

# United States Senate

WASHINGTON, DC 20510

January 28, 2024

The Honorable Gina M. Raimondo  
Secretary of Commerce  
U.S. Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Dear Secretary Raimondo,

We write to express our significant concerns with the Department of Commerce's (Commerce) review of Vietnam's status as a nonmarket economy (NME) under U.S. trade law. There is abundant evidence suggesting that Vietnam does not meet the legal requirements established by Congress to receive market economy status. We are especially concerned by reports that Commerce pledged to the government of Vietnam that your agency's review will result in a favorable determination, to the detriment of U.S. industries and workers.<sup>1</sup> We urge Commerce to examine the full range of evidence as it conducts its review and to consider the impact on American jobs and producers in its final determination.

In October, pursuant to a request from the government of Vietnam, Commerce announced the initiation of a changed circumstances review (CCR) of Vietnam's NME status.<sup>2</sup> The *Tariff Act of 1930* establishes a six-factor test to determine whether or not a country qualifies as a nonmarket economy.<sup>3</sup> Analysis by U.S. government agencies and other official sources clearly shows that Vietnam does not meet any of the first five factors:

1. **“The extent to which the currency of the foreign country is convertible into the currency of other countries”<sup>4</sup>:** Unlike the U.S. Federal Reserve, Vietnam's central bank “is not an independent body” and “continues to operate under government oversight.”<sup>5</sup> The U.S. Treasury Department recently added Vietnam back to its “currency monitoring” watchlist on the grounds that Vietnam meets two of the three criteria for currency manipulation.<sup>6</sup> We understand that Treasury continues to work with Vietnam to address

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<sup>1</sup> Inside U.S. Trade, “Vietnam: Raimondo pledged to push for change to country's market economy status,” Jason Asenso, September 25, 2023, <https://insidetrade.com/daily-news/vietnam-raimondo-pledged-push-change-country-s-market-economy-status>.

<sup>2</sup> International Trade Administration, “U.S. DEPARTMENT OF COMMERCE INITIATES REVIEW OF THE NON-MARKET ECONOMY STATUS OF VIETNAM,” press release, October 24, 2023, <https://www.trade.gov/press-release/us-department-commerce-initiates-review-non-market-economy-status-vietnam>.

<sup>3</sup> Tariff Act of 1930, Public Law 71-361.

<sup>4</sup> 19 U.S.C. 1677(18)(B)(i).

<sup>5</sup> International Trade Administration, “Vietnam - Country Commercial Guide,” <https://www.trade.gov/country-commercial-guides/vietnam-trade-financing>.

<sup>6</sup> Inside U.S. Trade, “Vietnam back on Treasury's currency list; Switzerland, Korea removed,” Brett Fortnam, November 8, 2023, <https://insidetrade.com/daily-news/vietnam-back-treasury-s-currency-list-switzerland-korea-removed>.

currency manipulation, but Commerce’s review must not presuppose progress in that arena.

2. **“The extent to which wage rates in the foreign country are determined by free bargaining between labor and management”<sup>7</sup>**: The U.S. State Department found severe deficiencies in Vietnam’s labor law in its 2022 human rights review of the country. State notes that “The government did not effectively enforce applicable laws providing for freedom of association and collective bargaining.”<sup>8</sup>
3. **“The extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country”<sup>9</sup>**: Foreign direct investment (FDI) in Vietnam is strictly controlled by the government.<sup>10</sup> Moreover, foreign investors must contend with “widespread corruption, the entrenched position of state-owned enterprises (SOEs) in certain sectors, regulatory uncertainty in key sectors, a weak and opaque legal regime, poor enforcement of intellectual property rights, a shortage of skilled labor, restrictive labor practices, and slow government decision-making processes.”<sup>11</sup>
4. **“The extent of government ownership or control of the means of production”<sup>12</sup>**: SOEs continue to dominate the Vietnamese economy, particularly “through their preferential position regarding access to credit and land.”<sup>13</sup> The Vietnamese government “still has widespread ownership ... in the manufacturing industries particularly with regard to [the] textile and garment sector. The country also retains strong state ownership in sectors such as agriculture ...; finance; real estate and construction; and wholesale and retail trade.”<sup>14</sup>
5. **“The extent of government control over the allocation of resources and over the price and output decisions of enterprises”<sup>15</sup>**: The Vietnamese government’s outside control of the banking sector allows it to unfairly promote SOEs and maintain extensive price controls.<sup>16</sup> While Vietnamese law does not explicitly preference SOEs, “in practice, a state enterprise that has higher operational costs than its private competitors can benefit from lower borrowing costs resulting from government guarantees extended by state-owned banks.”<sup>17</sup>

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<sup>7</sup> 19 U.S.C. 1677(18)(B)(ii).

<sup>8</sup> U.S. Department of State, “2022 Country Reports on Human Rights Practices: Vietnam,” <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/vietnam/>.

<sup>9</sup> 19 U.S.C. 1677(18)(B)(iii).

<sup>10</sup> Bloomberg Tax, “Foreign Exchange Management in Vietnam,” Nghiem Xuan Hong An, June 30, 2021, <https://news.bloombergtax.com/daily-tax-report-international/foreign-exchange-management-in-vietnam>.

<sup>11</sup> U.S. Department of State, “2023 Investment Climate Statements: Vietnam,” <https://www.state.gov/reports/2023-investment-climate-statements/vietnam/>.

<sup>12</sup> 19 U.S.C. 1677(18)(B)(iv).

<sup>13</sup> OECD iLibrary, “2. Overview of the Vietnamese state-owned sector,” [https://www.oecd-ilibrary.org/sites/a22345d0-en/1/3/2/index.html?itemId=/content/publication/a22345d0-en&\\_csp\\_=7fd2c60e3ecf8391a6129992af921638&itemIGO=oecd&itemContentType=book#section-d1e1335](https://www.oecd-ilibrary.org/sites/a22345d0-en/1/3/2/index.html?itemId=/content/publication/a22345d0-en&_csp_=7fd2c60e3ecf8391a6129992af921638&itemIGO=oecd&itemContentType=book#section-d1e1335).

<sup>14</sup> *Id.*

<sup>15</sup> 19 U.S.C. 1677(18)(B)(v).

<sup>16</sup> Viet Nam News, “Price control of key commodities a top priority for central government,” March 15, 2022, <https://vietnamnews.vn/economy/1165171/price-control-of-key-commodities-a-top-priority-for-central-government.html>; OECD iLibrary, “2. Overview of the Vietnamese state-owned sector,” [https://www.oecd-ilibrary.org/sites/a22345d0-en/1/3/2/index.html?itemId=/content/publication/a22345d0-en&\\_csp\\_=7fd2c60e3ecf8391a6129992af921638&itemIGO=oecd&itemContentType=book#section-d1e1335](https://www.oecd-ilibrary.org/sites/a22345d0-en/1/3/2/index.html?itemId=/content/publication/a22345d0-en&_csp_=7fd2c60e3ecf8391a6129992af921638&itemIGO=oecd&itemContentType=book#section-d1e1335).

<sup>17</sup> OECD iLibrary, “2. Overview of the Vietnamese state-owned sector,” <https://www.oecd-ilibrary.org/sites/a22345d0-en/1/3/2/index.html?itemId=/content/publication/a22345d0->

The sixth factor Commerce is required to consider as part of its review is a catch-all, giving Commerce the flexibility to consider “such other factors” as it deems appropriate.<sup>18</sup> In identifying additional issues to consider as part of this factor, we urge Commerce to take into account Vietnam’s close economic relationship with China,<sup>19</sup> especially as China and Vietnam actively seek to further deepen their trade ties.<sup>20</sup> Vietnam’s manufacturing sector relies heavily on inputs from China, making it “vulnerable to forced labor risks in supply chains.”<sup>21</sup> Moreover, Commerce itself has raised the alarm about China’s use of Vietnam to circumvent U.S. antidumping duties on Chinese-made products.<sup>22</sup> Vietnam currently has 25 antidumping orders against it, with four more investigations pending; these active and pending orders range across industries, from tires, mattresses, and paper shopping bags to wind towers.<sup>23</sup> Granting Vietnam market economy status would impact the outcome of all pending antidumping investigations and could prevent Commerce from protecting domestic workers and producers from market-distorting practices.

Additionally, Commerce must consider the severe labor issues in Vietnam as part of the sixth factor. Reports indicate child labor, forced labor, debt bondage, and violations of other internationally recognized labor standards remain prevalent in Vietnam.<sup>24</sup> Nearly 80 percent of Vietnam’s labor force works in the informal economy, with little or no legal protections and no ability to bargain for better wages and working conditions.<sup>25</sup>

Commerce must conduct an object and holistic review of Vietnam’s nonmarket economy status based on data and evidence, not politics. We understand that the administration is seeking to increase engagement in Southeast Asia, including through the Indo-Pacific Economic Framework (IPEF). However, such engagement cannot come at the cost of jobs and industries at home. Indeed, [several of us] raised similar concerns when the administration initially announced Vietnam’s involvement in IPEF.<sup>26</sup>

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<sup>18</sup> 19 U.S.C. 1677(18)(B)(vi).

<sup>19</sup> VOA News, “As US Woos Vietnam, Hanoi Remains Tied to China, Experts Say,” Le Nguyen, May 12, 2023, <https://www.voanews.com/a/as-us-woos-vietnam-hanoi-remains-tied-to-china-experts-say/7090084.html>.

<sup>20</sup> Reuters, “China pledges deeper trade ties with Vietnam,” Laurie Chen, November 25, 2023, <https://www.reuters.com/world/asia-pacific/china-pledges-deeper-trade-ties-with-vietnam-2023-11-26/>.

<sup>21</sup> U.S. Department of State, “2023 Investment Climate Statements: Vietnam,” <https://www.state.gov/reports/2023-investment-climate-statements/vietnam/>.

<sup>22</sup> U.S. Department of Commerce, “Department of Commerce Issues Final Determination of Circumvention Inquiries of Solar Cells and Modules from China,” press release, August 18, 2023, <https://www.commerce.gov/news/press-releases/2023/08/department-commerce-issues-final-determination-circumvention-inquiries>.

<sup>23</sup> International Trade Administration, “Data Visualization: ADCVD PROCEEDINGS,” <https://www.trade.gov/data-visualization/adcvd-proceedings>.

<sup>24</sup> U.S. Department of State, “2022 Country Reports on Human Rights Practices: Vietnam,” <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/vietnam/>; International Labor Rights Forum, “Across Vietnam, some 30,000 men, women, and children are being held against their will in state-run detention centers, forced to work, and beaten all in the name of ‘drug treatment,’” <https://laborrights.org/our-work/forced-labor-vietnam>.

<sup>25</sup> Oxfam, “Workers’ Rights,” <https://vietnam.oxfam.org/workers%E2%80%99-rights>.

<sup>26</sup> Letter from Senators Warren and Casey to USTR Katherine Tai, April 11, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.04.11%20USTR%20IPEF%20letter%20final.pdf>.

Granting Vietnam market economy status before it addresses its clear nonmarket behavior and the severe deficiencies in its labor law will worsen ongoing trade distortions, erode the U.S. manufacturing base, threaten American workers and industries, and reinforce Vietnam's role as a conduit for goods produced in China with forced labor. We urge you and your agency to thoroughly consider the economic and labor conditions in Vietnam as you conduct your review of Vietnam's market economy status, and believe the evidence points to one conclusion: Vietnam does not meet the requirements to receive market economy status under U.S. trade law. To find otherwise would weaken our trade enforcement laws and jeopardize the livelihoods of American workers.

Sincerely,



Elizabeth Warren  
United States Senator



Sherrod Brown  
United States Senator



Tammy Baldwin  
United States Senator



Robert P. Casey, Jr.  
United States Senator



Debbie Stabenow  
United States Senator



Bernard Sanders  
United States Senator



John Fetterman  
United States Senator



Tina Smith  
United States Senator