



MINISTRY OF INDUSTRY AND TRADE
THE SOCIALIST REPUBLIC OF VIETNAM

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The Honorable Gina Marie Raimondo
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Subject: Request for the U.S. Department of Commerce to Initiate a Changed Circumstances Review on Behalf of the Socialist Republic of Viet Nam

Dear Secretary Raimondo,

On behalf of the Ministry of Industry and Trade (“MOIT”), the Socialist Republic of Viet Nam (“Viet Nam”), I would like to extend my warm greetings to you and the U.S. Department of Commerce (“DOC”). I am writing this letter to respectfully request the DOC to initiate a Changed Circumstances Review (“CCR”) pursuant to Section 751(b) of the Tariff Act of 1930 (the “Act”), as amended and 19 C.F.R. § 351.216.

Viet Nam and the U.S. officially established a comprehensive partnership on July 25, 2013. This is an important step in the relations between the two countries. Since then, the Viet Nam–U.S. comprehensive partnership has been developing extensively, effectively, and substantively in the bilateral, regional, and international aspects in all fields, from politics-diplomacy, economy, education and science-technology to defense-security, with increasingly reinforced momentum and expanded scope of substantive and effective cooperation.

It has been over 20 years since the U.S. first determined Viet Nam as a non-market economy (NME) in the anti-dumping investigation against certain frozen

fish fillets from Viet Nam in 2002. Since then, the economy of Viet Nam has been through dramatic developments and reforms (as discussed in further details below). On the other hand, Viet Nam's commitment period for member countries of the World Trade Organization (WTO) to treat Viet Nam as a country with a non-market economy in anti-dumping and countervailing duty investigations already expired on 31 December 2018. Up to the present, the MOIT and the DOC (within the context of Viet Nam-U.S. Structural Issues Working Group in Trade Remedies) have established 10 technical sessions to discuss Viet Nam's market situation based on the six factors set out by the DOC under Section 771(18)(B) of the Act.

According to the most recent updates considering the six factors to be examined by the DOC under Section 771(18)(B) of the Act within the context of Viet Nam-U.S. Structural Issues Working Group in Trade Remedies, changed circumstances sufficient for initiation of a CCR exist. The economy of Viet Nam has transformed and should not be considered as a NME as prescribed in Section 771(18)(B) of the Act.

Until now, there have been 72 countries that have recognized Viet Nam as a market economy, notably the United Kingdom, Canada, Australia and Japan. Please refer to **Exhibit 1**.

Thus, MOIT finds that this is the right time to request the DOC to initiate a CCR.

1. The DOC's practice

As far as you have been concerned, the DOC has treated Viet Nam as an NME country in all past anti-dumping proceedings and has not issued a change-of-status memorandum regarding its NME classification yet. According to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.

The MOIT hereby submits that sufficient evidence exists demonstrating that Viet Nam has undergone significant structural economic changes and reforms since the policy "Doi Moi" in 1986, which warrants its re-designation as a market economy. These changes are demonstrated below.

2. Factors relevant to NME determination

According to Section 771(18)(C)(ii) of the Act, the DOC may make

a determination on whether a particular foreign country is an NME “at any time”. Section 771(18)(B) of the Act provides that in making such determinations, the DOC shall take into account the following factors:

- (i) the extent to which the currency of the foreign country is convertible into the currency of other countries,
- (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,
- (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,
- (iv) the extent of government ownership or control of the means of production,
- (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and
- (vi) such other factors as the administering authority considers appropriate.

Based on the six factors examined by the DOC, the MOIT would like to provide a brief on the development of Viet Nam up to the present with respect to each of those factors.

2.1. The currency of Viet Nam is convertible into the currency of other countries in a transparent manner based on market principles, fairness and non-discrimination

At the outset, we would note that the monetary and exchange rate policies are regulated in a transparent manner based on market principles, fairness and non-discrimination by the State Bank of Viet Nam (“SBV”), which operates the exchange rate policy within the framework of the general monetary policy in order to maintain macroeconomic stability and control inflation, rather than inducing an unfair competitive advantage in international trade.

The DOC’s first criteria for determining whether a country is a market economy is “the extent to which the currency is convertible”, rather than whether that country’s currency is convertible or not.

Viet Nam has undertaken the obligations stipulated by Sections 2, 3, and 4 of Article VIII of the Articles of Agreement of the International Monetary Fund

(IMF) for almost 20 years. During the working sessions with the U.S. Department of Treasury (the “DOT”), the management of monetary and exchange rate policies of the SBV over the past time was highly appreciated by the DOT. Particularly, in the most recent working session of the U.S. Secretary of the Treasury Janet Yellen with the SBV in July 2023, the Secretary recognized Viet Nam’s macroeconomic achievements and the effectiveness of the monetary policy over the past time. Simultaneously, the Secretary highly appreciated the efforts of the SBV in modernizing and enhancing the transparency of the monetary and exchange rate policy operating framework of Viet Nam to promote macroeconomic stability, ensuring the safety and soundness of the banking system.

Viet Nam’s regulations and practices have exceeded the standards set out by the DOC, as demonstrated below:

a) The U.S. Department of Treasury has confirmed that Viet Nam does not manipulate currency

Viet Nam would like to recall that according to a report by the U.S. Department of Treasury in April 2021, Viet Nam was no longer on the list of countries that undervalued its currency and only included on the Monitoring List of major trading partners that merit close attention to their currency practices and macroeconomic policies (Monitoring List). Viet Nam was removed from the Monitoring List in the U.S. Department of the Treasury's report released on November 10, 2022¹. In June 2023, Viet Nam has continued to be excluded from the Monitoring List by the U.S. Department of Treasury, leaving only seven economies: China, Chinese Taipei, the Republic of Korea, Germany, Malaysia, Singapore and Switzerland on the list². This means that the U.S. has recognized that Viet Nam does not manipulate and attempt to undervalue our currency.

b) Liberalization of current accounts and capital accounts

Viet Nam has been making continuous efforts to enhance the liberalization of current accounts and capital accounts. Up to the present, the position of Vietnamese Dong (VND) has strongly been enhanced through reform in

¹ U.S. Department of Treasury, Report to Congress – Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States, November 2022, <https://home.treasury.gov/system/files/206/November_2022_FXR_FINAL.pdf>, p.4.

² U.S. Department of Treasury, Report to Congress – Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States, June 2023, <https://home.treasury.gov/system/files/206/June_2023_FXReport.pdf>, p. 3.

denominations, form of currency, and development of a credit institution system with various services and a modern payment system. The operation of monetary policies has improved in quality and foreign exchange management regulations continue to be loosened. Fundamentally, current account transactions and some capital account transactions have been liberalized. The ability to meet foreign exchange demand continues to be polished and overall has relatively satisfied permitted transactions.

For current transactions between residents and non-residents, all payments and transfers are free to perform under the current system of legal documents of Viet Nam on the management of foreign exchange. For payment and transfer transactions related to exports and imports of goods and services, residents may purchase foreign currencies from licensed credit institutions to pay for the exports/imports upon presenting valid documents; Residents may choose VND, freely convertible foreign currencies and other currencies accepted by the credit institutions as the payment currency for current transactions, in line with Article VIII of the IMF's Articles of Agreement. For one-way transfer transactions, residents may purchase, transfer or carry foreign currencies abroad for their lawful needs in foreign countries.

For capital transactions, in the process of international economic integration, Viet Nam has gradually liberalized capital transactions carefully, with a roadmap in line with the development of the financial market and meeting the requirements of economic development. Investors in Viet Nam are not limited in terms of capital account transactions because they can purchase foreign currencies for legal transactions of capital accounts at licensed credit institutions.

The system of legal documents on capital flow management is built based on the principles of capital transaction liberalization recommended by the IMF³, whereby prioritizing the liberalization of capital inflows, followed by the liberalization of capital outflows; more stable capital flows will be liberalized first.

According to IMF's 2022 Annual Report on Exchange Arrangements and Exchange Restrictions, Viet Nam just remains restrictions only on three of

³ International Monetary Fund (IMF), Guidance Note for the liberalization and management of capital flows, April 2013, <<https://www.imf.org/external/np/pp/eng/2013/042513.pdf>>.

thirteen categories of capital account transactions,⁴ much better than other countries in the region like Thailand, Malaysia, and Indonesia that have been recognized as market economies by the U.S.

Referring to the KAOPEN⁵ index that measures the level of capital account liberalization, which was last updated in 2020, Viet Nam rate is equivalent to emerging markets, higher than developing countries and is classified as a highly liberalized group in the region, equivalent to Thailand, Indonesia, Malaysia, and higher than Bangladesh, India and China.

c) The level of the Government of Viet Nam intervention in the foreign exchange market (Government buys or sells domestic and foreign currencies to affect exchange rates...)

According to current legislation, the exchange rate of the VND is formed on the basis of both supply and demand for foreign currency in the market with State regulation. The use of monetary policy tools and the implementation of the intervention plan of the SBV in the foreign currency market are for the purpose of implementing the national monetary policy, rather than affecting the VND value.

In fact, the SBV manages the exchange rate, including intervening in the foreign currency market, within the framework of the general monetary policy in order to achieve the throughout and consistent goal of controlling inflation and stabilizing the macro-economy. Accordingly, the SBV closely monitors macroeconomic developments, domestic and foreign currencies, exchange rate movements, and foreign currency supply and demand to adjust the exchange rate appropriately, intervenes in the market flexibly in both buying and selling as necessary and limits excessive fluctuations in the exchange rate while gradually facilitates VND to move flexibly, absorbs external shocks, and contributes to achieving the goal of controlling inflation and stabilizing the macro-economic.

d) Capital control

⁴ International Monetary Fund (IMF), Annual Report on Exchange Arrangements and Exchange Restrictions Overview 2022, p. 84 <https://www.imf.org/en/Publications/Annual-Report-on-Exchange-Arrangements-and-Exchange-Restrictions/Issues/2023/07/26/Annual-Report-on-Exchange-Arrangements-and-Exchange-Restrictions-2022-530144>

⁵ Ito, H, Menzie, C, Notes on the Chinn-Ito Financial Openness Index (2020 Update), October 2022, <https://web.pdx.edu/~ito/Readme_kaopen2020.pdf>.

In 2022, new regulations were promulgated, guiding foreign exchange management for foreign borrowing and repayment of enterprises, amending and supplementing previous regulations to meet the practical needs of foreign borrowing and repayment activities of the enterprise as well as the management objectives of the SBV, including the following issues: (i) Administrative formalities: expand cases that do not require enterprises to carry out registration procedures, loan changes registration; decentralization in handling foreign loans in VND; (ii) Supplementing guidance on foreign exchange management for securing assets for foreign loans; (iii) Supplementing guidance in case the original borrower has a division, separation, consolidation or merger; (iv) Improving reporting mode. The new regulations perfect the legal framework for borrowing and paying foreign debts of enterprises that are not guaranteed by the Government, demonstrating the spirit of administrative formalities reform (simplification, application of information technology in providing public services), supporting enterprises to mobilize capital from abroad for their production and business.

For inbound and outbound investments in Viet Nam, from 2022 up to the present, the legal framework has basically remained unchanged in terms of management policy. Foreign direct investment (FDI) inflows are identified as an important component of Viet Nam's economy such as: helping to diversify capital mobilization sources for socio-economic development; contributing to the technological modernization of the economy; creating more jobs for workers; increasing revenue for the state budget; simultaneously, opening up many opportunities for domestic enterprises to participate in international production and supply chains, so that the national competitiveness is improved.

In fact, over the recent years, foreign investors have continuously disbursed their capital in Viet Nam. In 2022, the disbursement of foreign investment capital in Viet Nam reached 17.9 billion USD, increased by 14.3% compared to 2021. This has contributed to Viet Nam's impressive GDP growth of 8.02% in 2022 (the highest level in the past 10 years) despite the volatile world economic context (epidemic and prolonged political conflicts). Besides, foreign indirect investment (FII) is also a channel to mobilize capital for economic development.

2.2. Wage rates in Viet Nam are determined by free bargaining between Labor and Management

a) Viet Nam has established a complete and clear legal framework to

ensure the basic rights of employees

The Viet Nam labor market operates on market principles. This is underpinned by a comprehensive regulatory framework based on international norms and standards. Viet Nam has ratified 25 International Labor Organization (ILO) conventions and joined the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

The current labor legislation covers all contents related to the management, employment of labor and work of employees, and reasonably regulates labor relations and other related social relations closely connected to labor relations. Specifically, with the very first and completed Labor Code in 1994, undergoing 25 years of amendment and supplement, the 2019 Labor Code (please refer to **Exhibit 2**) has asserted that the labor relationship between employees or employees' organizations and employers is established through discussion, negotiation, and agreement on the principles of voluntariness, goodwill, equality, cooperation and mutual respect for lawful rights and benefits. The 2019 Labor Code approaches the progressive principles and international labor standards of the ILO and ensures the rights of workers in accordance with the international labor commitments that Viet Nam has made in line with Viet Nam's process of implementing the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and European Union-Viet Nam Free Trade Agreement (EVFTA).

Moreover, on the basis of these principles as well as rights and obligations prescribed by the law, the parties shall establish labor relations by negotiating on specific issues such as wages, jobs, working conditions, etc. Besides, the current policies play an active role in promoting discussion and negotiation in order to create harmonious, stable and progressive labor relations. Trade unions, representing the lawful and legitimate rights and benefits of employees, are gradually reformed through positive activities to understand employees' wishes in order to facilitate discussion and negotiation with employers and contribute to law and policy development in Viet Nam.

b) Regulations on the freedom to negotiate wages between employees and employers

Labor relations are established between the employer and the employee through a labor contract. A labor contract is an agreement between an employee and an employer on paid jobs, wages, working conditions, rights and obligations

of each party in the labor relationship (Clause 1, Article 13 of the Labor Code), based on the principles of voluntariness, equality, goodwill, cooperation and honesty, freedom to enter into labor contracts but not inconsistent with the law, collective bargaining agreements and social ethics (Article 15 of the Labor Code).

According to the provisions of the Labor Code and guiding documents, the employer and the employee agree on the form of time-based, product-or contract-based payment (Clause 1, Article 96 of the Labor Code). Wage is the amount that the employer pays the employee under an agreement to perform the job, including the salary by the job or by title, allowances and other additional payments (Clause 1, Article 90 of the Labor Code). The employer must establish a salary scale, payroll and labor productivity norms as the basis for recruiting, employing and negotiating salary according to the job or title stated in the labor contract and paying wages to employees (Clause 1, Article 93 of the Labor Code). The employer pays the employee based on the agreed salary, labor productivity and quality of work performance (Clause 1, Article 95 of the Labor Code). The employee's salary during the probationary period shall be agreed upon by both parties but must be at least 85% of the salary for that job (Article 26 of the Labor Code).

c) The extent of the Government's involvement in negotiating wages is limited

Vietnamese law provides for a reliable legal framework to protect the legitimate rights and interests of employees. The Government does not directly intervene in enterprise's wage policies. Wages shall be paid through negotiation between the employee and the employer and must not be lower than the minimum wage set by the Government (i.e., the lowest payment to ensure the minimum living standard for an employee who performs the simplest job in normal conditions).

In line with market economy principles, employees' wages in Viet Nam depend on the available supply and demand in the labor market, the quality and quantity of labor, and the results of the enterprise's business activities. To protect employee rights, Viet Nam provides for a statutory minimum wage. The minimum wage on a monthly basis from 2018-2022 is adjusted to increase by an average of 3.9%/year, the real salary growth rate in the 2018-2021 period is 4.52%/year. The

real wage rate growth has kept pace with the productivity growth at 4.9%/year.⁶ However, the labor market dynamic is not distorted by the presence of a minimum wage, which aims to ensure the minimum life quality of employees. According to the statistics of the World Bank⁷, the GDP per capita of Viet Nam in 1985 (prior to the open-door period) was about 236 USD/year and this figure is nearly 18-fold in 2022 at 4,163 USD/year. This visible improvement indicates both the development of Viet Nam economy in the “Doi Moi” period as well as the Viet Nam population’s quality of life.

2.3. Joint ventures or other investments by firms of other foreign countries are permitted in Viet Nam

a) Viet Nam maintains a welcoming foreign investment regime

Viet Nam maintains a friendly and open foreign investment regime where there is no difference in the treatment between foreign investors and domestic investors. Foreign investors are allowed to carry out investments in Viet Nam and create joint ventures in its territory. In recent years, various laws and decrees related to foreign investment have been amended, supplemented and adopted.

There has been no difference in the treatment between foreign investors and domestic investors since the 2005 Law on Investment was promulgated. These reforms have created an increasingly favorable environment for foreign investment, in order to improve institutions and laws, contributing to solving difficulties and obstacles for production, business and social life, especially in the context of both prevention and control of the COVID-19 pandemic and economic and social recovery and development; meet requirements arising from practice related to investment, business and corporate governance activities; attract capital and resources into production and business; contribute to improving the quality of the business environment. Thus, the current legal framework of Viet Nam ensures the interests of foreign investors when participating in investment and business activities in Viet Nam.

Viet Nam’s continuous efforts in improving the investment environment have been reflected in the FDI Regulatory Restrictiveness Index of OECD.⁸

⁶ International Labor Organization, Labor and Social Trends in Vietnam 2021, Outlook 2030, page 2 <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_837244.pdf>

⁷ The World Bank, GDP per capita (current US\$) – Vietnam, <<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=VN>>.

⁸ Available at [OECD FDI Regulatory Restrictiveness Index](https://www.oecd.org/industry/indicators/fdi-restrictiveness-index/)

Specifically, Viet Nam's restrictive index has decreased five times during the period 1997-2020, from 0.671 to 0.13.

In 2020, Viet Nam for the first time was included by UNCTAD in the list of the world's top 20 countries attracting FDI. Viet Nam is also one of the two countries in Asia that has improved its long-term credit index at a stable, positive level according to Moody's and S&P's assessments. Nikkei Asia rates Viet Nam as leading in Southeast Asia in terms of recovery after the COVID-19 pandemic (ranked eighth in the world).⁹

According to a survey by the Japan External Trade Organization - JETRO in 2022, Viet Nam is the third most attractive investment country in the world and second in Asia.¹⁰ According to EuroCham's survey in January 2023, Viet Nam remains firmly positioned among the top five investment destinations¹¹.

b) Results in attracting FDI

Attracting foreign investment inflows into Viet Nam achieved some impressive results: From 2018 to June 2023, the whole country had 14,553 valid projects with a total registered capital of 102.24 billion USD from 120 countries and territories. Realized capital in this period reached 111.6 billion USD, accounting for 38.8% of the total accumulated realized investment capital so far.

- By industry: Foreign investors have invested in 19/21 industries in the national economic subsector system. In which, the processing and manufacturing industry accounted for the highest proportion with more than 59.4 billion USD (accounting for 58.1% of total investment capital), following by the electricity production and distribution industry with more than 17.4 billion USD (accounting for 17.06% of total investment capital); real estate business industry with more than 13.6 billion USD (accounting for 13.3% of total investment capital).

- By investment partners: There were 120 countries and territories with investment projects in Viet Nam during this period. Among them, the leader is Singapore with a total registered capital of nearly 23 billion USD (accounting for 22.5% of total investment capital). Japan ranked second with nearly 17.3 billion

⁹ <https://asia.nikkei.com/Spotlight/Coronavirus/COVID-19-Recovery-Index/Vietnam-Cambodia-lead-ASEAN-comeback-in-Nikkei-COVID-index>

¹⁰ <https://ipcs.mpi.gov.vn/en/japanese-investors-to-expand-investment-in-vietnam-jetro/>

¹¹ <https://eurochamvn.org/eurocham-vietnams-q2-2023-business-confidence-index-reveals-a-modest-decline-reflecting-prevailing-market-conditions/>

USD (accounting for 16.98% of total investment capital), following by Korea, China, Hong Kong, and Chinese Taipei.

c) Implemented reforms to attract foreign investment

In the recent time, Viet Nam has carried out many reforms to attract foreign investment, specifically:

First, the Investment Law promulgated in 2020 (please refer to **Exhibit 3**) added regulations on preferential mechanisms and policies, investment support, targeting high-tech, innovative, high-value-added projects, and strengthens links, spreads and protects the environment, improves transparency and feasibility in implementing Viet Nam's market opening commitments under new generation Free Trade Agreements (FTAs), attracting FDI capital flows which are shifting rapidly in the current context.

Second, in order to improve the quality and effectiveness of foreign investment cooperation in the upcoming period, the Government of Viet Nam (GOV) has issued the Foreign Investment Cooperation Strategy for the period 2021-2030 and the Action Plan to implement the Strategy for the period 2021-2030; issued Directive No. 14/CT-TTg dated May 24, 2023 (please refer to **Exhibit 3**) on a number of tasks and solutions to improve the efficiency of foreign investment in the new period.

Third, Viet Nam has strengthened post-inspection work and unified the inspection and evaluation process for foreign-invested projects according to the provisions of the Investment Law and guiding documents, contributing to improving administrative procedures and transparency in monitoring and evaluating investment activities; avoiding organizing overlapping inspections between state investment management agencies, investment registration agencies and specialized management agencies, affecting businesses during project implementation.

Fourth, the Government, Ministries, branches and localities of Viet Nam actively deploy and synchronously enforce legal regulations, improve the effectiveness and efficiency of state management on investment, and create favorable conditions giving businesses equal access.

Fifth, Viet Nam has effectively organized bilateral and multilateral policy forums and dialogues with foreign associations and businesses to discuss orientations and solutions to improve the investment-business environment,

promoting the development of the private economic sector and actively contributing to Viet Nam's sustainable economic growth; simultaneously, removing obstacles and difficulties for businesses.

The GOV has established a special working group to review, remove difficulties, obstacles and promote the implementation of investment projects at ministries, branches and localities to promote the operation of investment projects, eliminating bottlenecks and freeing up resources for investment in socio-economic development.

d) Policy on foreign direct investments

Current regulations on foreign direct investment are implemented in accordance with the Investment Law 2020, the Government's Decree No. 31/2021/ND-CP dated March 26, 2021 (please refer to **Exhibit 4**) with regulations on incentives to attract investment by regions, industries, promote foreign investment cooperation and maximize the internal resources of domestic enterprises; closely link and improve the national competitiveness, capacity of industries and enterprises; strengthen the level of linkage between regions in the country. Accordingly, the perspective in the development of investment incentive policies should be to ensure that the objective is fair and that there is no discrimination against foreign-invested enterprises (FIEs). This is recognized in the WTO's Trade Policy Review: "*Through the update of the legal framework, Viet Nam intends to equalize the treatment accorded to Vietnamese and foreign investors and to attract foreign direct investment (FDI)*".¹²

Tax policies, fees, charges and tax incentives, fees and charges applicable to Viet Nam's current investment incentive projects are applied uniformly and equally, without distinction between Vietnamese enterprises and FIEs, fully complying with commitments when Viet Nam joined the WTO (without distinguishing between domestically produced goods and imported goods).

e) Achievements

The efforts of Viet Nam to facilitate a fair competitive business environment for foreign investors have paid off as the World Bank's "Doing Business 2020" report ranked Viet Nam at 70th out of 190 economies in terms of favorable business conditions. This rank is relatively good compared

¹² World Trade Organization, Trade Policy Review, Report by Secretariat dated March 2, 2021, para. 2.4, page 42 < https://www.wto.org/english/tratop_e/tpr_e/g410_e.pdf >

to the past as Viet Nam was over the 90th position in 2010¹³.

According to the “World Investment Report 2021” of UNCTAD¹⁴, Viet Nam is in the top 20 countries attracting the most FDI.

2.4. The Government of Viet Nam does not own or control the means of production to a significant extent

In order to demonstrate whether the GOV owns or controls the means of production to a significant extent, there are three crucial issues including (1) The role and development of the private sector in the economy and the policies for developing this sector; (2) Efforts to promote state-owned enterprise (SOE) equitization are considered an important political task to promote and enhance competitiveness in the market and (3) Land related issues.

a) The role and development of the private sector in the economy and the policies for developing this sector

As of December 31, 2020, Viet Nam had 660.1 thousand non-state enterprises, accounting for 96.5% of the total number of enterprises in the country and increasing by 35.1% compared to 2016; 22.2 thousand foreign-invested enterprises, accounting for 3.3% and increasing by 58.8%. Regarding labor, the non-state enterprises attracted more than 8.6 million employees, accounting for 58.6% of the total employees of the enterprise, increasing by 0.4% compared to 2016; the foreign-invested enterprise attracted 5.1 million employees, accounting for 34.6% and increasing by 22.5%.

In the period of 2018-2022, there are more than 130 thousand new enterprises were established on a yearly basis (especially according to statistics from the National Portal on business registration, in 2022, the whole country had more than 148,500 enterprises registered new establishments and returned to operation, this is considered as a record figure up to the present). Correspondingly, the annual registered capital reaches millions of VND billion. Particularly in the period 2018 - 2022, each year the private economy contributes an average of 2 million billion VND of new registered capital to the economy.

The capital structure changed in the direction of gradually increasing the proportion of the capital of non-state and FDI enterprises and reducing the

¹³ <https://www.worldbank.org/en/news/speech/2020/01/08/speech-by-ousmane-dione-world-bank-country-director-for-vietnam-at-the-event-vietnam-doing-business-2020-challenges-and-solutions>

¹⁴ UNCTAD, World Investment Report 2021, page 5, figure I.5, <https://unctad.org/system/files/official-document/wir2021_en.pdf>

proportion of the capital of state enterprises. As of December 31, 2020, non-state enterprises accounted for 59.4% of the total capital of the whole enterprise, an increase of 92.5% compared to 2016; FDI enterprises accounted for 19.2%, an increase of 84.4% in 2016.

Currently, there are about 800 thousand operating enterprises (some large-scale private enterprises are gradually doing multi-industry business and becoming large, important enterprises in the economy. Besides, some private enterprises are those that invest abroad and have successes as well as build their brands, contributing nearly 45% to the country's GDP, one third of state budget revenue, more than 40% of investment capital is implemented throughout society, creating jobs for 85% of the country's employees. Furthermore, the private sector plays an important role in Viet Nam's international trade activities (accounting for 35% of total import turnover and 25% of total export turnover). The group of entrepreneurs is growing stronger with about 7 million people with an increasingly strong entrepreneurial spirit, innovation and desire to rise; social responsibility, ethics and culture are increasingly spreading.

Among the 50 largest companies in 2022 in Viet Nam, the private sector contributed 33 companies from banking-finance, real estate, automotive, telecommunication, insurance, steel, consumer goods sectors, etc.¹⁵

b) Efforts to promote SOE equitization are considered an important political task to promote and enhance competitiveness in the market

In recent years, the GOV has been steadfast and enforced drastic and consistent measures to continue the restructuring and divestment of SOEs in order to achieve equitization of SOEs in industries and fields that can be undertaken by the private sector, in order to promote and enhance competition in the market.

c) Land related issues

The GOV has improved the Law on Land to ensure the rights and obligations of each land user. According to the 2013 Land Law (please refer to **Exhibit 4**), there is no fundamental discrimination of rights and obligations between local and foreign entities in directly accessing land from the State. Depending on the types of land, the forms of the State-allocated land with or without land use fees, leased land with annual rental payments or leased land with

¹⁵ The list is available at [VNR500 - Ranking of Top 500 largest enterprises in Vietnam](#)

one-off payment for the entire lease time, the land users have corresponding rights and obligations.

The land users are entitled to exercise the rights to exchange, transfer, lease, sublease, inherit, donate or mortgage, and contribute capital to land use rights.

Economic organizations and FIEs who are allocated lands by the State with collection of land use levy or leased land with one-off payment for the entire lease period or receive land use rights for project implementation may be entitled to the right to transfer land use rights and assets under their ownership attached to the land. The transfer price is freely negotiated between the parties.

In fact, Viet Nam has a robust real estate market. The vast majority of land and real estate transactions in Viet Nam are private transactions in which the GOV plays no role in setting prices or other terms of the transaction. As of December 31, 2022, Viet Nam has 37,658 enterprises operating in the real estate sectors¹⁶. Most enterprises are private. The private enterprises operate in all real estate sectors, including housing, industrial, and tourism real estate markets. Real estate has made a major contribution to GDP and attracts foreign capital to Viet Nam. Specifically, in 2022, the total newly registered capital, adjusted registered capital and capital contribution and purchasing shares by foreign investors for real estate activities reached nearly 4.5 billion USD, making up 15.5%¹⁷. In terms of the structure of GDP, real estate activities have made up 3.46% in 2022¹⁸.

Viet Nam's institutional framework on land ownership and regulations on land use rights do not limit the formation of a free land market.

2.5. The Government of Viet Nam does not have significant control over the allocation of resources or over the price and output decisions of enterprises

Under the DOC's practices, in consideration of this factor, the DOC considers (1) whether through industrial policies, the government of a country distorts prices and outputs of enterprises, (2) regulation of prices, and (3) financial sector.

a) Viet Nam's industrial policies are not for the purpose of distorting

¹⁶ General Statistic Office, Statistical Year Book of Vietnam 2022, p. 398 < https://www.gso.gov.vn/wp-content/uploads/2023/06/Sach-Nien-giam-TK-2022-update-21.7_file-nen-Water.pdf>

¹⁷ General Statistic Office, Statistical Year Book of Vietnam 2022, p. 311 < https://www.gso.gov.vn/wp-content/uploads/2023/06/Sach-Nien-giam-TK-2022-update-21.7_file-nen-Water.pdf>

¹⁸ General Statistic Office, Statistical Year Book of Vietnam 2022, p. 250 < https://www.gso.gov.vn/wp-content/uploads/2023/06/Sach-Nien-giam-TK-2022-update-21.7_file-nen-Water.pdf>

prices and outputs of enterprises

Like countries around the world such as the United Kingdom and EU countries that are recognized as market economies by the DOC, the GOV issues industrial strategies. However, industrial strategies are not mandatory and are not for the purpose of distorting the prices and outputs of enterprises.

Instead, it just sets out forecasts and guidance for the future development of the industries and encourages the private sector's investment, including foreign investments in the industries in each period.

For example, Article 1.1 of Decision 879/QD-TTg dated June 9, 2014 (please refer to **Exhibit 5**) on approving the strategy for Viet Nam's industrial development through 2025 with a vision toward 2035 provides:

"1. Viewpoints

a/ To develop the industrial sector on the basis of effectively mobilizing resources from all economic sectors; to encourage the development of the private economy and foreign-invested sectors.

b/ To develop priority industries and industrial fields, primarily focusing on agricultural and rural industrialization and modernization, on the basis of high-quality human resources and advanced technologies, regarding competition as a driving force for development.

c/ To make the best use of existing advantages and international opportunities; to link production with services and trade, and take the initiative in participating deeply in the world industrial production value chain.

d/ To attach importance to developing a number of dual-purpose industries to serve national defense and security.

dd/ To develop industry on the basis of green growth, sustainable development and environmental protection."

The Appendix of Decision 879/QD-TTg expressly forecasts the manufacturing sector accounted for 74.61% of the total production value in 2035. It does not set out any mandatory targets for the manufacturing sector. It just provides a forecast.

Moreover, the industrial strategies are not bound to be implemented by enterprises. For example, Article 3 of Decision 879/QD-TTg provides that Ministers, heads of ministerial-level agencies, heads of government-attached

agencies, and chairpersons of provincial-level People's Committees shall implement this Decision. The enterprise's right to autonomy in production and business is provided in the 2020 Enterprise Law (please refer to **Exhibit 6**), which is detailed in Article 7 as follows:

“1. Freely engage in any business line that is not prohibited by law.

2. Freely run the business and choose a type of business organization; choose business lines, area of operation and type of operation; change the scale of business and business lines.

3. Choose the method of mobilizing, distributing and using capital.”

Finally, the industrial policies are forecast, guidance and not bound to be implemented, Viet Nam has not experienced excessive capacity in main industries, including steel, cement, flat glass, coal chemicals, polysilicon, wind power equipment, aluminum, shipbuilding, etc.

b) Regulation of prices

First, regarding the regulation of prices, Viet Nam promulgated Law No. 11/2012/QH13 on Prices (please refer to **Exhibit 7**). Article 5.1 of the Law provides: *“The State manages prices under the market mechanism; respects the right of self-determination of prices, competition of prices of production or business organizations and individuals as prescribed by law”*. Thus, the GOV is not allowed to control the prices of goods.

Regarding electricity prices, Article 1.13 of Law No. 24/2012/QH on amending, and supplementing certain Articles of Law on Electricity (please refer to **Exhibit 8**) provides: *“Electricity prices shall follow market mechanisms with the State's regulation to comply with the development of the electricity market”*.

In fact, since February 2022, the MOIT has increased the average electricity retail price frame due to the impact of the energy crisis and geopolitical tensions in Europe, exchange rate fluctuations between the USD and many other currencies, inflation pressures, and increased production and business costs globally which led to increased energy prices in many countries around the world, including Viet Nam.

Similarly, petrol and oil prices are basically in accordance with the market supply–demand. Article 1.2 of Decree 95/2021/ND-CP on amending, and supplementing certain Articles of Decree 83/2014/ND-CP (please refer to **Exhibit 9**) on petrol and oil trading provides that retail prices of petrol and oil are based

on “the price that is determined according to prices for domestic and imported petrol and oil products, and is the basis for the authorities to determine the regulated price, for determination of retail prices for domestic petrol and oil (except for mazut, which must be wholesaling prices)”.

Second, the significant size and the presence of the private area in various sectors of the economy ensures that prices cannot be artificially distorted through administrative measures. Specifically, the private sector participates in all sectors of the economy, including sectors: manufacturing, energy, utilities, finance, telecom and ICT, transportation, real estate and construction, wholesale, retail, and other services. Additionally, the size and contribution of the private sector to the economy are overwhelming as compared to SOEs. As analyzed above, as of December 31, 2020, non-state enterprises accounted for 59.4% of the total capital of the whole enterprise, an increase of 92.5% compared to 2016; FDI enterprises accounted for 19.2%, an increase of 84.4% in 2016. The total proportion of the private sector is 78.6%.

c) Financial sector

First, Viet Nam has fundamentally reformed the financial sector over the years to ensure the participation of the private sector in the financial sector and the SBV does not intervene in commercial banks’ business decision-making. State-owned commercial banks have been equitized. Currently, Viet Nam maintains only four wholly state-owned commercial banks in a total of 35 domestic commercial banks and two wholly state-owned policy banks. As of June 30, 2023, the capital of private commercial banks accounted for around 71% of the total capital of commercial banks¹⁹.

Additionally, according to the IMF’s report, credit granted by private banks to the economy accounted for the majority and increased steadily during 2017 – 2021. Credit was mostly funded to the private sector. The loans for SOEs accounted for only 4.1% in 2021.

According to the World Bank’s report, the percentage of non-perform loans to total gross loans decreased significantly to below two percent in 2022.

These above factors show that the allocation of credit is based on the market principle. Thus, credit is used productively.

¹⁹ [NHNN - NHTM Cổ phần \(sbv.gov.vn\)](http://nhnn-nhtm.com.vn)

Second, regarding lending interest rates, it is market-determined. Article 13.1 of Circular 39/2016/TT-NHNN (please refer to **Exhibit 10**) on lending transactions of credit institutions provides: “*credit institution and its customer shall agree on the interest rate depending on capital demands and supplies on the market, loan demands and creditworthiness of customers*”.

Notably, credit institutions (including state-owned banks) are independent and separate from the SBV and are free to decide whom to provide services to, how, for how long, and at what price. The SBV functions as a market maker for credit institutions; and ensures the safety of the system and implementation of national monetary policy. The SBV does not interfere with credit institutions in granting preferential loans to enterprises. Commercial banks are entitled to assess and decide whether to provide preferential loans to eligible enterprises and to be responsible for their decisions.

For SOEs under the control of the SBV, the SBV does not directly intervene in the management and administration of enterprises but exercises the rights of SOEs through the representative mechanism.

2.6. Other factors indicate that Viet Nam economy operates on market principles

Besides the above five factors, Viet Nam has also provided five other substantial factors to determine the operation of its economy based on market principles, including (1) establishing and completing a basic legal framework for enterprise bankruptcy; (2) transparency in the corporate governance system; (3) updating the legal framework for State Audit; (4) ensuring a consistent legal system and (5) diversifying and expanding the foreign economic relations.

a) Establishing and completing a basic legal framework for enterprise bankruptcy

The 2014 Law on Bankruptcy (please refer to **Exhibit 11**) was promulgated and came into effect, which contributes to perfecting the legal system of business, creating a transparent legal basis for enterprises to recover or withdraw from the market, and protecting the interests of creditors and debtors. The Bankruptcy Law 2014 has many breakthroughs that overcome shortcomings and inadequacies of the previous Bankruptcy Law and is considered to have many progressive points. Article 6 of the 2014 Law on Bankruptcy added a provision that regulates notifying individuals, agencies and organizations must ensure the accuracy of the notices and must pay compensations for damage and take responsibility before

the law in case of intentional false announcements, causing damage to enterprises or cooperatives.

Since the Law on Bankruptcy 2014 took effect until September 30, 2022, the People's Courts at all levels issued decisions to open bankruptcy procedures for 682 cases, 208 decisions to declare bankruptcy according to normal procedures, and 32 decisions to declare bankruptcy under summary procedures, 11 cases applied recovery procedures. In 2022, the courts settled 121 applications and issued decisions to declare bankruptcy for 58 enterprises; decided to suspend bankruptcy procedures for 36 enterprises and 1 cooperative.

Therefore, compared with the nine years of implementation of the 2004 Bankruptcy Law (from 2004 to 2013: Courts at all levels indicated 236 decisions to open bankruptcy proceedings, of which 83 decisions declared bankruptcy), the number of cases of bankruptcy that courts at all levels accepted and settled has increased by about three times). This indicates that the level of application of the Bankruptcy Law in Viet Nam has increased and is effective implementation.

b) Transparency in the corporate governance system

Regarding the corporate governance system, the most important reforms of the Law on Enterprises No. 59/2020/QH14 (please refer to **Exhibit 12**) intend to reduce administrative procedures and facilitate business registration and market entry; improve the legal framework on corporate governance and the level of protection of investors and shareholders in accordance with good and common international standards and practices; improve governance effectiveness and operational efficiency of SOEs; promote capital market development in order to diversify capital sources for production and business investment; facilitating business re-organization and acquisition of enterprises.

The SBV has also recently announced a new Law on Anti-Money Laundering (“AML Law”) (please refer to **Exhibit 13**) that has been in effect since March 1, 2023. This AML Law is designed to address several shortcomings identified in the current AML Law from 2012 and align with international AML standards that Viet Nam is required to implement. The main goal of this new Law is to improve the effectiveness of money laundering prevention activities and crime prevention in general. This also focuses on strengthening international cooperation to keep Viet Nam's financial system safe and secure for everyone. By enhancing these measures, the new Law aims to create a more transparent and trustworthy financial environment in Viet Nam.

Moreover, Viet Nam has also been developing policies on Environmental – Social – Governance (ESG) for the purpose of implementing the best international practices on corporate management suitable to the conditions of Viet Nam to ensure a stable development of the stock market and a transparent economy in Viet Nam.

c) Updating the legal framework for State Audit

Audit activities of the state audit are considered to be a constituent element of economic relations of the market economy in order to ensure the balance of economic and financial relations in competition, ensuring that disclosed information is always honest and appropriate, in order to guarantee the transparency and healthiness of the national finance. The Law on State Audit 2015 (please refer to **Exhibit 14**) is an important law in the legal system of Viet Nam, being a legal tool to strengthen the inspection and control of financial resources of the state, concurrently being the current highest legal basis, which regulates in a full, comprehensive, systematic manner the organization and operation of the State Audit.

d) Ensuring a consistent legal system

Viet Nam operates an economy operating under a unified legal system and effective implementation.

In order to meet the demand for state management, internal demand of socio-economic development and international economic integration, Viet Nam's judicial system has been increasingly improved. Up to the present, Viet Nam has a relatively comprehensive legal system that not only meets the demand of international economic integration but also meets the demand for national economic development as well as contributes to the establishment of Viet Nam's market economy status.

Legal documents are issued on the basis of stringent principles, orders and procedures as prescribed in the Law on Promulgation of Legal Documents 2016 (amended and supplemented in 2020) (please refer to **Exhibit 15**), which has the principle: ensuring the consistency of the legal documents system; ensuring the transparency in the provisions of legal documents; and ensuring the openness and democracy in the process of developing and promulgating legal documents.

In addition, the institution improvement-administrative reform is one of Viet Nam's three strategic breakthroughs, including the aim to improve the

market economy of Viet Nam. The Constitution (amended) of the Socialist Republic of Viet Nam which was adopted by the National Assembly on November 28, 2013 and entered into force on January 1, 2014 affirms the respect for property rights, legal property of individuals and organizations, the rights of freedom to conduct business, equality of economic sectors, development of Viet Nam's economy as a socialist-oriented market economy with several types of ownership and economic sectors.

e) Diversifying and expanding the foreign economic relations

Viet Nam's foreign economic relations are growing strongly in both breadth and depth with an increase in the number and quality of partners and areas of cooperation. Viet Nam has diplomatic relations with nearly 200 countries and territories; has commercial relations with more than 220 partners and cooperation relations with more than 500 international organizations. By the end of 2022, Viet Nam has a total of 34 Comprehensive Strategic Partners, Strategic Partners and Comprehensive Partners.

Viet Nam has signed more than 90 bilateral trade agreements, about 60 investment promotion and protection agreements. As of August 2023, Viet Nam is a member of 16 FTAs with the participation of about 60 economies, of which 15 FTAs have taken effect and 1 new FTA has officially been signed (July 25, 2023). Viet Nam is currently negotiating three other FTAs. Among them, there are many new generation FTAs such as CPTPP and EVFTA, meeting high standards in traditional areas such as trade in goods and services and new areas such as labor, environment, government procurement, transparency, investment dispute settlement mechanism and state-owned enterprises.

In addition to actively participating and implementing WTO commitments, Viet Nam also improves the effectiveness of participation in some areas of cooperation with OECD, is an active and proactively member to promote APEC cooperation and contributes to the IPEF initiative.

Viet Nam's remarkable achievements in market opening and integration into the regional and global economy have been recognized and highly appreciated by many international organizations, domestic and foreign businesses as well as independent research institutes. Notably, Viet Nam successfully organized the APEC 2017, achieving many important results not only for Viet Nam but also meeting the expectations of APEC members and international organizations and business community.

3. Conclusion

As the mentioned reasons above, especially within the context of preparing for the 10th anniversary of the establishment of a comprehensive partnership between Viet Nam and the United States, the MOIT respectfully requests the DOC to initiate a changed circumstances review to evaluate the current economic status of Viet Nam and to consider the factors to no longer treat Viet Nam as an NME country, pursuant to section 771(18)(B) of the Act.

The MOIT avails itself of this opportunity to renew to the DOC the assurances of its highest consideration. ✓

Yours sincerely,



Handwritten signature in blue ink

Nguyen Hong Dien,

Minister

Ministry of Industry and Trade of Viet Nam

Cc: The Office of the United States Trade Representative
The National Security Council
U.S. Embassy and Consulate in Viet Nam
Embassy of the Socialist Republic of Viet Nam in the U.S.
Viet Nam Trade Office in the U.S.

GOVERNMENT CERTIFICATION

I, TRINH ANH TUAN, currently employed by Government of the Socialist Republic of Viet Nam (“GOV”), certify that I prepared or otherwise supervised the preparation of the attached submission of the Letter of Ministry of Industry and Trade (MOIT) filed on September 8, 2023 for the request to initiate a Changed Circumstances Review regarding the Anti-dumping Duty Administrative Review of Raw Honey from the Socialist Republic of Viet Nam (A-552-833). I certify that the public information and any business proprietary information of the MOIT contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for the purpose of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Date: September 8, 2023

Signature:



Trinh Anh Tuan (Mr)
Director General
Trade Remedies Authority of Viet Nam
Ministry of Industry and Trade
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Public Service List

A-552-833

Raw Honey From Vietnam

REV - Admin Review

REV 08/25/2021 - 05/31/2023

The public service list is a compilation of parties with Administrative Protective Order ('APO') access and other interested parties who have requested to be included on the Public Service List. Only the authorized applicants listed on the APO Service List are entitled to be served with business proprietary information. All parties on this list are entitled to public documents and public versions of proprietary documents. **NOTE:**

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End of Service List