidence and flawed data.

On the contrary, the relevant multilateral institutions have done a thorough analysis of the Vietnamese economy based upon extensive data compilation and interpretation. For example, the IMF Vietnam Country Report No. 02/5 issued in January 2002 was accompanied by an 88 page Selected Issues and Statistical Appendix (the "Statistical Appendix"). The Statistical Appendix includes 5 parts and 33 tables. Both VASEP and Petitioners cite the Statistical Appendix in their respective submission. Moreover, most of the relevant multilateral materials are publicly available on the website of the issuing institution and many of these publications are cited in Petitioners' submission.

In sum, Petitioners' claims about the quality and quantity of data available from independent third parties are directly contradicted by currently available publications from multilateral organizations. VASEP submits that the Department should disregard Petitioners' assertion that this issue is "extremely important" for the Department's analysis.

4. A Determination By The Department That Vietnam Is An NME Could Adversely Affect The Development Of The Private Sector In Vietnam

The seafood export industry has been one of the most dynamic components of sustained private sector growth in Vietnam. The foundation for this growth and vigor was laid a few years ago when Vietnam aggressively restructured the industry and state influence was minimized through the assistance of a Danish technical assistance project.

Indeed, 3 of the 4 mandatory respondents in this investigation are private closely-held or publicly traded corporations, with the other respondent a state enterprise that operates free from state influence. Since the current size and prospects of the private sector in Vietnam must be considered by the Department under its Section 771(18) review, it would be ironic if the Department decided to treat Vietnam as an NME and, in making this determination, stifled the growth of Vietnam's private sector.

5. American Businesses in Vietnam Know A Market Economy When They See One

The American Chamber of Commerce in Vietnam ("Amcham") submitted comments supporting treatment of Vietnam as a market economy on behalf of its 700 plus members. According to the AmCham submission, "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 classify as market economies."²

In addition, several members of Amcham, including Cargill, Citigroup, American Standard, Unilever and New York Life, submitted individual letters of support. Cargill's experience and views are particularly relevant as the company understands agricultural commodity trading and agriculture on a global basis as very few companies do. And Cargill unambiguously concluded its submission by asserting that "to burden efficient Vietnamese producers with inappropriate comparisons under the NME rules, particularly in agriculture and food production, is unjustified and unfair."³

VASEP urges the Department to take into account the testimony of American business in Vietnam. Whether they are Fortune 50 conglomerates, global consumer companies, financial services giants, leading global traders, SMEs, entrepreneurs or NGO members of Amcham, they all have no difficulty reaching the conclusion that Vietnam should be treated as a market economy. VASEP believes that the Department should listen to the positive collective voice of American business in Vietnam. They should know. And they do know.

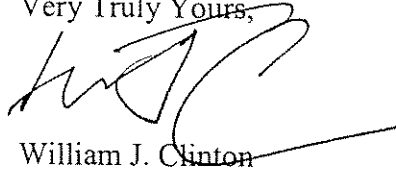
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² <http://ia.ita.doc.gov/download/vietnam-nme-status/comments/amcham/amcham-vietnam-nme-status-cmts.pdf>

³ <http://ia.ita.doc.gov/download/vietnam-nme-status/comments/cargill/cargill-vietnam-nme-status-cmt.pdf>

VASEP respectfully submits that the Department should determine that Vietnam is indeed a market economy for the reasons set forth in VASEP's original submission and in this rebuttal letter. Please contact the undersigned if you have any questions.

Very Truly Yours,

A handwritten signature in black ink, appearing to be 'W. Clinton', written over the text 'Very Truly Yours,'.

William J. Clinton

K. Minh Dang

Edmund W. Sim

Keir A. Whitson

Counsel to VASEP and Its Individual Members

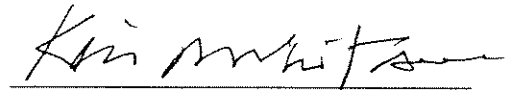
CERTIFICATE OF SERVICE

I, Keir A. Whitson, of White & Case, certify that on the 15th day of October, 2002, a copy of the foregoing submission was served upon the following interested parties by hand at the addresses indicated below:

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Keir A. Whitson

October 15, 2002