

December 15, 2023

Lisa W. Wang,
Assistant Secretary for Enforcement and Compliance
Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

**Re: Whether Vietnam remains a non-market economy (NME) country under
Section 771(18)(B) Tariff Act of 1930**

DOCKET ITA-2023-0010 ¹

Dear Assistant Secretary Wang:

The Coalition for a Prosperous America (CPA) writes to express our **opposition** to the Department of Commerce revoking the non-market economy status of the Socialist Republic of Vietnam. Vietnam is simply not a market economy by any measure.

State-owned firms dominate the economy, and Chinese-owned firms are pervasive. Prices and wages are not set by market forces and are thus arbitrary or simply adjusted to comport with national policy goals. The dong is not a convertible currency. And the Socialist Republic of Vietnam is a superhighway transshipment route for unlawful and duty-evading Chinese projects.

The misguided effort to classify the Socialist Republic of Vietnam as a market economy is similar to the failed thinking that led to granting permanent normal trade relations status to China - a diplomacy-driven groupthink that fake trade liberalization will persuade a dedicated communist country to become capitalist, democratic, and liberalized. It did not work with China. And it won't work with the Socialist Republic of Vietnam.

The prosperity of American industries and workers that are and will be subjected to the assault of Vietnamese imports must not be sacrificed, once again, for incorrect and never-successful diplomatic deals to make friends. American strength, as diplomats don't seem to internalize, arises from a dominating and broad productive base and when growth and employment are strong.

CPA is proud to be the nation's leading bipartisan organization representing exclusively domestic producers and workers across many industries. We believe the Department's mission and goals are aligned with CPA's goals. And, indeed, the Department states on its enforcement web page:

¹ <https://www.regulations.gov/document/ITA-2023-0010-0001>

Unfair foreign pricing and government subsidies distort the free flow of goods and adversely affect American business in the global marketplace. Enforcement and Compliance, within the International Trade Administration of the Department of Commerce, enforces laws and agreements to protect U.S. businesses from unfair competition within the United States, resulting from unfair pricing by foreign companies and unfair subsidies to foreign companies by their governments.²

However, granting Vietnam market economy status would have only one effect – to make it more difficult to prove violations of those laws, and, conversely, to make it easier for Vietnamese enterprises to violate them. And they have a history of doing so . . .

Vietnam is engaged in a pattern of violation of U.S. anti-dumping laws.

As recently reported by the law firm of Cassidy Levy Kent:³

. . . [O]ver the last decade, Vietnam has been the target of a successive dumping investigation seven different times after the original target – the People’s Republic of China (“PRC”) – was found to be engaged in injurious dumping. Within as little as 130 days after the date of the anti-dumping duty order concerning China, new producers in Vietnam were subject to ultimately successful allegations of dumping in the United States . . .

And, just as often, Vietnam has been investigated for dumping simultaneously with Chinese entities. Across the simultaneous and successive cases, there are instances of overlapping affiliated relationships involving Chinese and Vietnamese entities.

In addition, as shown in Table 2, Commerce has found Vietnam to be circumventing existing anti-dumping duty orders on several occasions over the last five years. Such circumvention involves minor assembly operations in Vietnam using parts and components imported from a country (most often the People’s Republic of China) subject to anti-dumping and/or countervailing duty order(s).

² <https://www.trade.gov/us-antidumping-and-countervailing-duties#:~:text=Antidumping%20and%20countervailing%20duties%20level,American%20businesses%20and%20workers%20vulnerable.>

³ Commerce Reportedly Poised to Review Vietnam’s Non-Market Economy Status, Cassidy Levy & Kent, <https://www.cassidylevy.com/news/commerce-reportedly-poised-to-review-vietnam-non-market-economy-status/>

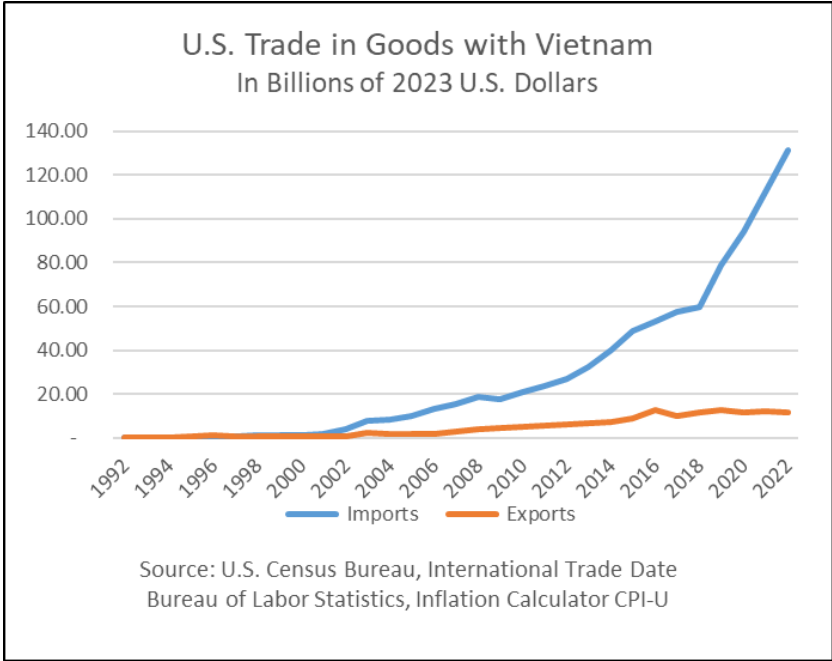
Product Name	China Case #	Fed. Reg. Cite	Date
Collated Steel Staples	A-570-112, C-570-113	88 FR 57931 (Prelim.)	8/24/2023
Crystalline Silicon Photovoltaic Cells	A-570-979, C-570-980	88 FR 57419	8/23/2023
Hardwood Plywood Products	A-570-051, C-570-052	88 FR 46740	7/20/2023
Stainless Steel Sheet and Strip	A-570-042, C-570-043	88 FR 19070	3/30/2023
Aluminum Extrusions	A-570-967, C-570-968	84 FR 39805	8/12/2019
Cold-Rolled Steel Flat Products	A-570-029, C-570-030	83 FR 23891	5/23/2018
Corrosion-Resistant Steel Products	A-570-026, C-570-027	83 FR 23895	5/23/2018

The evasion and circumvention determinations noted above also coincide with Vietnam’s recent success in attracting foreign direct investment in response to the 2018 imposition of tariffs on Chinese goods pursuant to Section 301 of the Trade Act of 1974. To attract such FDI, Vietnam’s industrial zones provide preferential treatment to entities relocating from China.

Any state-condoned efforts to facilitate Vietnamese production aimed at avoiding the impact of antidumping and countervailing duty orders on other non-market economies [should] likewise bear upon Vietnam’s status as a market or non-market economy in Commerce’s assessment.

This decision has the potential to exacerbate an increasingly one-sided trade relationship with a large economy.

Vietnam is a country of some 100 million people with a gross domestic product of nearly \$370 billion. Our trade relationship with Vietnam has been singularly one-sided, and growing more so:



Since 1992, the United States has sent a net \$734 billion dollars (measured in 2023 dollars) to Vietnam for goods imports. 50 percent of that amount, \$368 billion, has been sent since 2018. Neither have these trade in goods deficits been offset by trade in services, which have been negligible by comparison.

U.S. Trade in Goods with Vietnam 1992-2022							
In Billions of 2023 Dollars							
Year	Imports	Exports	Balance	Year	Imports	Exports	Balance
1992	-	0.01	0.01	2008	18.71	1.78	(6.71)
1993	-	0.01	0.01	2009	17.45	1.85	(8.43)
1994	0.10	0.35	0.25	2010	20.81	1.67	(11.35)
1995	0.40	0.50	0.11	2011	23.78	2.78	(12.75)
1996	0.64	1.20	0.55	2012	26.96	4.04	(14.66)
1997	0.74	0.54	(0.19)	2013	32.54	4.40	(13.05)
1998	1.04	0.51	(0.52)	2014	39.80	5.19	(15.63)
1999	1.11	0.53	(0.58)	2015	49.05	5.87	(17.91)
2000	1.45	0.65	(0.80)	2016	53.45	6.15	(20.81)
2001	1.82	0.80	(1.03)	2017	57.63	6.65	(25.89)
2002	4.05	0.98	(3.07)	2018	59.95	7.45	(32.35)
2003	7.56	2.20	(5.36)	2019	79.06	9.14	(39.90)
2004	8.49	1.78	(6.71)	2020	93.91	12.82	(40.62)
2005	10.28	1.85	(8.43)	2021	112.11	10.09	(47.55)
2006	13.02	1.67	(11.35)	2022	131.31	11.80	(48.15)
2007	15.52	2.78	(12.75)				
Source: U.S. Census Bureau, Foreign Trade Statistics U.S. Bureau of Labor Statistics, Inflation Calculator, CPI-U							

These chronic trade in goods deficits have inflicted serious damage on the American economy, and on American individuals, their families, and their communities. Making it more difficult to prove trade violations will only exacerbate an already untenable situation.

Geopolitical considerations should not override the Department’s primary mission of supporting the U.S. economy, and in any event will not bring the hoped for results.

Building up the Socialist Republic of Vietnam is building up another Communist regime – a result that is incompatible with the United States’ commitment to supporting democracy. To believe our doing so will lead Vietnam toward democracy at home and participation in the Western democratic world order is a fool’s errand, as vividly demonstrated by our pursuit of that belief, and its utter failure, in the case of the People’s Republic of China.

Furthermore, there is no reason to believe that economic concessions would lead Vietnam to align with the United States versus China. In September, the United States became a “comprehensive strategic partner” of Vietnam, only to be trumped three months later by China, with whom Vietnam agreed “to build a Vietnam-China community “with a shared future, which

holds strategic significance”—diplomatic language that indicates that however much Vietnam is being wooed by the West, it intends to maintain its close political and economic ties with its giant northern neighbor.”⁴⁴ CPA understands that the Department must collaborate to some extent with the White House and the Department of State in geopolitical strategies. But the Department of Commerce must not let such considerations lead it to violating its primary duty of building a robust U.S. economy.

Finally, we note that building up the Socialist Republic of Vietnam also has the concomitant ill effect of building up our adversary China, in two respects: firstly, by supporting Chinese inputs into the products the U.S. imports from Vietnam. Secondly, by encouraging Chinese companies to set up shop in Vietnam.

Vietnam manifestly fails to meet the other criteria for market economy designation, as discussed in the attached Appendix. We believe these failures to meet the criteria for market economy status are obvious. If the Department were to reach a contrary conclusion, we believe it must be on the basis of careful, in-depth study and analysis. Therefore, in addition to our opposition to a grant of market economy status, CPA urges the Department to extend the period for comment on the matter, to permit the in-depth study it deserves.

Respectfull submitted,

A handwritten signature in blue ink that reads "Michael C. Stumo". The signature is written in a cursive, flowing style.

Michael Stumo, CEO
Coalition for a Prosperous America

⁴⁴ Why Everyone Wants to be China’s Friend, Wall Street Journal, December 12, 2023.
<https://www.wsj.com/world/why-everyone-wants-to-be-vietnams-friend-d23b6881?st=ykvrq2usv842na>

Appendix – Application of Criteria for Non-Market Economy Designation⁵

1. Vietnam’s currency is not convertible into the currency of other countries.

Vietnam’s currency, the Vietnamese dong (VND), is not convertible because the country has strict foreign exchange controls that limit the movement of foreign currencies in and out of Vietnam. Vietnam does not publish data on its foreign exchange intervention.⁶ The State Bank of Vietnam (SBV) regulates the exchange rate of the VND and sets a daily reference rate based on a basket of currencies. The SBV also imposes restrictions on the payment and remittance of foreign currencies for various purposes, such as trade, investment, loans, and dividends.⁷ Vietnam is one of six economies on the U.S. Department of the Treasury (“Treasury Department”) currency monitoring list.⁸

Foreign investors and businesses face difficulties in repatriating their profits and capital from Vietnam, as they need to obtain approval from the SBV and comply with certain conditions.⁹

2. Wage rates in Vietnam are not determined by free bargaining between labor and management.

One of the reasons why Vietnam wage rates are suppressed due to lack of free labor negotiations between unions and management is that Vietnam is a one-party state with a single, state-led union federation, the Vietnam General Confederation of Labour (VGCL). The VGCL is not independent of the ruling Communist Party or of employers, and independent trade unions not affiliated to the VGCL are banned.¹⁰ This means that workers have limited bargaining power and representation in the labor market, and their interests and rights are often subordinated to the party’s and the state’s economic and political goals.¹¹

3. Foreign investment in Vietnam is prejudiced.

Vietnam limits recourse to foreign investors in both its own legal system as well as in international arbitration. The State Department records as follows: “Vietnam’s courts are often ineffective in settling commercial disputes due to Vietnam’s underdeveloped legal system. Negotiation between concerned parties or arbitration are the most common means of dispute

⁵ 19 U.S. Code § 1677(18)(B).

⁶ Treasury’s Report to Congress on the Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States, November 2023 (hereinafter, “Treasury FX Report”), p. 35, available at https://home.treasury.gov/system/files/206/November_2023_FXR.pdf

⁷ *Id.*

⁸ *Id.* at 42.

⁹ <https://vietnam-business-law.info/blog/2013/6/23/foreign-exchange-control-and-ma-activities-in-vietnam>

¹⁰ <https://thediplomat.com/2021/12/the-limits-of-vietnams-labor-reforms/>

¹¹ *Id.*

resolution. The Law on Commercial Arbitration does not allow a foreign investor to refer an investment dispute to a court in a foreign jurisdiction. Vietnamese judges cannot apply foreign laws to a case before them, and foreign lawyers cannot represent plaintiffs in a court of law.”¹²

4. The government ownership or control of the means of production is pervasive.

According to the OECD Review of the Corporate Governance of State-Owned Enterprises in Vietnam, “[s]tate-owned enterprises still account for one-third of gross domestic product and dominate many of the sectors such as energy, transport, telecommunications and finance.”¹³

5. The extent of government control over the allocation of resources and over the price and output decisions of enterprises is extensive.

The U.S. State Department records as follows: “The state collectively owns and manages all land in Vietnam. Neither foreigners nor Vietnamese nationals can own land. However, the government grants land use and building rights, often to individuals. ... If land is not used according to the land use rights certificate or if it is unoccupied, the rights revert to the government. If investors do not use land leased within 12 consecutive months or delay land use by 24 months from the original investment schedule, the government is entitled to reclaim the land.”

6. Such other factors as the administering authority considers appropriate.

Please refer to discussion in body of letter.

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¹² <https://www.state.gov/reports/2023-investment-climate-statements/vietnam/>

¹³ Executive Summary - OECD Review of the Corporate Governance of State-Owned Enterprises in Vietnam (October 15, 2022), <https://www.oecd-ilibrary.org/sites/3f6b9a9f-en/index.html?itemId=/content/component/3f6b9a9f-en>