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Country

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EXECUTIVE SUMMARY

The Department of Commerce (Commerce) conducted this review of Vietnam's status as a non-market economy (NME) country in response to a request by the Government of Vietnam (GOVN) on September 8, 2023, within the context of a changed circumstances review (CCR) of the U.S. antidumping (AD) order on raw honey from Vietnam.² As the GOVN submitted sufficient justification for a reevaluation of Vietnam's NME status, Commerce determined that good cause existed to initiate its review on October 30, 2023.³

Vietnam has implemented notable market-oriented economic reforms for nearly two decades under a broader economic initiative known as the “Doi Moi” (often translated as “renovation” or “innovation”). Those reforms aimed to transition Vietnam out of an economic system that relied on intensive government direction and intervention, which Commerce characterized as an NME for purposes of U.S. AD laws when it last reviewed Vietnam's NME status in 2002. The record in this proceeding reveals evidence that Vietnam's market-oriented reforms have materially benefitted its economy. According to the International Monetary Fund (IMF), these reforms have helped lift an estimated 40 million people out of poverty (1993-2014), propel Vietnam's per capita gross domestic product (GDP) growth to become the second fastest in the world behind China (at 5.6 percent since 1990), and lay a foundation for greater private ownership and decision-making autonomy for state-owned enterprises (SOEs).⁴ Since Commerce's 2002 determination, Vietnam has further opened up internationally and joined the World Trade Organization (WTO) in 2007.

Despite Vietnam's impressive reforms and economic growth, **Commerce now determines in this 2024 review that Vietnam remains an NME country for purposes of U.S. AD law.** As this review will explain, based on the assessment of the record evidence, persistent structural and institutional issues in Vietnam remain. The extensive and pervasive government involvement in Vietnam's economy that pertains to the six statutory factors Commerce relies upon in making a market economy determination distorts Vietnamese prices and costs, and ultimately renders them unusable for purposes of calculating U.S. AD duties.

When Commerce conducted its last in-depth analysis of Vietnam's economy to evaluate its market economy status in 2002, it determined that Vietnam was an NME country.⁵ Commerce's

² *Raw Honey from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 87 FR 22184 (April 14, 2022); see also GOVN's letter, “Request for the U.S. Commerce to Initiate a Changed Circumstances Review on Behal of the Socialist Republic of Viet Nam,” dated September 8, 2023.

³ *Raw Honey from the Socialist Republic of Vietnam: Initiation of Antidumping Duty Changed Circumstances Review*, 88 FR 74152 (October 30, 2023).

⁴ IMF (IMF), “Vietnam: Raising Millions Out of Poverty,” August 2018, available at www.imf.org/en/Countries/VNM/vietnam-raising-millions-out-of-poverty.

⁵ Commerce's Memorandum, “Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam – Determination of Market Economy Status,” dated November 8, 2002 (*Commerce's Vietnam NME Determination (2002)*).

2002 findings highlighted significant government intervention in the economy, including restrictions on currency convertibility, GOVN control over how wages were determined, and heavy regulation over FDI. At that time, Commerce also identified how the GOVN held significant ownership and control over the means of production and allocation of key resources, maintained ultimate control over land use, and pursued slow SOE privatization initiatives.

Like Commerce's 2002 NME determination, Commerce's current NME review is based on an analysis of six factors established under section 771(18)(B) of the Tariff Act of 1930. These factors, identified below, have been thoroughly analyzed using a variety of sources, including information from interested parties, the public, and others in the form of formal comments, a public hearing, and third-party authoritative sources. Commerce invited public comment and rebuttal comment on Vietnam's economic status as an NME country to ensure full public and interested party participation in this inquiry.⁶ The public hearing concerning the NME determination was also held on May 8, 2024, allowing interested parties and the public who submitted timely comments to participate.⁷ Finally, with regard to the authoritative information from third parties, Commerce used sources that are well regarded as authoritative and unbiased, including those from the World Bank, IMF, and OECD. All of these resources helped inform Commerce's analysis of the six statutory criteria and were placed on the administrative record of this review.

For each of the factors, Commerce relied upon an analytical framework that evaluated both *de jure* (legal) and *de facto* (practical) aspects of the information it collected. This dual approach sometimes identified discrepancies between the legal provisions and the developments in the economy, providing a comprehensive view of Vietnam's economic conditions. The dual *de jure* and *de facto* analysis was occasionally supplemented to include relevant information for certain factors. Factor 4 was an example of this, as it included information about an important component of the economy (land) that was both economically significant and illustrative of broader findings.

⁶ After the comment periods had closed, Commerce received new factual information from several domestic industries claiming that the GOVN submitted false statements and omitted material facts regarding Vietnam's alleged reforms. Given that Commerce has the inherent authority to protect the integrity of its proceedings, it accepted the alleged information and allowed all other interested parties as well as the public to comment on these allegations. See Wiley's Letter, "Raw Honey from the Socialist Republic of Vietnam - Comments on the Government of Vietnam's False Statements and Material Omissions," dated March 8, 2024; and Commerce's Memorandum, "Changed Circumstances Review of the Socialist Republic of Vietnam's Status as a Non-market Economy Country: Extension of Time to File Rebuttal Comments," dated March 29, 2024.

⁷ Commerce's Memorandum, "Hearing Schedule," dated April 11, 2024.

[Factor 1] The Extent to Which the Currency of the Foreign Country is Convertible Into the Currencies of Other Countries.

Since 2002, economic reforms have led to enhanced currency convertibility and a general unwinding of GOVN influence over the Vietnamese dong's valuation. This noteworthy progress has included the Vietnamese government's (1) assumption of IMF Article VIII obligations, which require full convertibility of traded goods and services in the current account; (2) expansion of the trading band in which the dong can be traded; (3) overall reduction in intervention activity on the foreign exchange market; and (4) consideration of a broader set of economic variables when deciding upon currency market intervention activity. While the dong is more responsive today to market forces than it was at the time of Commerce's 2002 determination, it maintains restrictions on its convertibility. The GOVN continues to conduct foreign exchange interventions to influence the value of the dong and Vietnam's central bank (the State Bank of Vietnam, or SBV) is not independent of the policy making apparatus. Moreover, the dong was on the U.S. Department of Treasury's (Treasury's) list of most egregious currency manipulators until 2022.

[Factor 2] The Extent to Which Wage Rates in the Foreign Country are Determined by Free Bargaining Between Labor and Management.

Vietnam has introduced notable labor law reforms over the past 20 years, such as the enactment of the *Labor Code, No. 45/2019/QH14 (Vietnam Labor Code (2019))*, which has helped enhance worker protections and promote fairer labor practices. Importantly, the *Vietnam Labor Code (2019)* has legalized not only the formation of labor unions but the rights of those unions to bargain collectively. Despite the GOVN's legal reforms in this area, Vietnam's labor market does not reflect free bargaining between labor and management. Labor unions that are truly independent from the GOVN are illegal in Vietnam. The state-controlled Vietnam General Confederation of Labor (VGCL) and its affiliates are the only labor organizations in existence in Vietnam. In addition, strikes are generally illegal in Vietnam and the country's dispute resolution system does not effectively address labor conflicts and grievances. All of these issues have compromised the ability of workers to organize and bargain collectively for higher wages.

[Factor 3] The Extent to Which Joint Ventures or Other Investments by Firms of Other Foreign Countries are Permitted in the Foreign Country.

Market-oriented reforms intended to open Vietnam's economy to foreign investment have been considerable, culminating in an investment climate that the OECD has characterized as being one of the most open in Southeast Asia.⁸ As a result, Vietnam has been attracting increasing FDI levels since 2002. While this represents a noteworthy achievement, that rise in FDI has been roughly in line with simultaneous growth in Vietnam's GDP, suggesting that there has been no dramatic change in the country's overall dependence on foreign investment during that period. A deeper analysis of official Vietnam FDI inflows, as well as an investigation into comparative,

⁸ OECD, *OECD Economic Surveys: Vietnam 2023*, (April 2023), 10.

dynamic, and other economic indicators, suggest that considerable challenges to foreign investment in Vietnam remain. Notably, foreign investment is still restricted in an excessive number of commercial sectors and activities, in part or in whole. The challenges also include general market access barriers, red tape, lack of transparency in regulatory processes, and failure to protect firms' intellectual property rights.

[Factor 4] The Extent of Government Ownership or Control of the Means of Production.

Vietnam's "Doi Moi" economic reforms, launched in 1986, have helped liberalize the economy from pervasive government ownership and control over the means of production. These reforms have led to two important and simultaneous market-oriented changes to Vietnam's economy in which the state sector is now shouldering a smaller share of overall production relative to 2002 and enterprises in the non-state sector are filling the void. While GOVN statistics identify the size of the SOE sector to have declined from 40.0 percent of GDP in 2002 to a 20.6-30.2 percent range in recent years,⁹ Commerce believes these statistics have understated SOEs' overall contributions to economic activity. Specifically, accounting for indirect forms of SOE ownership and Vietnamese companies with minority shares but controlled levels of government ownership would likely result in higher estimates of state ownership. Greater transparency in the identification of SOEs' output levels would also contribute to a more accurate, and likely higher, share of government influence over economic activity in Vietnam.

Meanwhile, Vietnam's private sector, which accounted for almost half of GDP according to the latest data, has not grown since 2002, in large part due to its limited access to resources (*e.g.*, capital). The void filled by the decline in the size of the SOE sector is instead accounted for by foreign firms from such countries as Japan, South Korea, and China. While the combination of these market-oriented developments has been important, Vietnamese law still requires SOEs to play the leading role in its economy, and benefits are still largely disproportionately bestowed upon state sector firms relative to their private sector counterparts. As such, deeper structural reforms are needed before the economy becomes deeply reliant upon free-forming supply and demand conditions.

Continued state ownership and control over land, an important means of production, in Vietnam is an illustrative example of how the government dictates market outcomes. Although the GOVN has marginally improved policies governing government pricing and allocation of land-use rights, the government continues to own all land in Vietnam and exercise significant control over its pricing and allocation. Individual land-use rights remain limited and land users are often not able to sell their land-use rights or convert the land for different uses.

⁹ The wide ten percentage point range in official statistics is attributable to certain definitional, measurement, and transparency issues in data collection that is explained in the Factor 4 section of this report.

[Factor 5] The Extent of Government Control Over the Allocation of Resources and Over the Price and Output Decisions of Enterprises.

Vietnam's market-oriented economic reforms have helped liberalize the economy from excessive reliance on the government to allocate resources and make price and output determinations for enterprises. With respect to allocation of capital, the most economically significant of these resources, the GOVN has helped Vietnam lessen its pervasive dependence on lending to the state sector since 2002. According to Vietnamese statistics and Commerce estimates, GOVN ownership in the banking sector has fallen from the 70 to 80 percent range in 2002 to at least 50 percent today, although the exact figure is unknown due to the lack of publicly available information concerning joint-stock banks.

The GOVN has also reduced the number of price controls over commodities since 2002. Despite these important market-oriented reforms, Commerce finds that considerable resource allocation is still being conducted by the government, and that extensive price controls have lingered since 2002. Moreover, the GOVN still heavily relies on state planning as a means through which it directs business decisions to achieve output and other economic outcomes. As benefits such as preferential lending practices are still disproportionately bestowed upon state sector firms relative to their private sector counterparts, deeper structural reforms are needed before resource, price, and output determinations become principally driven by free-forming market conditions.

[Factor 6] Such Other Factors as the Administering Authority Considers Appropriate.

Since 2002, Vietnam has implemented notable legal reforms by improving the protection of legal rights to corporations, facilitating fairer competition, and promoting better transparency in corporate governance. Concerning corruption, Vietnam has enacted the *Anti-Corruption Law, No. 36/2018/QH14 (Anti-Corruption Law (2018))*, which expanded anti-corruption measures and introduced stricter asset declaration requirements. Despite these efforts, the persistent influence of the Communist Party of Vietnam (CPV) in Vietnam's legal system continues to undermine judicial independence and effective law enforcement. Other considerable challenges to its legal system include the inconsistent enforcement of laws and ongoing regulatory transparency and accountability issues. Moreover, corruption remains pervasive, with high-profile cases highlighting the gaps between legislative intent and practical implementation. These issues not only deter further foreign investment but also impede Vietnam's progress toward a fully functional market economy.

Commerce's determination to maintain Vietnam's status as an NME country for purposes of U.S. AD law is the result of a collective analysis of all statutory factors, and not any singular issue or statutory factor.

LIST OF ACRONYMS AND SELECT DEFINITIONS

ABB	An Binh Commercial Joint Stock Bank
ACB	Asia Commercial Joint Stock Bank
AD	Antidumping
ADB	Asian Development Bank
Agribank	Vietnam Bank for Agriculture and Rural Development
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
Bac A Bank	BAC A Commercial Joint Stock Bank
BaoViet Bank	Bao Viet Joint Stock Commercial Bank
BIDV	Bank for Investment and Development of Vietnam
BTI	Bertelsmann Transformation Index
BSR	Binh Son Refining and Petrochemical One Member Co Ltd
CBA	Collective Bargaining Agreements
CCR	Changed Circumstance Review
Chinn-Ito	An index measuring a country's degree of capital account openness
CLA	Collective Labor Agreement
CMSC	Commission for the Management of State Capital
CPI	Consumer Price Index
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CPV	Communist Party of Vietnam
Doi Moi	Vietnamese term (translated as “renovation” or “innovation”) for the country’s market-oriented economic reforms launched in 1986
EAB	Dong A Commercial Joint Stock Bank
ECV	Energy Capital Vietnam
ERC	Enterprise Registration Certificate
EIU	Economist Intelligence Unit
ENT	The Economic Needs Test

EVFTA	European Union-Vietnam Free Trade Agreement
EVN	Electricity Vietnam
Eximbank	Viet Nam Export Import Commercial Joint Stock
FACB	Freedom of Association and the Right to Collective Bargaining
FDI	Foreign Direct Investment
FIEs	Foreign Invested Enterprises
FOL	Foreign Ownership Limitations
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GERO	Grassroots-Level Employees' Representative Organizations
GOVN	Government of Vietnam
HDBank	Ho Chi Minh City Development Joint Stock Commercial Bank
ICOR	Incremental Capital-Output Ratio
IIPA	International Intellectual Property Alliance
IMF	International Monetary Fund
ILO	International Labour Organization
Informal Sector	This large sector of the economy includes all private unincorporated and unregistered enterprises that produce at least some of their non-agricultural goods and services for sale or barter.
IPO	Initial Public Offering
IPR	Intellectual Property Right
IPRI	International Property Rights Index
IRC	Investment Registration Certificate
JSB	Joint-Stock Bank
JSC	Joint-Stock Companies
KLB	Kien Long Commercial Joint Stock Bank
Lienviet Post Bank	LienViet Commercial Joint Stock Bank
LLC	Limited Liability Company
MB	Military Commercial Joint Stock Bank

ME	Market Economy
MND	Ministry of National Defense (part of GOVN)
MOLISA	Ministry of Labor Invalids and Social Affairs (part of GOVN)
MPI	Ministry of Planning and Investment (part of GOVN)
MPS	Ministry of Public Security (part of GOVN)
MSB	Maritime Commercial Joint Stock Bank
Nam A Bank	Nam A Commercial Joint Stock Bank
NCB	National Citizen Bank
NCC	National Competition Committee (part of GOVN)
NME	Non-market Economy
NOIP	National Office of Intellectual Property (part of GOVN)
Non-market Economy	A foreign country which was determined by Commerce not to operate on market principles of cost or pricing so that merchandise sales do not reflect the fair value of the merchandise
Non-state Sector	Enterprises that are non-SOEs, including private and foreign firms
NPL	Non-performing Loans
OCB	Orient Commercial Joint Stock Bank
OECD	Organization for Economic Co-operation and Development
PGBank	Petrolimex Group Commercial Joint Stock Bank
PI	Portfolio Investment
PPP	Public-Private Partnership
Price Valorization	Implementations by the State of solutions and measures provided in the Law on Price to stabilize goods and services prior to price fluctuation
Private Enterprise	Business managed by private individuals that are not connected to the state
PvcomBank	Public Vietnam Bank
PVOIL	PetroVietnam Oil Corporation
PV POWER	PetroVietnam Power Corporation
Sacombank	Saigon Thuong TinCommercial Joint Stock Bank

SBV	State Bank of Vietnam (part of GOVN)
SCB	Sai Gon Commercial Joint Stock Bank
SCIC	State Capital Investment Corporation (part of GOVN)
Seabank	Southeast Asia Commercial Joint Stock Bank
SEDP	Socio-Economic Development Plan
SEG	State Economic Group
SGB	Saigon Bank for Industry & Trade
SHB	Saigon-Hanoi Commercial Joint Stock Bank
SME	Small- and Medium-sized Enterprises
SOE	State-owned Enterprise
State Sector	Sector of the economy that is owned by the government or state-owned enterprises (SOEs)
Techcombank	Viet Nam Technological and Commercial Joint Stock Bank
TIP	U.S. Department of State's Trafficking in Person's Report
TPB	TienPhong Commercial Joint Stock Bank
Treasury	Department of the Treasury
TRIPS	Trade-Related Aspects of IPR
TVPRA List	U.S. Department of Labor's List of Goods Produced by Child Labor or Forced Labor
UNICEF	United Nations International Children's Emergency Fund
USD	U.S. Dollar
VAMC	Vietnam Asset Management Company
VCOSA	Vietnam Cotton & Spinning Association
VGCL	Vietnam General Confederation of Labor
VIB	Vietnam International Commercial Joint Stock Bank
Viet Capital Bank	Viet Capital Commercial Joint Stock Bank
VIETA Bank	Viet A Commercial Joint Stock Bank
Vietbank	Viet Nam Thuong Tin Commercial Joint Stock Bank
Vietcombank	Joint Stock Commercial Bank for Foreign Trade of Vietnam

VietinBank	Vietnam Joint Stock Commercial Bank of Industry and Trade
Vinacafe	Vietnam National Coffee Corporation
Vinachem	Vietnam National Chemical Group
Vinador	Vietnam Forestry Corporation
Vinafood-North	Vietnam Northern Food Corporation
Vinafood-South	Vietnam Southern Food Corporation
Vinamilk	Vietnam Dairy Products Joint Stock Company
Vinatex	Vietnam National Textile and Garment Corporation
VND	Vietnamese Dong
VPBank	Vietnam Prosperity Commercial Joint Stock Bank
VRG	Vietnam Rubber Group
WGI	Worldwide Governance Indicators
WJP	World Justice Project
WRO	Worker Representative Organizations
WTO	World Trade Organization

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INTRODUCTION AND BACKGROUND

Commerce finds the Socialist Republic of Vietnam remains an NME country for purposes of U.S. AD law¹⁰ due to the sustained and pervasive government influence over its countries' economic activities. This introduction highlights the reasons for this classification by Commerce.

A. Introduction

In 2002, Commerce conducted an in-depth analysis of Vietnam's economic reforms to determine its market economy status. Commerce concluded that Vietnam had not successfully transitioned to a market economy as of that time.¹¹ Commerce's 2002 findings highlighted significant government intervention in the economy, including restrictions on currency convertibility, government control over how wages are determined, and the slow pace of privatization of SOEs. Additionally, Commerce found that foreign direct investment was encouraged in its country, but heavily regulated by the government. At the time, Commerce also found that Vietnam's government maintained control over the allocation of key resources, was involved in price-setting measures in various sectors, and held significant ownership over the means of production. Furthermore, Commerce found in 2002 that private land ownership was not allowed, and the government retained ultimate control over land use. These structural and institutional issues that inhibited the free-forming supply and demand conditions within the Vietnamese economy, and subsequently distorted price and output levels, led Commerce to treat Vietnam as a NME in 2002, for the purposes of U.S. AD law.

In reviewing the changes in the legal framework and economic conditions that have unfolded since the 2002 NME determination, Commerce has concluded that Vietnam has made notable market-oriented economic reforms in the past 20 years. However structural and institutional deficiencies persist, and for reasons explained below, these hindrances continue to distort overall market conditions. The extensive and pervasive government involvement in Vietnam's economy that relate to the six statutory factors Commerce relies upon for such determinations distort Vietnamese prices and costs, and ultimately render them unusable for purposes of calculating U.S. antidumping duties.

The NME designation made by Commerce only impacts the AD rates that are calculated in investigations and administrative reviews in which Vietnamese companies are found to be dumping goods on the U.S. market. The NME designation is only relevant to AD proceedings.¹²

¹⁰ As explained *supra*, references to "NME" or non-market economy status in this report are for the purposes of the U.S. antidumping laws, see section 771(18) of the Tariff Act of 1930, 19 U.S.C. 1677(18).

¹¹ Commerce's Memorandum, "Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam – Determination of Market Economy Status," dated November 8, 2002 (*Commerce Vietnam NME Determination 2002*).

¹² 19 U.S.C. 1677(18).

B. Background

Commerce determined that Vietnam was an NME country under the U.S. Antidumping Law in 2002. Since then, Commerce has consistently treated Vietnam as an NME in all antidumping (AD) investigations and administrative reviews involving imported products from Vietnam.

On September 8, 2023, the Government of Vietnam (GOVN) submitted a letter to Commerce requesting a review of Vietnam's status as an NME country within the context of a changed circumstances review (CCR) of the AD order on raw honey from Vietnam.¹³ In response, Commerce initiated a CCR NME review and published the initiation in the Federal Register on October 30, 2023. This review examines whether Vietnam remains an NME country for purposes of the AD law, in accordance with sections 751(b) and 771(18)(C)(ii) of the Act.¹⁴

To ensure full public and interested party participation in this inquiry, Commerce invited public comment on Vietnam's economic status as an NME country. All comments and rebuttal comments were received by December 21, 2023, and February 1, 2024, respectively. Invitations for comments, along with the comments and rebuttal comments themselves, have remained accessible using the Federal eRulemaking portal at <http://www.regulations.gov> under Docket Number ITA-2023-0010.

On March 8, 2024, Commerce received new factual information from several domestic industries claiming that the GOVN submitted false statements and omitted material facts regarding Vietnam's alleged reforms in the context of the ongoing review of Vietnam's status as an NME country.¹⁵ Given that Commerce has the inherent authority to protect the integrity of its proceedings, it accepted the alleged information as part of the administrative record and allowed all other interested parties as well as the public to comment on these allegations until April 5, 2024.¹⁶ On May 8, 2024, Commerce also held a public hearing regarding the CCR of Vietnam's status as an NME country.¹⁷ This hearing allowed the interested parties and the general public who participated in the proceeding to express their views.

C. Analytical Framework

The inquiry into whether Vietnam remains an NME country was conducted pursuant to section 771(18)(A) of the Act, which defines the term "non-market economy country" as any foreign

¹³ GOVN's Letter, "Request for the U.S. Commerce to Initiate a Changed Circumstances Review," dated September 8, 2023.

¹⁴ *Raw Honey from the Socialist Republic of Vietnam: Initiation of Antidumping Duty Changed Circumstances Review*, 88 FR 74152 (October 30, 2023).

¹⁵ Petitioners' Letter, "Raw Honey from the Socialist Republic of Vietnam- Comments on the Government of Vietnam's False Statements and Material Omissions," dated March 8, 2024.

¹⁶ Commerce's Memorandum, "Changed Circumstances Review of the Socialist Republic of Vietnam's Status as a Non-market Economy Country: Extension of Time to File Rebuttal Comments," dated March 29, 2024.

¹⁷ Commerce's Memorandum, "Hearing Schedule," dated April 11, 2024.

country determined by Commerce not to “operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.” The impact of Commerce’s designation of a country as an NME is limited to U.S. trade remedy proceedings. According to section 771(18)(C)(i) of the Act, a country’s NME status remains in effect until revoked.

In reviewing a country’s market or non-market economy status under the statute, Commerce is directed to consider six factors in accordance with section 771(18)(B) of the Act:

- (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.

Market prices are essential for the dumping calculation to provide meaningful results concerning below cost and discriminatory pricing. The dumping calculation compares the price at which a foreign importer sells subject merchandise in the United States to the price sold in that importer’s home market (or an appropriate surrogate market). This calculation is therefore an inherently market-based mechanism that seeks to determine whether a party is selling its product at market-based prices and is not being manipulated by a price discriminator. Using non-market prices undermines this goal, rendering the results meaningless, as it defeats the purpose of establishing a market benchmark.

Commerce’s analytical approach examines whether Vietnam should be designated as a market or non-market economy country by evaluating both *de jure* (legal framework) and *de facto* (relevant and unfolding developments within Vietnam’s economy) aspects.¹⁸ This dual approach has identified discrepancies between the legal provisions and real-world practices and has provided a comprehensive view of Vietnam’s relevant economic conditions. By combining qualitative and quantitative analyses, the analytical framework thoroughly assesses Vietnam’s market economy characteristics, highlighting both areas where Vietnam’s government has conducted substantive market-oriented reform, and those where GOVN intervention continues to cause sustained market distortions.

¹⁸ This dual analytical approach is consistent with Commerce’s previous analytical methods in making NME determinations, such as Russia and Belarus. See Commerce’s Memorandum, “Reconsideration of Russia’s Status as a Market Economy Country,” dated November 9, 2022. See also Commerce’s Memorandum, “Final Results of Changed Circumstance Reviews Regarding Belarus,” dated October 16, 2020.

FACTOR ONE: THE EXTENT TO WHICH THE CURRENCY OF THE FOREIGN COUNTRY IS CONVERTIBLE INTO THE CURRENCY OF OTHER COUNTRIES

Since *Commerce's Vietnam NME Determination (2002)*, economic reforms in Vietnam have led to enhanced currency convertibility and a general unwinding of GOVN influence over the dong's valuation. This noteworthy progress has included the GOVN's: assumption of IMF Article VIII obligations, which require full convertibility of the current account; expansion of the trading band in which the dong can be traded; overall reduction in intervention activity in the foreign exchange market; and consideration of a broader set of economic variables when setting the central exchange rate. While the dong is more responsive to market forces than it was at the time of *Commerce's Vietnam NME Determination (2002)*, and while Vietnam was removed from the U.S. Department of Treasury's (Treasury's) list of most egregious currency manipulators in 2022, the dong is still not freely convertible. The GOVN continues to influence the value of its currency by intervening in the foreign exchange market, and Vietnam's central bank, the SBV, is not independent from the policy-making apparatus.

This part of the analysis examines the extent to which the GOVN's exchange rate arrangement, interventions in the foreign exchange market, and capital and current account openings facilitate such convertibility. After the introductory section in Part A, Part B of this analysis describes the legal framework governing the role of the SBV and Vietnam's exchange rate regime. Part C examines developments within the economy that are related to: (1) the role of the SBV; (2) Vietnam's foreign exchange rate arrangement; (3) the extent of GOVN interventions in the foreign exchange market; and (4) the controls on current and capital account transactions in Vietnam.

A. Introduction

A country's exchange rate is the price of its currency relative to that of another country. It is essential for international trade, as the exchange rate allows for a direct comparison of prices for goods, services, and financial transactions across borders. It also provides the terms by which international transactions are adjusted to account for differences in currency valuation.

A country's integration into world markets depends on the convertibility of its currency. A government preventing the full convertibility of its currency or influencing the forces of supply and demand that drive the currency's value can substantially erode business confidence and international trade.

To instill confidence in the international trading system, the IMF's Article VIII aims to prevent signatory countries from limiting the convertibility of their domestic currencies. Specifically, under Article VIII's Sections 2, 3 and 4, IMF members agree "not to impose restrictions on the making of payments and transfers for current international transactions."¹⁹ Vietnam became a

¹⁹ IMF, "Press Release: Vietnam Accepts IMF's Article VIII Obligations," IMF Press Release no. 06/02, available at www.imf.org/en/News/Articles/2015/09/14/0149/pr0602, January 5, 2006.

signatory to the IMF's Article VIII on November 8, 2005.²⁰ This was a noteworthy development and identified in the GOVN's submission of comments to Commerce in the context of this NME review.²¹ According to the IMF, by accepting these obligations, the GOVN "signal{ed} to the international community that it will pursue economic policies which will make restrictions on the making of payments and transfers for current international transactions unnecessary, and will contribute to a multilateral payments system free of restrictions."²² The GOVN also stated in its comment for this NME review that it reaffirmed its Article VIII obligations when it became a member of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in 2019.²³

Becoming a signatory to these important agreements was not the only liberalizing development to currency policy that the Vietnamese government undertook in recent history. Since 2002, the GOVN implemented important reforms to liberalize the value of the dong. Today, the exchange rate is more responsive to market forces than in 2002 and is allowed to be traded within a wider trading band than in the past.²⁴ In 2022, Treasury determined that Vietnam was no longer among the most egregious currency manipulators worldwide, owing to its practices of unwinding from government intervention.²⁵ At that time, Treasury found that "{a}s a result of discussions through the enhanced engagement process, Treasury and the SBV reached agreement in July 2021 to address Treasury's concerns about Vietnam's currency practices. Treasury remains satisfied with the progress made by Vietnam and will continue to engage closely with the SBV on currency issues."²⁶

Despite these and other liberalizing developments, the dong is not yet fully convertible or market driven. *Commerce's Vietnam NME Determination* (2002) serves as a sound starting point for this assessment. At the time, it found that the dong was "not responsive to the forces of supply and demand."²⁷ Since 2002, the dong has remained tightly managed by the GOVN, as the widening trading band in which the government allows it to be traded still confines the convertibility of its currency. With respect to the currency's more direct valuation, there still exists a considerable amount of government influence as Vietnam's SBV does not have operational independence

²⁰ IMF, "Press Release: Vietnam Accepts IMF's Article VIII Obligations," IMF Press Release no. 06/02, available at www.imf.org/en/News/Articles/2015/09/14/01/49/pr0602, January 5, 2006.

²¹ Ministry of Industry and Trade of the Socialist Republic of Vietnam, *Re: Raw Honey from the Socialist Republic of Vietnam: Initiation of Changed Circumstances Review Comments of Government of Viet Nam*, (December 21, 2023) (GOVN Comments (2023)), 4.

²² IMF, "Press Release: Vietnam Accepts IMF's Article VIII Obligations," IMF Press Release no. 06/02, available at www.imf.org/en/News/Articles/2015/09/14/01/49/pr0602, January 5, 2006.

²³ GOVN Comments (2023), 4.

²⁴ IMF, *Vietnam: Staff Report for the 2022 Article IV Consultation – Informational Annex*, IMF Country Report No. 22/209, (May 2022), 2.

²⁵ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (November 2023), 36.

²⁶ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (November 2023), 36.

²⁷ *Commerce's Vietnam NME Determination* (2002), 10.

from the GOVN, in contrast to most other countries.²⁸ Also, the GOVN does not publish data on its foreign exchange transactions to clearly assess the depth and timing of intervention in its currency market. According to the Economist Intelligence Unit in 2023, “[i]ntervention in the currency markets will continue to be a feature of Vietnam’s tightly controlled exchange-rate regime.”²⁹ As of Treasury’s latest currency assessment, Vietnam was one of six countries that it is actively monitoring regarding currency valuation issues.³⁰

The GOVN’s decreasing reliance on currency convertibility restrictions and interventions are positive developments. Since Treasury no longer classifies Vietnam as a currency manipulator, Treasury continues to “engage closely with the SBV to monitor Vietnam’s progress in addressing Treasury’s concerns and is thus far satisfied with progress made by Vietnam.”³¹ Moreover, the IMF’s Executive Board of Directors have recently “welcomed recent steps towards greater exchange rate flexibility and monetary policy modernization and encouraged continued efforts in this direction.”³²

B. Legal Framework

Vietnam’s sole and official currency is the Vietnamese dong (VND or dong).³³ The *Constitution of the Socialist Republic of Vietnam (Vietnam Constitution (2013))* states that “{t}he State shall ensure the stabilization of the national currency value.”³⁴ *Decree No. 70/2014/ND-CP Detailing a Number of Articles of the Ordinance on Foreign Exchange and the Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Foreign Exchange (Decree No. 70)* states that the exchange rate “...shall be formed on the basis of the foreign currency market demand and supply, and regulated by the State.”³⁵ {emphasis added}

1. The Role of the State Bank of Vietnam

The SBV is the central bank of Vietnam. According to *Law No. 46/2010/QH12 on the State Bank of Vietnam*, the SBV is responsible for, *inter alia*, “conduct{ing} operations for the purpose of

²⁸ IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation – Informational Annex*, IMF Country Report No. 19/235, (June 2019), 64.

²⁹ EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 70-71.

³⁰ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (November 2023), 4. The other countries currently being “monitored” by Treasury are China, Germany, Malaysia, Singapore, and Taiwan.

³¹ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (June 2022), 4.

³² IMF, *Vietnam: Staff Report for the 2022 Article IV Consultation – Informational Annex*, IMF Country Report No. 22/209, (May 2022), 2.

³³ IMF, *Vietnam: Annual Report on Exchange Arrangements and Exchange Restrictions: 2022*, (July 26, 2023), 1; and GOVN, *Vietnam Constitution (2013)*, Article 55(3).

³⁴ GOVN, *Vietnam Constitution (2013)*, Article 55(3).

³⁵ GOVN, *Decree No. 70/2014/ND-CP Detailing a Number of Articles of the Ordinance on Foreign Exchange and the Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Foreign Exchange* (July 17, 2014), Article 15(1).

currency value stability...and...contribute{ing} to accelerating socio-economic development along the socialist orientation.”³⁶ Decree No. 70 further states that the SBV “...shall regulate exchange rates through the use of monetary policy instruments and the implementation of plans on intervention in the foreign currency market.”³⁷

2. Foreign Exchange Rate Arrangement

The primary element of the GOVN’s foreign exchange rate regime is the official central rate, which is the VND/USD rate set daily by the SBV and published on its website.³⁸ The SBV also publishes “cross rates” between the VND and certain other currencies daily on its website.³⁹ *Decision No. 2730/QD-NHNN on the Announcement of the Official Exchange Rate Between Vietnam Dong and US dollar and the Cross Rate Between Vietnam Dong and Other Foreign Currencies* (Decision No. 2730) establishes that the central rate is determined based on fluctuations in the interbank of international foreign exchange market for several currencies “that have established major commercial, lending or borrowing, or debt repayment, or investment relationship with Vietnam, macroeconomic and currency balances, and in line {with} monetary policy goals.”⁴⁰ Decree No. 70 further states that Vietnam has a floating exchange rate arrangement that is based on “monetary baskets of the countries having trade, borrowing, debt-payment and investment relations with Vietnam according to the macro-economic objectives in each period.”⁴¹ The *de jure* exchange rate arrangement is therefore a managed floating exchange rate regime.⁴²

³⁶ GOVN, SBV Law No. 46/2010/QH12 (June 29, 2020), Article 4(1).

³⁷ GOVN, Decree No. 70/2014/NĐ-CP Detailing a Number of Articles of the Ordinance on Foreign Exchange and the Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Foreign Exchange (July 17, 2014), Article 15(1).

³⁸ GOVN, *Decision No. 2730/QD-NHNN on the Announcement of the Official Exchange Rate Between Vietnam Dong and US dollar and the Cross Rate Between Vietnam Dong and Other Foreign Currencies* (December 31, 2015), Article 1. GOVN, SBV “Exchange Rate,” available at www.sbv.gov.vn/TyGia/faces/ExchangeRate.jspx, accessed September 22, 2023.

³⁹ GOVN, *Decision No. 2730/QD-NHNN on the Announcement of the Official Exchange Rate Between Vietnam Dong and US dollar and the Cross Rate Between Vietnam Dong and Other Foreign Currencies* (December 31, 2015), Article 3.

⁴⁰ GOVN, *Decision No. 2730/QD-NHNN on the Announcement of the Official Exchange Rate Between Vietnam Dong and US dollar and the Cross Rate Between Vietnam Dong and Other Foreign Currencies* (December 31, 2015), Article 2(1).

⁴¹ GOVN, Decree No. 70/2014/NĐ-CP Detailing a Number of Articles of the Ordinance on Foreign Exchange and the Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Foreign Exchange (July 17, 2014), Article 15(2).

⁴² IMF, *Vietnam: Annual Report on Exchange Arrangements and Exchange Restrictions: 2022*, (July 26, 2023), 1.

C. Developments in the Economy

1. The Role of the State Bank of Vietnam

Operational independence from the government is necessary for a central bank to be able to operate without political influence.⁴³ Vietnam's central bank, the SBV, does not have operational independence from the GOVN but rather follows government directives.⁴⁴ According to the IMF, "...unlike other countries that have modernized monetary policy, the Vietnamese economy still features characteristics of a centrally planned economy, where the central bank is an integral component of the State (IMF 2017) and therefore follows government guidelines when formulating monetary policy..."⁴⁵ The IMF further states that "...the SBV features low central bank independence and accountability as public policy decisions are centralized, and the SBV's mandate is influenced by the government's political goals. The SBV lacks both political independence – given that the SBV Governor is a cabinet member – and operational independence."⁴⁶

2. Foreign Exchange Rate Arrangement

Calculation of the Official Central Rate. As detailed in the Legal Framework, the primary element of the GOVN's foreign exchange rate regime is the official central rate, which is the VND/USD rate set daily by the SBV and published on its website.⁴⁷ At the time of *Commerce's Vietnam NME Determination (2002)*, the central rate was calculated based on the average of price quotes in the interbank market (*i.e.*, rates that the dong was actually traded at, which were only permitted to range from 0.25 percent of the government-set rate) from the previous day.⁴⁸ As of January 2016, the SBV incorporates two additional factors into the calculation of the central rate: (i) a weighted average of movements of dong exchange rates vis-à-vis seven other important trading partners' currencies; and (ii) domestic macroeconomic conditions.⁴⁹ Increasing the trading band and reforming the calculation of the central rate serve to liberalize the exchange rate and increase the influence of market factors on the value of the dong. However, the SBV does not make public information on exactly how the three factors listed

⁴³ IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation – Informational Annex*, IMF Country Report No. 19/235, (June 2019), 65.

⁴⁴ IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation – Informational Annex*, IMF Country Report No. 19/235, (June 2019), 64.

⁴⁵ IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation – Informational Annex*, IMF Country Report No. 19/235, (June 2019), 64.

⁴⁶ IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation – Informational Annex*, IMF Country Report No. 19/235, (June 2019), 65.

⁴⁷ GOVN, *Decision No. 2730/QD-NHNN on the Announcement of the Official Exchange Rate Between Vietnam Dong and US dollar and the Cross Rate Between Vietnam Dong and Other Foreign Currencies* (December 31, 2015), Article 1. GOVN, SBV, "Exchange Rate," available at www.sbv.gov.vn/TyGia/faces//ExchangeRate.jspx, accessed September 22, 2023.

⁴⁸ *Commerce's Vietnam NME Determination (2002)*, 10.

⁴⁹ IMF, *Vietnam: Staff Report for the 2022 Article IV Consultation – Informational Annex*, IMF Country Report No. 22/209, (May 2022), 2.

above are used to influence the exchange rate, such as providing a formula for the central rate calculation. The exchange rate-setting process, therefore, continues to lack transparency.

Vietnam's Foreign Exchange Rate Arrangement and Trading Band. Only authorized banks are permitted to trade the Vietnamese dong, and those banks can only buy and sell dong at rates that are within a “trading band” of the central rate.⁵⁰ At the time of *Commerce’s Vietnam NME Determination* (2002), the trading band had a narrow range of 0.25 percent above or below the central rate.⁵¹ Since that time, the band around which the VND/USD exchange rate is permitted to fluctuate has increased significantly. In August 2015, the band was increased from one percent above or below the previous day’s official rate to three percent.⁵² In October 2022, it was further increased to five percent.⁵³ These changes point broadly in the direction of increased VND convertibility, subject to the limitations described below.

De Facto Fluctuation of the Central Rate. Although authorized banks are now permitted to trade dong within the newly established five percent trading band, in reality, SBV intervention in the foreign exchange market (discussed in more detail in the section on GOVN Interventions in the Foreign Exchange Market) prevents the exchange rate from fluctuating to that extent. According to the IMF, the monetary framework in Vietnam relies on “a stable exchange rate closely tied to the U.S. dollar.”⁵⁴ In June 2022, the IMF reported that, since March 2020, the exchange rate had only been permitted to appreciate within a more narrow range of two percent.⁵⁵ While the trading band has since increased to five percent, it remains to be seen whether the dong will be allowed increased fluctuation based on market forces.

The IMF’s Classification of Vietnam’s Exchange Rate Arrangement. The IMF classifies each country’s exchange rate arrangement based on the extent to which the exchange rate is permitted to fluctuate based on market forces. It includes four broad categories which each have subcategories: (i) “hard pegs” (such as exchange arrangements with no separate legal tender and currency board arrangements); (ii) “soft pegs” (including conventional pegged arrangements, pegged exchange rates within horizontal bands, crawling pegs, stabilized arrangements, and crawl-like arrangements); (iii) “floating regimes” (such as managed floating and free floating); and (iv) a residual category, “other managed.”⁵⁶ While Vietnam’s *de jure* exchange rate arrangement (*i.e.*, the GOVN’s legal classification of the exchange rate arrangement) is a managed float, the IMF classifies Vietnam as having a *de facto* crawl-like arrangement as of

⁵⁰ IMF, *Vietnam: Staff Report for the 2022 Article IV Consultation – Informational Annex*, IMF Country Report No. 22/209, (May 2022), 2.

⁵¹ *Commerce’s Vietnam NME Determination* (2002), 10.

⁵² IMF, *Vietnam: Staff Report for the 2022 Article IV Consultation – Informational Annex*, IMF Country Report No. 22/209, (May 2022), 2.

⁵³ Asian Development Bank, “Viet Nam,” in *Asian Development Outlook*, (April 2023), 241.

⁵⁴ IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation – Informational Annex*, IMF Country Report No. 19/235, (June 2019), 64.

⁵⁵ IMF, *Vietnam: Annual Report on Exchange Arrangements and Exchange Restrictions: 2022*, (July 26, 2023), 1.

⁵⁶ IMF, *Vietnam: Annual Report on Exchange Arrangements and Exchange Restrictions: 2022*, (July 26, 2023), 1.

2023.⁵⁷ A crawl-like arrangement (in the soft-peg category) is less subject to market forces than its *de jure* managed float arrangement (in the floating regimes category) would suggest. While exchange rates categorized as soft pegs are only permitted to fluctuate to a certain degree and are broadly pegged to the value of something else (in the case of Vietnam, the value of the USD), managed floating exchange rates are considered by the IMF to be “market-determined rates.”⁵⁸ Since the IMF did not make the aforementioned *de jure* and *de facto* categorizations of countries’ exchange rate arrangements at the time of the *Commerce’s Vietnam NME Determination* (2002), it is difficult to compare the IMF’s assessment of Vietnam’s exchange rate arrangement in 2002 with its assessment of the arrangement today. However, since Vietnam’s exchange rate is now permitted to fluctuate by two percentage points on a *de facto* basis, it can be considered to have greater flexibility than in 2002 when the exchange rate band in place was only 0.25 percent.

3. GOVN Interventions in the Foreign Exchange Market

To keep the dong within the trading band described above, the GOVN buys and sells dong on the foreign exchange market using its foreign currency reserves.⁵⁹ This government intervention on the supply of dong impacts the value of the currency. Most countries intervene to a certain extent on a limited basis in the foreign exchange market under the authority of a central bank that is typically independent of broader policy direction. Such an institutional construction allows central banks to be highly responsive to unexpected economic shocks. However, when such interventions are used on a more persistent and sustained basis, they can lead to a currency valuation practice that is not solely based on market forces.

The SBV has traditionally intervened actively in the foreign exchange market to sell dong to prevent it from appreciating.⁶⁰ However, the GOVN does not publish data on its foreign exchange interventions or reserve levels so it is not possible to know to what extent the SBV is intervening in the foreign exchange market at any given time.⁶¹ In December 2020, Treasury officially determined that the GOVN was manipulating its currency due in part to its sustained and asymmetric interventions in the foreign exchange market to undervalue the dong since 2016.⁶² According to Treasury, “Vietnam does not publish data on foreign exchange intervention. However, the Vietnamese authorities have conveyed credibly to Treasury that net purchases of foreign exchange in the four quarters through June 2020 were \$16.8 billion,

⁵⁷ IMF, *Vietnam: Staff Report for the 2023 Article IV Consultation – Informational Annex*, (July 25, 2023), 2; and IMF, *Vietnam: Annual Report on Exchange Arrangements and Exchange Restrictions: 2022*, (July 26, 2023), 1.

⁵⁸ IMF, *Vietnam: Annual Report on Exchange Arrangements and Exchange Restrictions: 2022*, (July 26, 2023), 1.

⁵⁹ USTR, *Section 301 Investigation Report on Vietnam’s Acts, Policies, and Practices Related to Currency Valuation*, (January 15, 2021), 9.

⁶⁰ IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation – Informational Annex*, IMF Country Report No. 19/235, (June 2019), 53.

⁶¹ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (June 2022), 46.

⁶² Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (December 2020), 2-3.

equivalent to 5.1 percent of GDP. Vietnam intervened largely in one direction in 2019 and the outset of 2020, purchasing large amounts of foreign exchange reserves during a period of ample global liquidity, while net purchases then declined notably as global financial conditions tightened amid the COVID-19 pandemic.⁶³ The report goes to say that during the above referenced period, “the authorities allowed almost no movement of the dong against the U.S. dollar.”⁶⁴

As of June 2022, Treasury determined that the GOVN’s foreign exchange interventions were no longer persistent or one sided.⁶⁵ However, as of Treasury’s latest exchange rate assessment in June 2024, Vietnam was on the list of countries that Treasury was “monitoring,” indicating that it still meets two of the three criteria to be determined to be a currency manipulator.⁶⁶ Treasury found in its latest assessment in June 2024 that, although net purchases of foreign exchange in the four quarters through December 2023 remained below the 2 percent threshold to consider Vietnam a currency manipulator, Vietnam continued to intervene somewhat extensively in the foreign exchange market (net purchases of foreign exchange made up 1.5 percent of GDP).⁶⁷ While this figure still represents a relatively significant amount of government intervention in the foreign exchange market, it remains below the 2 percent threshold that would result in Vietnam being determined to be a currency manipulator.⁶⁸ Treasury further stated that it remains satisfied with the progress Vietnam has made concerning the GOVN’s currency practices.⁶⁹

As can be seen in Figure 1.1 below, the value of the dong against the US dollar has depreciated since Treasury took it off the currency manipulator list in 2022.⁷⁰ This is likely to be at least partly due to the strengthening of the U.S. dollar during that period.⁷¹ In its latest currency report, the Treasury Department found that, in 2023, the dong actually strengthened against many other

⁶³ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States* (December 2020), 53.

⁶⁴ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (December 2020), 53.

⁶⁵ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (June 2022), 46.

⁶⁶ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States* (June 2024), 4. The two criteria Vietnam still meets are that Vietnam has: (1) a significant bilateral goods and services trade surplus with the United States that is at least \$15 billion; and (2) a material current account surplus that is at least 3 percent of GDP, or a surplus for which Treasury estimates there is a material current account “gap” using Treasury’s Global Exchange Rate Assessment Framework (GERAF). See Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States* (November 2023), 3. See Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (November 2023), 3.

⁶⁷ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (June 2024), 35.

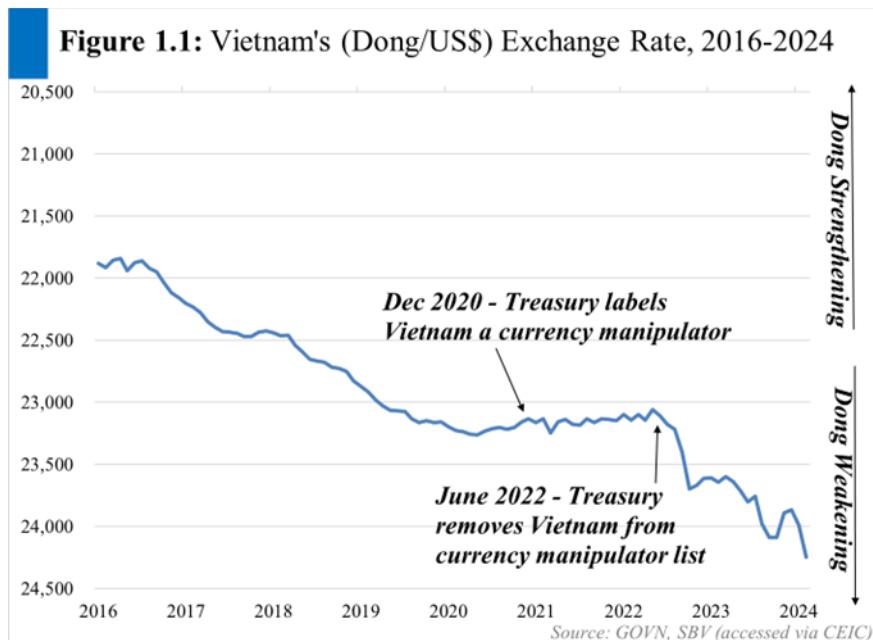
⁶⁸ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (November 2023), 4.

⁶⁹ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (November 2023), 36.

⁷⁰ GOVN, SBV, “FX Rate: Reference Rate: US Dollar,” data accessed via CEIC.

⁷¹ Vietnam Investment Review, “Exchange Rate Sparks Debate on Volatility,” available at <https://vir.com.vn/exchange-rate-sparks-debate-on-volatility-109454.html>, March 12, 2024.

currencies in the region, appreciating by 1.7 percent and 1.2 percent on a nominal effective basis and real effective basis, respectively.⁷²



4. Controls on Current and Capital Account Transactions

Current account (broadly defined as the balance of trade for goods and services) and capital account (broadly defined as the sum of financial transactions) controls are government restrictions on the use of the domestic currency for international transactions. Such controls can impact the extent to which the currency of the country is freely convertible by affecting the ability of market actors to convert currency and therefore influence the supply and demand of currency. As a result, such controls can impact the extent to which the exchange rate is determined by market forces.

Current Account Controls. The current account is the sum of the balance of trade of goods and services (*i.e.*, exports – imports), net primary income (such as compensation of employees, interest on investments abroad, and distributed income of corporations), and net secondary income (such as taxes on income, international insurance claims and premiums, foreign aid, and foreign citizens sending funds abroad).⁷³ In other words, it is the net currency exchanged with other countries that is primarily used to purchase and sell goods and services. Current account

⁷² Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (November 2023), 35-36.

⁷³ IMF, *Balance of Payments and International Investment Position Manual: Chapter 2: Overview of the Framework*, (November 2013), 14.

controls generally involve restrictions on the use of the dong for purposes of trade, income, and profit remittances.

At the time of the *Commerce's Vietnam NME Determination (2002)*, several types of current account controls remained in place in Vietnam.⁷⁴ Those converting dong were required to provide reasons for purchasing the foreign currency and relevant documentation to substantiate the origins of the money.⁷⁵ In addition, foreign currency could only be purchased at authorized banks, and the transactions were dependent upon banks' ability to supply the foreign currency.⁷⁶ Foreign enterprises designated on a list of priority enterprises by the government were permitted to convert currency with fewer restrictions.⁷⁷

Due to the restrictions on convertibility of the dong for current account purposes, as of 2002, Vietnam had not yet assumed IMF Article VIII obligations requiring full convertibility of the current account, which was something that all recent successful market economy graduation candidates had accomplished.⁷⁸ As of November 2005, Vietnam assumed the IMF Article VIII obligations.⁷⁹ Notably, individuals are generally permitted to purchase, transfer, and take foreign currency out of Vietnam for current transactions, including payments for imports, services abroad and loans, and transfers of profits and dividends.⁸⁰ Foreigners working in Vietnam may receive salaries, bonuses, and allowances in foreign currency.⁸¹

It should be noted that current account transactions are still required to be made at credit institutions authorized by the SBV.⁸² In addition, the dong is required to be used for most types of transactions in Vietnam, with foreign currency permitted to be used for 17 limited purposes.⁸³

Capital Account Controls. The capital account is defined differently by different organizations and for different purposes. This memorandum will consider it to be the sum of foreign direct investment (FDI), portfolio investment flows, and bank borrowing.⁸⁴ In other words, it is the net

⁷⁴ *Commerce's Vietnam NME Determination (2002)*, 9.

⁷⁵ *Commerce's Vietnam NME Determination (2002)*, 9.

⁷⁶ *Commerce's Vietnam NME Determination (2002)*, 9.

⁷⁷ *Commerce's Vietnam NME Determination (2002)*, 9.

⁷⁸ *Commerce's Vietnam NME Determination (2002)*, 9.

⁷⁹ IMF, *Vietnam: Annual Report on Exchange Arrangements and Exchange Restrictions: 2022*, (July 26, 2023), 1.

⁸⁰ EIU, "Exchange Controls: Overview," available at <https://viewpoint.eiu.com/analysis/article/103952193>, April 1, 2024; and PwC, "Vietnam: Corporate – Other Issues," available at <https://taxsummaries.pwc.com/vietnam/corporate/other-issues>, February 15, 2024.

⁸¹ EIU, "Exchange Controls: Overview," available at <https://viewpoint.eiu.com/analysis/article/103952193>, April 1, 2024.

⁸² EIU, "Exchange Controls: Overview," available at <https://viewpoint.eiu.com/analysis/article/103952193>, April 1, 2024; and PwC, "Vietnam: Corporate – Other Issues," available at <https://taxsummaries.pwc.com/vietnam/corporate/other-issues>, February 15, 2024.

⁸³ EIU, "Exchange Controls: Overview," available at <https://viewpoint.eiu.com/analysis/article/103952193>, April 1, 2024; and IMF, *Vietnam: Annual Report on Exchange Arrangements and Exchange Restrictions: 2022*, (July 26, 2023), 3-5.

⁸⁴ M. Ayhan Kose and Eswar Prasad, "Capital Accounts: Liberalize or Not?" available at www.imf.org/external/pubs/ft/fandd/basics/capital.htm, accessed April 3, 2024.

transfer of funds to and from a country to purchase assets.⁸⁵ Capital account controls involve restrictions on transactions involving international investment and lending activities.

At the time of the *Commerce's Vietnam NME Determination (2002)*, the dong was not convertible for capital account purposes,⁸⁶ meaning companies and individuals were not permitted to transfer currency in or out of the country except in accordance with strict rules. Significant controls existed on all transactions in capital, bond and money market instruments, and investment securities.⁸⁷ Since then, some capital controls have been liberalized, although there are still capital controls on all transactions in capital, bond and money market instruments, and most investment securities.⁸⁸ For example, foreign investors are required to open capital accounts at authorized banks in Vietnam to receive and repatriate investment funds when undertaking investments in Vietnam.⁸⁹ In addition, foreign currency to be used for portfolio investments must first be exchanged into dong, and any profits in dong on such investments must be exchanged into foreign currency before it can be sent abroad.⁹⁰

However, some controls on capital transactions have been added in recent years. For example, the 2020 *Law on Investment* requires investors to transfer all profits and other incomes earned from overseas investment into Vietnam within six months.⁹¹ Previously, there was no provision for the timeline of profits and earnings repatriation.⁹²

The Chinn-Ito Index. The Chinn-Ito Index was designed to measure the extent of current and capital account controls identified by the IMF, and can be used to compare such restrictions in a country over time and against other countries' currencies.⁹³ The index captures the combined effects of four binary variables: (i) the presence of restrictions on current account transactions; (ii) the presence of restrictions on capital account transactions; (iii) the existence of multiple exchange rates; and (iv) the existence of surrender export proceed requirements (*i.e.*, the requirement to convert export proceeds into domestic currency).⁹⁴

⁸⁵ M. Ayhan Kose and Eswar Prasad, "Capital Accounts: Liberalize or Not?" available at www.imf.org/external/pubs/ft/fandd/basics/capital.htm, accessed April 3, 2024.

⁸⁶ *Commerce's Vietnam NME Determination (2002)*, 10.

⁸⁷ *Commerce's Vietnam NME Determination (2002)*, 10.

⁸⁸ IMF, *Vietnam: Annual Report on Exchange Arrangements and Exchange Restrictions: 2022*, (July 26, 2023), 10-11.

⁸⁹ EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 71.

⁹⁰ EIU, "Exchange Controls: Overview," available at <https://viewpoint.eiu.com/analysis/article/103952193>, April 1, 2024.

⁹¹ IMF, *Vietnam: Annual Report on Exchange Arrangements and Exchange Restrictions: 2022*, (July 26, 2023), 10.

⁹² IMF, *Vietnam: Annual Report on Exchange Arrangements and Exchange Restrictions: 2022*, (July 26, 2023), 10.

⁹³ Hiro Ito and Menzie Chinn, "What Matters for Financial Development? Capital Controls, Institutions, and Interactions," *Journal of Development Economics* 81(1) (October 2006): 163-192; and Nicoletta Batini and Luigi Durand, "Analysis and Advice on Capital Account Developments: Flows, Restrictions and Policy Toolkits," Independent Evaluation Office of the International Monetary Fund Background Paper BP/20-02/03 (August 2020), 13.

⁹⁴ Hiro Ito and Menzie Chinn, "A New Measure of Financial Openness," *Journal of Comparative Policy Analysis* 10(3) (September 2008): 5.

The latest version of Chinn-Ito index collected annual data from 182 countries between 1970 and 2020 from the IMF's *Annual Report(s) on Exchange Arrangements and Exchange Restrictions*.⁹⁵ Negative values (which have yet to go below -2.0) are associated with low values of financial liberalization relative to the mean level, while high values (which have peaked at 2.39) represent countries with high levels of financial liberalization.⁹⁶ According to this index, Vietnam's capital account experienced a sharp increase in openness in 2008, with its score improving from -1.234 to -0.159, and has remained at that level since.⁹⁷ Vietnam's ranking compared to other countries has also improved from 2002, when it was ranked 123 (out of 182 countries), to 2020, when it ranked 101 (out of 182 countries).⁹⁸ Despite this noteworthy improvement, Vietnam still ranks low compared to other countries and has remained in the bottom half of considered countries since the Chinn-Ito index was first published in 1970.⁹⁹

According to the Chinn-Ito Index, Vietnam currently ranks lower than four of the other eleven countries currently designated as NMEs by Commerce (Armenia, Azerbaijan, Georgia, and Kyrgyzstan), higher than six of the other NME countries (Belarus, China, Moldova, Tajikistan, Turkmenistan, and Uzbekistan), and has a current score that is in line with one other (Russia). Figure 1.2 below highlights these scores on most of the NME countries.¹⁰⁰

⁹⁵ Hiro Ito and Menzie Chinn, "Notes on The Chinn-Ito Financial Openness Index 2020 Update," *Journal of Development Economics* (July 2020): 8-9.

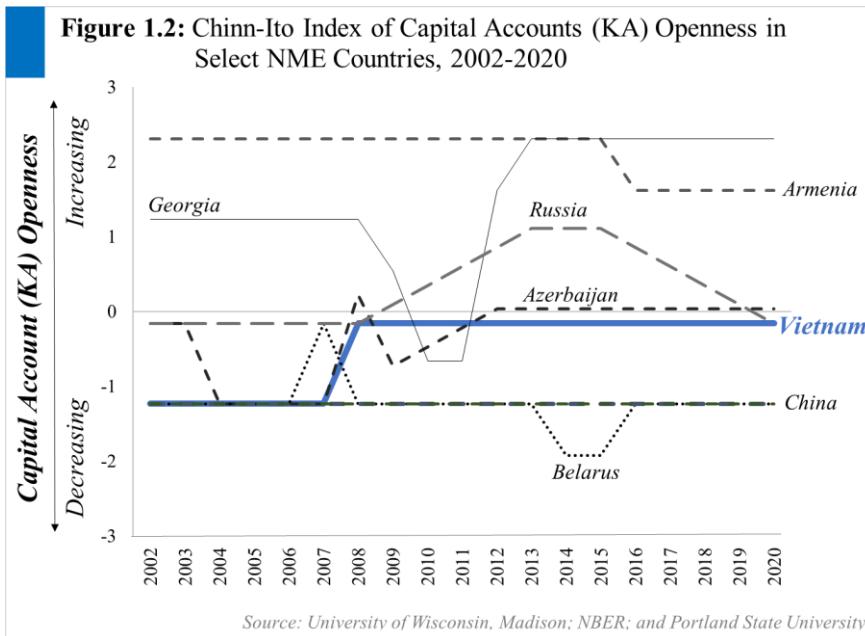
⁹⁶ Hiro Ito and Menzie Chinn, "Notes on The Chinn-Ito Financial Openness Index 2020 Update," *Journal of Development Economics* (July 2020): 8-9.

⁹⁷ Hiro Ito and Menzie Chinn, "What Matters for Financial Development? Capital Controls, Institutions, and Interactions," *Journal of Development Economics* 81(1) (October 2006): 163-192.

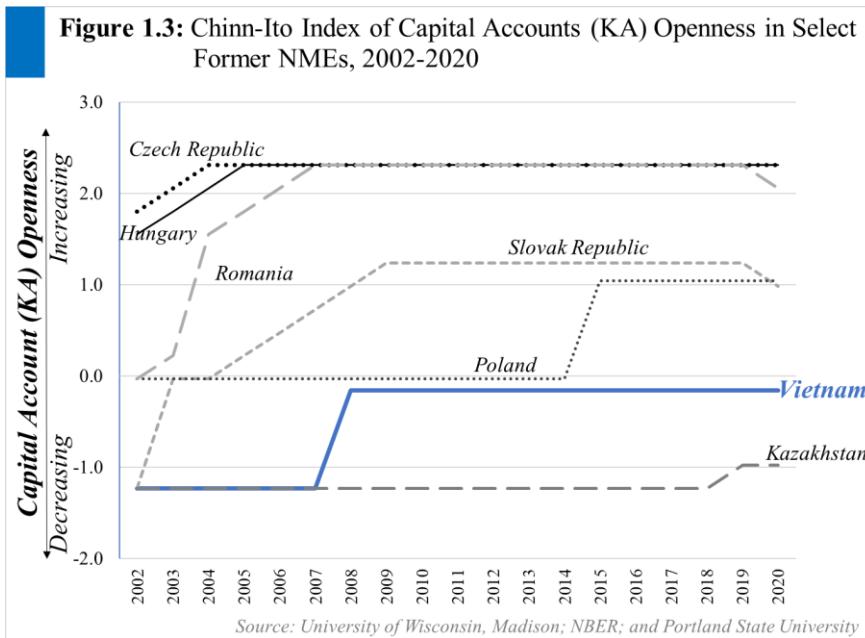
⁹⁸ Hiro Ito and Menzie Chinn, "What Matters for Financial Development? Capital Controls, Institutions, and Interactions," *Journal of Development Economics* 81(1) (October 2006): 163-192.

⁹⁹ Hiro Ito and Menzie Chinn, "What Matters for Financial Development? Capital Controls, Institutions, and Interactions," *Journal of Development Economics* 81(1) (October 2006): 163-192.

¹⁰⁰ While not all NME countries could be shown in Figure 1.2 given space and readability constraints, the observations identified in the text provide a more comprehensive assessment.



As can be seen in Figure 1.3 below, in comparison with other countries that were previously designated as NMEs but have since been determined to be market economy countries, Vietnam scores lower than all of them except one (Kazakhstan).¹⁰¹



¹⁰¹ While not all graduated NME countries could be shown in Figure 1.3 given space and readability constraints, the observations identified in the text provide a more comprehensive assessment.

D. Assessment of the Factor

Commerce's Vietnam NME Determination (2002) found that the exchange rate of the dong was “not responsive to the forces of supply and demand.”¹⁰² Since then, the GOVN has implemented important reforms to liberalize the value of the currency. Today, the exchange rate is somewhat more responsive to market forces than in 2002. However, the exchange rate remains tightly managed by the GOVN. According to the Economist Intelligence Unit, “[i]ntervention in the currency markets will continue to be a feature of Vietnam’s tightly controlled exchange-rate regime, and the risk of the U.S. labelling Vietnam a currency manipulator again – along with threats of trade-related punitive actions – will grow in the next three to five years.”¹⁰³

Importantly, the central rate set by the government now takes into account more economic factors, and the band around the dong that the currency is permitted to trade at has increased significantly. The SBV appears to have reduced the extent of interventions in the foreign exchange market, allowing the dong to appreciate based on market forces. Additionally, the GOVN has assumed IMF Article VIII obligations, which require full convertibility of the current account.

However, the exchange rate is still loosely pegged to the U.S. dollar, with the IMF characterizing Vietnam as having a crawl-like exchange rate arrangement. The GOVN states that its calculation of the central rate takes into account more economic factors, but the SBV does not make public information on exactly how these factors are used to influence the exchange rate. As a result, the exchange rate-setting process continues to lack transparency. Moreover, the SBV continues to intervene in the foreign exchange market to ensure that the VND/USD exchange rate remains somewhat consistent. The GOVN does not publish data on its foreign exchange transactions, so it is not possible to know the true extent of the GOVN’s foreign exchange interventions.

As recently as 2020, Treasury officially determined that the GOVN was manipulating its currency due in part to its sustained and asymmetric interventions in the foreign exchange market to undervalue the dong. Although important progress has been made in recent years, given Treasury determination that the GOVN’s foreign exchange rate interventions were no longer persistent or one sided as of June 2022, the extent to which the GOVN will allow the dong to fluctuate based on market forces in the long term remains to be seen. Treasury found in its latest assessment in June 2024 that, although net purchases of foreign exchange in the four quarters through December 2023 remained below the 2 percent threshold to consider Vietnam a currency manipulator, Vietnam continued to intervene somewhat extensively in the foreign exchange market (net purchases of foreign exchange made up 1.5 percent of GDP).¹⁰⁴ According to the Economist Intelligence Unit, “Vietnam has long suppressed the value of its currency to benefit

¹⁰² *Commerce's Vietnam NME Determination (2002)*, 10.

¹⁰³ EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 70-71.

¹⁰⁴ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (June 2024), 35.

export competitiveness, but it began to moderate this strategy in 2021, after it was briefly labelled a currency manipulator by the US...”¹⁰⁵ The IMF continues to list allowing for greater exchange rate flexibility as one of its key recommendations to the GOVN.¹⁰⁶ Given these outstanding issues, Vietnam remained as one of six countries that Treasury is actively monitoring regarding currency valuation issues.¹⁰⁷

¹⁰⁵ EIU, “Exchange Controls: Overview,” <https://viewpoint.eiu.com/analysis/article/103952193>, April 1, 2024.

¹⁰⁶ IMF, *Vietnam: Staff Report for the 2022 Article IV Consultation*, IMF Country Report No. 22/209, (May 2022), 1,16.

¹⁰⁷ Treasury, *Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, (November 2023), 4. The other countries currently being “monitored” by Treasury are China, Germany, Malaysia, Singapore, and Taiwan.

FACTOR TWO: THE EXTENT TO WHICH WAGE RATES IN THE FOREIGN COUNTRY ARE DETERMINED BY FREE BARGAINING BETWEEN LABOR AND MANAGEMENT

The GOVN has introduced considerable labor law reforms over the past 20 years, such as amending the *Labor Code*, No. 45/2019/QH14 (*Labor Code (2019)*) to enhance worker protections and promote fairer labor practices. Importantly, the *Labor Code (2019)* has legalized not only the formation of labor unions but also the rights of those unions to bargain collectively. Despite the GOVN's notable reforms in this area, Vietnam's labor market is not highly reliant upon free bargaining between labor and management. The state-controlled labor union federation (Vietnam General Confederation of Labor, or VGCL)¹⁰⁸, which dominates labor representation, has hindered the formation of independent unions, thereby compromising the ability of workers to organize and bargain collectively for higher wages.¹⁰⁹ Additionally, Vietnam's dispute resolution system has not effectively addressed labor conflicts and grievances. The ongoing presence of child labor and forced labor conditions also illustrate an apparent disconnect between the GOVN's legislative intent to harmonize Vietnam's labor system with best international practices and real-world enforcement of the country's prevailing laws.

This part of the analysis examines the extent to which wage bargaining in Vietnam has improved since *Commerce's Vietnam NME Review (2002)*. After the introductory section in Part A, Part B examines the legal framework governing labor and wage setting in Vietnam to assess how well these provisions support free bargaining and align with international standards. This section will also evaluate Vietnam's system of unionization, collective bargaining, strikes, dispute resolution, labor mobility, the prevalence of the informal sector, and child and forced labor conditions.¹¹⁰ Part C focuses on the implementation of the legislative reforms by examining actual labor market practices and the effectiveness of enforcement mechanisms.

¹⁰⁸ According to the ILO, the VGCL is Vietnam's only legal trade union federation, consisting of 18 National Industrial Unions and Federations of Labor in all 63 cities and provinces under the Central Government. Institutionally, it is subordinate to the ruling Communist Party, embedded in the structures of the party-state, and receives a lot of funding from it. ILO, "Workers and Employers Organizations in Viet Nam," available at www.ilo.org/regions-and-countries/asia-and-pacific-deprecated/viet-nam/areas-work/workers-and-employers-organizations-viet-nam, accessed June 30, 2024; and Joe Buckley, "COVID-19 Turned Vietnam's State-Run Union's Greatest Weakness into Its Biggest Strength," *The Diplomat*, July 29, 2021.

¹⁰⁹ ILO, "Workers and Employers Organizations in Viet Nam," available at www.ilo.org/regions-and-countries/asia-and-pacific/viet-nam/areas-work/workers-and-employers-organizations-viet-nam, accessed June 30, 2024.

¹¹⁰ These indicators are major points raised in the public comments that we solicited for this review. See, for examples, *GOVN Comments (2023)*, Letter from Domestic Interested Parties, "Comments on Changed Circumstances Review of the Socialist Republic of Vietnam's Status as a Nonmarket Economy Country," (*Domestic Interested Parties' Comments*) dated December 21, 2023, and Letter from American Honey Producers Association and Sioux Honey Association (Petitioners) and Edsal Manufacturing Co. Inc., "Raw Honey from the Socialist Republic of Vietnam - Changed Circumstance Review of the Socialist Republic of Vietnam's Status as a Non-Market Economy Country, ITA-2023-0010," dated December 21, 2023 (*Petitioners' Comments*).

A. Introduction

The extent to which wages are determined through free bargaining between labor and management is a key component of market and NME status determinations. In a market economy, wage rates are primarily influenced by supply and demand conditions, ultimately leading to greater allocative efficiency in labor markets. If workers are not able to negotiate their wages, either individually or collectively, management of companies can have more bargaining power than employees over wage determinations. Since wages are an important component of a producer's costs and prices, attempts to place lower or higher government pressure on salaries will likely distort market outcomes on goods and services, and compromise efficiency, transparency, and competitive conditions.

Since *Commerce's Vietnam NME Review (2002)*, Vietnam has undertaken notable legal reforms to modernize its labor market. The *Vietnam Labor Code (2019)* introduced notable improvements, such as the right to form Grassroots-Level Employees' Representative Organizations (GEROs) and the rights of those organizations to bargain collectively on behalf of workers.¹¹¹ These changes aligned Vietnam's labor laws more closely with international labor standards.¹¹² Vietnam's commitment to international labor standards is further evidenced by its ratification of various International Labor Organization (ILO) conventions.¹¹³

Despite these legislative improvements, several structural and practical challenges persist. The state-controlled VGCL still dominates labor representation and hinders the development of independent unions and genuine collective bargaining.¹¹⁴ The VGCL does not adequately represent workers' rights, which limits workers' ability to negotiate effectively for better wages and working conditions. Additionally, issues such as inadequate dispute resolution mechanisms, limited labor mobility, and insufficient protection of workers in the informal sector remain significant concerns. The ongoing presence of child and forced labor also remains a significant concern, but it remains unclear whether these concerns are directly associated with market economy conditions.

B. Legal Framework

Commerce's Vietnam NME Review (2002) determined that the GOVN retained legal control over certain wage levels, and that control could ultimately affect free bargaining between employers

¹¹¹ ILO, *Get to know your new Labor Code 2019: Workers' Representative Organizations*, (June 2020).

¹¹² GOVN, *Labor Code (2019)*.

¹¹³ GOVN, *Resolution No. 80/2019/QH14* accession to the ILO's Convention No. 98, *Resolution No.*

104/2020/QH14 accession to Convention No. 105 concerning the Abolition of Forced Labor, and *Decision 2234/QD-TTg 2021* Plan on implementation of ILO's Convention 105 Abolition of Forced Labor.

¹¹⁴ Joe Buckley, "COVID-19 Turned Vietnam's State-Run Union's Greatest Weakness into Its Biggest Strength," *The Diplomat*, July 29, 2021; Anne Cox and Stephane Le Queux, "Towards an independent workers' voice in Vietnam?" *Labour and Industry* 33(3) (September 2023): 385–399; and ILO, "Workers and Employers Organizations in Viet Nam," available at www.ilo.org/regions-and-countries/asia-and-pacific/viet-nam/areas-work/workers-and-employers-organizations-viet-nam, accessed June 30, 2024.

and employees, which would distort market outcomes.¹¹⁵ Since 2002, the GOVN has been incrementally reforming its laws in an attempt to align its labor market conditions with international best practices.¹¹⁶ Such incremental reforms have been introduced through updates to its prevailing labor law and regulations. Additional legal updates have been made to Vietnam's *Law on Trade Union, Law, No. 12/2012/QH13 (Trade Union Law (2012))*, which enhances the role of trade unions in safeguarding workers' rights, and the *Law on Social Insurance, Law, No. 58/2014/QH13 (Social Insurance Law (2014))*, which is intended to offer comprehensive social security measures. Moreover, the *Law on Employment, No. 38/2013/QH13 (Investment Law (2013))* and *Law on Vocational Education, No. 74/2014/QH13 (Vocational Education Law (2014))* aim to improve employment opportunities and skill development, while the *Law on Occupational Safety and Health, No. 84/2015/QH13 (Occupational Safety and Healthy Law 2015)*) ensures safer working conditions. Vietnam's ratification of 25 ILO Conventions further solidifies its alignment with international labor standards.

1. Unionization and Rights of Grassroots-Level Employees' Representative Organizations

Right to Unionize in Vietnam. The *Law on Trade Unions (2012)* states that all trade unions must operate "in accordance with lines and policies of the Party."¹¹⁷ Therefore, although trade unions are technically legal in Vietnam, trade unions that are fully independent from the GOVN and do not comply with the CPV's directives are illegal.¹¹⁸ As will be further described in the *Developments in the Economy* section, the government-run and -controlled VGCL remains the only legal labor union system in Vietnam, with which all trade unions must be affiliated, and is closely aligned with the CPV. According to the *Law on Trade Unions (2012)*, the VGCL has the prerogative to "build the organizational structure and titles of trade union representatives,"¹¹⁹ as well as "perform the right and responsibility to own assets of trade unions."¹²⁰ This grants the VGCL undue discretionary power over the activities and management of any trade unions that may arise. Such authority provides the GOVN with the right to directly control trade unions and prevent them from operating independently. Moreover, the GOVN is required, as per its commitments under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and European Union-Vietnam Free Trade Agreement (EVFTA), to ratify

¹¹⁵ Commerce's *Vietnam NME Reivew* (2002), 11-16.

¹¹⁶ GOVN Comments (2023), 13-16.

¹¹⁷ GOVN, *Law on Trade Unions (2012)*, Article 6.

¹¹⁸ Articles 1, 6, 23, and 28 of the *Law on Trade Unions (2012)* establish that Vietnamese trade unions must operate under the leadership of the CPV and adhere to the party's guidelines and policies. Article 1 specifies this requirement, Article 6 outlines the responsibilities of trade unions to operate in accordance with the CPV's policies and directives, and Articles 23 and 28 provide the party-affiliated VGCL the prerogative of building both the organizational structure and titles of trade union representatives and owning the assets of trade unions, respectively, reinforcing the control of the state and the CPV over trade unions.

¹¹⁹ GOVN, *Law on Trade Unions (2012)*, Article 23(2).

¹²⁰ GOVN, *Law on Trade Unions (2012)*, Article 28.

ILO Convention 87, which would compel Vietnam to recognize independent trade unions unassociated with the VGCL; however, the GOVN has yet to fulfill this commitment.¹²¹

The described alignment of the VGCL with the CPV's policies exemplifies the Vietnamese government's resistance to the formation of independent unions. Another illustrative example is "Directive 24", an internal CPV document issued by the CPV's central committee in July 2023.¹²² Commerce cannot independently confirm the authenticity of this document.¹²³ However, if authentic in part or in whole, it should be noted that "Directive 24" explicitly prohibits the existence of independent unions and reinforces government and party control over labor organizations. It also suggests an ongoing effort by the CPV to maintain tight control over labor unions.

Grassroots-Level Employees' Representative Organizations. The *Labor Code (2019)* established a role for Grassroots-Level Employees' Representative Organizations (GEROs), also known as Worker Representative Organizations (WROs).¹²⁴ GEROs are local workers' organizations independent of trade union structures and operating at the enterprise level.¹²⁵ The *Labor Code (2019)* states that GEROs and unions shall "have equal rights and obligations in protection of legitimate rights and interests of employees in labor relations."¹²⁶ The law allows GEROs to (i) operate at the enterprise level; (ii) request and engage in collective bargaining and strikes; and (iii) organize discussions that influence labor policies and workplace conditions.¹²⁷

While GEROs and unions have similar functions, and are allowed to recruit members, bargain collectively, and represent members in conflicts, they are not unions and are limited in what they can do compared to unions.¹²⁸ Unlike trade unions, GEROs do not receive state support and are not permitted "to partake in political and policy debates and discussion at all levels, from the

¹²¹ Nguyen Hoang Ha, a labor lawyer working at the ILO, notes that despite legal reforms, the GOVN "seems still hesitant in creating a complete legal framework for the workers to enjoy the right to organize and collective bargaining." See Nguyen Hoang Ha, "Realizing freedom of association under Vietnam's legislation," *Vietnam Law & Legal Forum*, July 3, 2022.

¹²² The 88 Project, "Vietnam's Leaders Declare War on Human Rights as a Matter of Official Policy," available at <https://the88project.org/vietnams-leaders-declare-war-on-human-rights>, February 29, 2024.

¹²³ On April 5, 2024, in its comments regarding Directive 24, GOVN stated, "As an initial matter, although the Department has requested the information regarding Directive 24, the contents of Directive 24 belong on the list of protected state secrets under Viet Nam's Law on State Secrets Protection 2018 and as a result, it is not publicly available." See Ministry of Industry and Trade of the Socialist Republic of Vietnam, *Re: Raw Honey from the Socialist Republic of Viet Name: the Government of Viet Nam's Comments on the New Information Placed on the Record*, dated April 5, 2024, 2.

¹²⁴ The literature is inconsistent in labeling these entities. Another term for such labor organizations, which the International Labor Organization employs, is 'Workers' Organizations at Enterprise Level' (WO); ILO, *Get to Know Your New Labor Code 2019: Workers' Representative Organizations*, (June 2020).

¹²⁵ GOVN, *Labor Code (2019)*, Articles 170 and 172; and ILO, *Get to Know Your New Labor Code 2019: Workers' Representative Organizations*, (June 2020).

¹²⁶ GOVN, *Labor Code (2019)*, Articles 170 and 178.

¹²⁷ Anne Cox and Stephane Le Queux, "Towards an independent workers' voice in Vietnam?" *Labor & Industry* 33(3) (September 2023): 385; GOVN, *Labor Code (2019)*, Articles 63, 68, and 70; and ILO, *Get to Know Your New Labor Code 2019: Workers' Representative Organizations*, (June 2020).

¹²⁸ Joe Buckley, "Freedom of Association in Vietnam: A Heretical View," *Global Labor Journal* 12(2) (2021): 80.

national level down,” but rather are limited to the enterprise level.¹²⁹ The limitation of GEROs to the enterprise level means that they are unable to consolidate higher-level organizations by linking across enterprises, keeping them weak and largely ineffective.¹³⁰

Technically, GEROs have the right to initiate collective bargaining. However, they must first achieve “the minimum number of members as prescribed by the government,”¹³¹ and the law does not state how many members constitute this membership threshold. Finally, GEROs are legally permitted to organize and lead strikes. However, the *Labor Code (2019)* sets out burdensome bureaucratic procedures before launching, including obtaining mediation, court authorization, and providing employers a five-day notice period. These requirements effectively reduce the impact of the strike on employers since they are given advance notice to prepare for the strike and potentially mitigate its effects.¹³² Vietnam’s labor regulations are therefore not fully compliant with ILO standards regarding the right to organize.¹³³

Moreover, despite being codified in the *Labor Code (2019)*, GEROs are not currently legally permitted in Vietnam. According to the U.S. Department of State’s *2022 Investment Climate Statement*, until the GOVN publishes implementation guidance for the *Labor Code (2019)*, workers cannot legally form GEROs.¹³⁴ Without such official support and guidance, the legal framework remains incomplete and independent labor organizations cannot operate legally, severely limiting workers’ ability to organize and advocate for their rights. The U.S. Department of State statement indicates that the implementation guidance should include decrees providing guidance on establishing and joining independent unions, and determining the level of autonomy independent labor organizations will have in administering their affairs.¹³⁵ The Ministry of Labor, Invalids and Social Affairs (MOLISA) was expected to issue this guidance in 2022; however, as of the writing of this report, it still has not issued any such guidance, so labor organizations independent from the single state-led union federation (the VGCL) are still unable to legally form, and effectively only VGCL-affiliated trade unions are currently permitted to legally engage in collective bargaining and strikes.

¹²⁹ Joe Buckley, “Freedom of Association in Vietnam: A Heretical View,” *Global Labor Journal* 12(2) (2021): 84.

¹³⁰ Joe Buckley, “Freedom of Association in Vietnam: A Heretical View,” *Global Labor Journal* 12(2) (2021): 84.

¹³¹ GOVN, *Labor Code (2019)*, Article 68.

¹³² Joe Buckley, “Freedom of Association in Vietnam: A Heretical View,” *Global Labor Journal* 12(2) (2021): 86.

¹³³ ILO Convention No. 87 – Freedom of Association and Protection of the Right to Organize Convention, Articles 2-6, and ILO Convention No. 98 – Right to Organize and Collective Bargaining Convention, Articles 1-4.

According to Dr. Nguyen Hoang Ha, who is currently working at the ILO Vietnam, Vietnam’s labor legislations are not fully compliant with ILO standards on the right to organize. See Nguyen Hoang Ha, “Realizing freedom of association under Vietnam’s legislation,” *Vietnam Law & Legal Forum*, July 3, 2022.

¹³⁴ U.S. Department of State, *2023 Investment Climate Statements: Vietnam*, Section 11: Labor Policies and Practices, (July 2023).

¹³⁵ U.S. Department of State, *2023 Investment Climate Statements: Vietnam*, Section 11: Labor Policies and Practices, (July 2023).

2. Collective Bargaining for Wages

The *Labor Code (2019)* provides a legal framework for wage determination through collective bargaining and outlines processes to address potential failures associated with collective bargaining. The law emphasizes the importance of dialogue and negotiation between employers and employee representatives.¹³⁶ The law stipulates that the collective bargaining process must be conducted transparently with all relevant information shared between the parties to facilitate informed decision making.¹³⁷ It also requires the outcomes of the collective bargaining discussions to be documented in a collective labor agreement (CLA), which must be registered with the relevant labor authority, thus ensuring that the agreements are legally binding and enforceable.¹³⁸

However, CLAs are subject to stringent government oversight and regulatory requirements under the *Labor Code (2019)*. Such oversight can significantly limit enterprise-level bargaining.¹³⁹ CLAs must often be approved or are heavily influenced by the VGCL, which, in turn, is aligned with the CPV's policies.¹⁴⁰ The centralized control and regulatory constraints create an environment where wage rates and labor conditions are more reflective of state policy rather than market forces, undermining the principles of a free market economy.

Dispute resolution. The *Labor Code (2019)* also establishes procedures for resolving disputes when negotiations reach an impasse, which includes the involvement of state-provided mediation and arbitration services. If the parties do not reach an agreement, they must first seek mediation through labor authorities. If mediation fails, the dispute can then be escalated to arbitration, where an impartial arbitrator will review the case and make a binding decision.¹⁴¹ By providing structured avenues for resolving conflicts, the code underscores the government's role in facilitating fair negotiations and protecting the rights of both workers and employers.

In some cases, government-appointed arbitrators and mediators are appointed to settle collective bargaining disagreements. Although state-provided mediation and arbitration services are common in many market economies,¹⁴² in Vietnam, they are seen too often to prioritize concerns of businesses over equitable outcomes for workers, leading to decisions that favor employers or align with the state's broader economic policies at the expense of fair wages and working conditions for employees.¹⁴³ Many critics also argue that the involvement of government

¹³⁶ GOVN, *Labor Code (2019)*, Article 4(6).

¹³⁷ GOVN, *Labor Code (2019)*, Article 70(3).

¹³⁸ GOVN, *Labor Code (2019)*, Chapter 5, Section 3: Collective Labor Agreements.

¹³⁹ Anne Cox and Stephane Le Queux, "Towards an Independent Workers' Voice in Vietnam?" *Labour and Industry* 33(3) (September 2023): 388.

¹⁴⁰ Joe Buckley, "The Limits of Vietnam's Labor Reforms," *The Diplomat*, January 2022.

¹⁴¹ GOVN, *Labor Code 2019*, Article 71.

¹⁴² Arnold M. Zack and Thomas A. Kochan, "Mediation and Conciliation in Collective Labor Conflicts in the USA," in Martin C. Euwema, Francisco J. Medina, Ana Belen Garcia, Erica Romero Pender (eds.), *Mediation in Collective Labor Conflicts*, (Cham: Springer Nature, 2019), 309-322.

¹⁴³ Fair Wear Foundation, *Vietnam Country Study*, (2021), 29.

authorities in these processes can result in biased decisions, which is compounded by the centralized control exerted by the VGCL.¹⁴⁴ The combination of these factors can lead to settlements that do not fully reflect the interests of the workers, thereby undermining free-forming labor market principles.

In conclusion, while the *Labor Code (2019)* introduces important legal provisions for collective bargaining, significant challenges remain in their practical implementation. The substantial control exerted by the VGCL, combined with weak dispute resolution mechanisms, limits the effectiveness of collective bargaining as a tool for fair wage determination.

3. *Strikes and Dispute Resolution*

The Right to Strike. The *Labor Code (2019)* provides the legal basis for workers' strikes in Vietnam.¹⁴⁵ Although workers are technically allowed to strike, procedural limitations and requirements make it difficult for strikes to occur. For example, workers must engage in mediation before striking. If mediation fails, workers must obtain court authorization to strike. In addition, workers must provide five days' notice before the start date of the strike, display a list of claims, and provide proof that a majority of the existing representative organization, such as a trade union, voted to strike.¹⁴⁶ This not only makes it difficult for workers to engage in lawful strikes, but also grants the GOVN the ability to prevent strikes from legally occurring by requiring court authorization. Similarly, requiring workers to provide five days' notice before striking grants companies increased power in the negotiation process since they have five days to prepare for the loss of workers. The law also allows the GOVN, through provincial-level People's Committees, to postpone or cancel a strike if it is deemed "likely to cause serious damage to the national economy and public interests or pose threats to national defense, security, public order or human health," as well as outright prohibits strikes "in workplaces where it can pose a threat" to such considerations.¹⁴⁷

Dispute Resolution. The *Labor Code (2019)* also provides for the resolution of labor disputes, including mediation, arbitration, and litigation. This system is designed to protect employees from unfair labor practices, such as unjust wage deductions and delayed payments. However, the complexity of the legal processes established for dispute resolution can pose challenges, particularly for workers who lack the necessary resources or legal knowledge. The law outlines different types of labor disputes, the need to gather evidence, submit forms, and attend hearings,

¹⁴⁴ Domestic Interested Parties' Comments, 7-15; Petitioners' Comments, 22-27.

¹⁴⁵ According to Section 5 of the *Labor Code (2019)*, strikes are heavily regulated. Specifically, according to Article 198, strikes must be organized by "employee representative organizations," meaning trade unions and GEROs, the latter of which are unable to form yet due to lack of implementation guidance. Consequently, strikes must go through the established trade union system, effectively limiting independent strike actions.

¹⁴⁶ GOVN, *Labor Code (2019)*, Articles 200-202. Note that, currently, strikes can only be legally organized and led by trade unions under the VGCL system, as voluntary GEROs have not yet been successfully established due to the lack of implementation guidance.

¹⁴⁷ GOVN, *Labor Code (2019)*, Articles 209 and 210.

which can be time-consuming and complicated.¹⁴⁸ For example, labor disputes are categorized as either individual labor disputes, collective labor disputes, and rights-based versus interest-based disputes. Each type of dispute has specific procedures and requirements for resolution, such as mediation, arbitration, or court hearings.¹⁴⁹ Additionally, understanding the legal language and requirements without legal knowledge or representation can be difficult.

Procedural Challenges in Labor Dispute Resolution and Strikes. The complexity of the legal processes established for dispute resolution can pose significant challenges, particularly for workers who might lack the necessary resources or legal knowledge. For example, the law outlines several steps and requirements, including different types of labor disputes, the need to gather evidence, submit forms, and attend hearings, which can be time-consuming and complicated. While the *Labor Code (2019)* lays out procedures for resolving three types of labor disputes—individual labor disputes, collective labor disputes, and collective labor disputes regarding interests—the first two do not have provisions permitting labor strikes. In the case of the latter, it is only after the required mediation process fails that workers then are allowed to strike.¹⁵⁰

These complexities can discourage workers from pursuing their claims, as they may find the prolonged resolution and necessity for legal representation daunting. This often results in many labor issues remaining unresolved.¹⁵¹ According to the U.S. Department of State, legally outlined mechanisms for labor dispute resolution vary by situation, with the right to strike limited to interest-based collective labor disputes following mandated conciliation and arbitration processes.¹⁵² This further underscores the procedural limitations that make it difficult for workers to engage in lawful strikes and effectively resolve disputes, ultimately undermining the stability and fairness of the labor market in Vietnam.

4. Labor Mobility

Labor mobility is crucial for allocative efficiency in an economy, as it allows workers to migrate freely in search of better employment opportunities and conditions. Labor mobility not only facilitates the optimal distribution of skills across various sectors and geographical regions but

¹⁴⁸ GOVN, *Labor Code (2019)*, Articles 179-182.

¹⁴⁹ GOVN, *Labor Code (2019)*, Articles 179-190, and 192.

¹⁵⁰ GOVN, *Labor Code (2019)*, Articles 199-201.

¹⁵¹ DCNH-Law, “Labor Dispute Resolution Process in Vietnam,” available at <https://dcnh-law.com/labor-dispute-resolution-process-in-vietnam/>, accessed June 14, 2024; and Truong Lang, “Doing Business: How to Handle Labor Disputes in Vietnam,” Viettonkin Consulting, available at www.viettonkinconsulting.com/global-business/how-to-handle-labor-disputes-in-vietnam/, November 7, 2023. Workers may initiate the labor dispute process but face significant barriers that prevent them from seeing it through to resolution. These barriers can include the complexity of the legal procedures, the need for substantial evidence and documentation, and the potential for lengthy and costly legal battles. Consequently, many labor disputes may remain unresolved because workers either abandon the process midway or never reach a satisfactory conclusion.

¹⁵² U.S. Department of State, 2023 *Investment Climate Statements: Vietnam*, Section 11: Labor Policies and Practices, (July 2023).

also has the potential to improve workers' ability to bargain for better wages by allowing them to relocate for higher-paying jobs. In an unrestricted environment, workers can relocate to areas where their skills are in high demand, and they can earn higher wages. Conversely, constraints on labor mobility can lead to mismatches in labor supply and demand, resulting in underemployment and stagnant wage growth. In Vietnam, there is a *Ho Khau* system, or household registration system, that impacts the ability of workers to migrate for work.

4.1 The Ho Khau System and Labor Mobility

Legal Barriers to Labor Mobility. Vietnam's *Ho Khau* system was originally implemented to control migration and maintain internal security.¹⁵³ Despite significant reforms following the economic liberalization (*Doi Moi*) in 1986, the *Ho Khau* system continues to restrict labor mobility in Vietnam. While some improvements have been made to the *Ho Khau* system by the *Law on Residence, No. 81/2006/QH11 (Residence Law (2006))* and the 2020 updates to that law, *Law on Residence, No. 68/2020/QH14 (Residence Law (2020))*, the *Ho Khau* system remains largely intact, primarily for purposes of population control.¹⁵⁴

The *Residence Law (2020)* provides citizens with the right to freely move within the country and choose their place of residence. However, individuals must provide a range of documents, including proof of employment, housing contracts, and identification papers, to register a new place of residence, whether permanent or temporary.¹⁵⁵ Additionally, individuals must demonstrate stable employment and housing to convert temporary residence status to permanent residence status.¹⁵⁶ These requirements can be difficult for migrant workers to overcome, especially those with informal or temporary employment who do not have formal contracts or stable housing arrangements. These requirements can therefore prevent, or at least delay, the registration process, thereby restricting labor mobility.

5. *Informal Sector*

The informal sector plays a significant role in Vietnam's economy, encompassing a large share of economic activity, from street vending and small-scale manufacturing to various service providers operating without formal business registrations. It is related in principle to the private sector in Vietnam (described in Factor 4) as it includes "all private unincorporated enterprises that produce at least some of their goods and services for sale or barter, are not registered (no business license) and are engaged in non-agricultural activities (or without written accounts,

¹⁵³ Jake Lin and Jingyu Mao, *Changing Household Registration and Worker Welfare in China and Vietnam*, European Research Council, Policy Brief 1, (June 24, 2022).

¹⁵⁴ Jake Lin and Jingyu Mao, *Changing Household Registration and Worker Welfare in China and Vietnam*, European Research Council, Policy Brief 1, (June 24, 2022).

¹⁵⁵ GOVN, *Residence Law (2020)*, Article 9.

¹⁵⁶ GOVN, *Residence Law (2020)*, Articles 23 and 27.

etc.).¹⁵⁷ Enterprises that are not formally registered are considered distinct from private sector activity and encompass approximately 22.7 percent of Vietnam's labor force according to a 2017 IMF estimate.¹⁵⁸ Given the importance of the informal sector and the challenges faced by informal workers, the GOVN has taken steps to provide them with legal protections and benefits. The *Labor Code (2019)* extends labor law protections to "workers without labor relations," or those operating in the informal sector.¹⁵⁹ Additionally, the *Social Insurance Law (2014)* complements this by extending benefits, such as health insurance, pensions, and unemployment benefits, to informal sector workers.¹⁶⁰

However, despite these legislative efforts, several structural and practical challenges remain. Although the *Labor Code (2019)* extends labor protections to all workers, the lack of implementation guidance enforcing these protections hinders their effectiveness.¹⁶¹ Without detailed guidance, labor inspectors and officials are unsure how to apply labor laws to informal workers and businesses, leading to inconsistent and often non-existent enforcement.¹⁶² According to the ILO, the lack of effective enforcement mechanisms and the ambiguity in legal definitions contribute to the ineffective application of labor laws in the informal sector.¹⁶³ As a result, informal workers continue to face exploitation and poor working conditions, undermining the intent of the labor laws and contributing to economic inequality and social instability. This lack of formalization can distort labor markets and suppress wages.

6. Child Labor and Forced Labor

In its comments, the GOVN addresses continued challenges of child and forced labor issues,¹⁶⁴ pointing to labor law advancements and international labor standards adoption as steps toward

¹⁵⁷ Nghiem Thi Ha Van and François Roubaud, "Measuring the non-observed economy in Vietnam: A focus on informal economy," *World Economics Journal* 23(2) (June 2022): 4; ILO, *Resolution Concerning Statistics of Employment in the Informal Sector*, Fifteenth International Conference of Labor Statistics, (January 1993); and ILO, *Guidelines Concerning a Statistical Definition of Informal Employment*, Seventeenth International Conference of Labor Statisticians, (November 24-December 3, 2003).

¹⁵⁸ Nghiem Thi Ha Van and François Roubaud, "Measuring the non-observed economy in Vietnam: A focus on informal economy," *World Economics Journal* 23(2) (June 2022): 10.

¹⁵⁹ GOVN, *Labor Code (2019)*, Article 2(1).

¹⁶⁰ GOVN, *Social Insurance Law (2014)*.

¹⁶¹ Letter from the Petitioners, Edsal Manufacturing Co., Inc., Steel Dynamics, Inc., The American Kitchen Cabinet Alliance; and The American Shrimp Processors Association, "Raw Honey from Socialist of Vietnam – Changed Circumstances Review of the Socialist Republic of Vietnam's Status as a Non-Market Economy Country, ITA-2023-0010- Rebuttal Comments," dated February 1, 2024 (*Domestic Industry's Rebuttal Comments*), 11-16.

¹⁶² ILO, *World Employment and Social Outlook: Trends 2021*, (June 2, 2021), 101.

¹⁶³ ILO, *World Employment and Social Outlook: Trends 2021*, (June 2, 2021), 101.

¹⁶⁴ Child labor and forced labor issues are particularly prevalent in hazardous industries in Vietnam, making them critical concerns by organizations such as the ILO and UNICEF. These organizations have highlighted the sectors deeply impacted by this issue, stressing the urgent need for strong legal protections. According to UNICEF, there are more than 1 million children aged 5-7 engaged in child labor in Vietnam, accounting for 5.4 percent of the child population in this age group. More than half of these child laborers perform hazardous work. With respect to forced labor, the U.S. Department of State's Trafficking in Persons Report (TIP) places Vietnam on the "Tier 2 Watch List" in 2023, the second-worst designation in the TIP report.

improvement. Specifically, GOVN highlights its efforts to meet international labor standards and improve the regulatory framework to protect labor rights.¹⁶⁵ Notably, Vietnam has adopted the principles of the ILO and integrated them into its national legislation, specifically through the *Labor Code (2019)*, which provides a comprehensive legal framework aimed at safeguarding labor rights, including those of children.¹⁶⁶ Additionally, the *Law on Children, No. 102/2016/QH13 (Children Law (2016))* sets out comprehensive measures to prevent child exploitation, protect children's rights, and provide support for children in special circumstances.¹⁶⁷ These special circumstances include children with disabilities requiring special care, those from poor or marginalized communities lacking basic services, orphaned or abandoned children needing state protection, victims of abuse or exploitation, children in conflict with the law requiring rehabilitative support, and those affected by natural disasters or emergencies. The law emphasizes the importance of caring for, educating, and protecting children, alongside social programs and activities that raise awareness to prevent underage labor.¹⁶⁸ According to GOVN, Vietnam has also committed to evaluating and potentially joining additional ILO conventions by 2030, which could further enhance labor protections.¹⁶⁹

Despite the prohibition of child and forced labor in Vietnamese laws, deficiencies in the legislation remain. For example, the legal definition does not include debt bondage, which is a form of forced labor where individuals are compelled to work to repay debts under exploitative terms that are difficult to escape.¹⁷⁰ Additionally, although the *Children Law (2016)* prohibits the worst forms of child labor and sets the minimum working age, it does not specify the penalty for violations.¹⁷¹ The lack of specific penalties for violations further undermines the effectiveness of the legislation, as there are no clear legal consequences to deter such practices. Moreover, while the GOVN has committed to evaluating and potentially joining additional ILO conventions by 2030, this commitment alone is insufficient without concrete actions to address the existing legal gaps. The lack of immediate measures and clear timelines raises concerns about the urgency and effectiveness of these commitments. Therefore, despite improvements in the legal provisions in place and the formal adoption of certain ILO standards, significant gaps in Vietnam's legal structure allow some of the worst forms of child labor to persist.¹⁷²

¹⁶⁵ GOVN, Ministry of Industry and Trade, *Re: Raw Honey from the Socialist Republic of Vietnam: Initiation of Changed Circumstances Review – Rebuttal Comments of Government of Viet Nam*, (February 1, 2024) (GOVN Rebuttal Comment (2024)), 58.

¹⁶⁶ GOVN Comments (2023), 12-18.

¹⁶⁷ GOVN, *Children Law (2016)*.

¹⁶⁸ GOVN, *Children Law (2016)*.

¹⁶⁹ GOVN Comments (2023), 15-16.

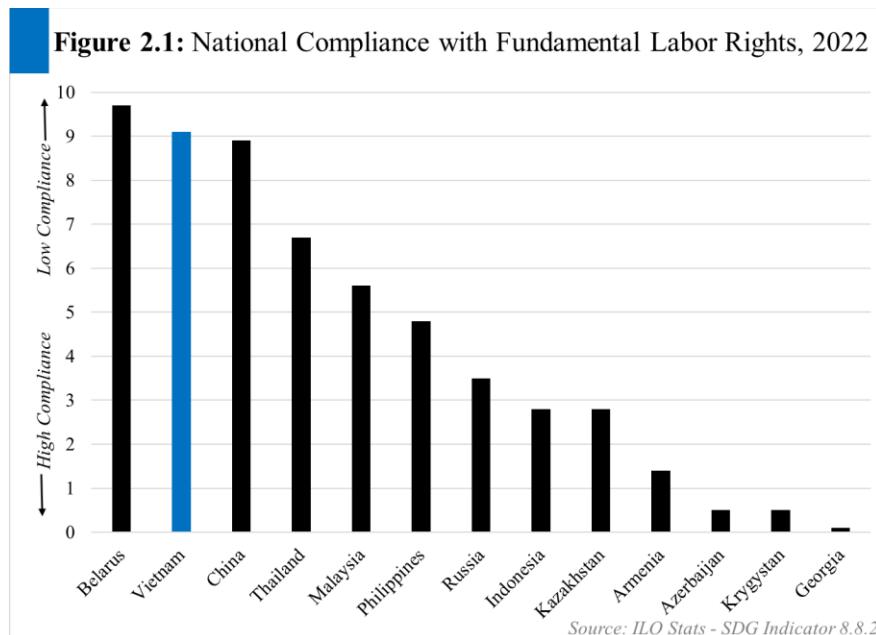
¹⁷⁰ ILO, "What is Debt Bondage," Global Business Network on Forced Labor, available at <https://flbusiness.network/debt-bondage/>, accessed June 30, 2024.

¹⁷¹ Specifically, Article 28 of the *Children Law (2016)* prohibits the use of children in the worst forms of child labor. This includes any work that is likely to harm their health, safety, or morals, and any work that interferes with their education.

¹⁷² U.S. Department of State, *2023 Country Reports on Human Rights Practices: Vietnam*, Section 7 Worker Rights, (April 2024).

C. Developments in the Economy

Commerce's Vietnam NME Review (2002) found that Vietnamese workers earned very low wages and that there were no labor unions independent of the government.¹⁷³ Since 2002, the GOVN has incrementally attempted to improve labor market conditions, including gradually but consistently increasing minimum wage scales to help improve living standards, as well as creating space for GEROs to operate alongside labor unions.¹⁷⁴ However, there remain important impediments that impact the free bargaining of wages, including constraints on freedom of association and the right to collective bargaining (FACB), deficiencies in the formulation and enforcement of collective labor agreements, and the inability of GEROs to actually form. As ILO data (Figure 2.1) has shown, Vietnam has one of the worst scores for national compliance with fundamental labor rights, which entails both national legislation that is not in conformity with FACB rights as well as acts committed in violation of the existing national legislation that is in conformity with FACB rights, and fares quite poorly relative to other Asian countries.



1. Unions and Collective Bargaining in Vietnam

Labor unionization plays a significant role in ensuring that market forces impact wage determination effectively and fairly. By providing workers with collective bargaining power, unions enable more effective negotiations for wages, benefits, and working conditions, ultimately reducing economic disparities.¹⁷⁵ Without robust mechanisms for independent negotiation, wage rates are often determined by state policies rather than market dynamics,

¹⁷³ *Commerce's Vietnam NME Review (2002)*.

¹⁷⁴ GOVN Comments (2023), 12-18.

¹⁷⁵ John S. Ahlquist, "Labor Unions, Political Representation, and Economic Inequality," *Annual Review of Political Science* 20 (May 2017).

leading to wage suppression and disparities across different sectors and regions, undermining the principles of a market-oriented economy.¹⁷⁶ Research by the OECD finds that countries with strong collective bargaining frameworks exhibit more equitable wage distributions and better working conditions.¹⁷⁷ The World Bank also emphasizes that independent and effective collective bargaining is essential for protecting workers' rights, ensuring fair wage distribution, reducing poverty, and enhancing economic growth.¹⁷⁸ Overall, union membership can lead to more equitable wage outcomes, help ensure that wages reflect the true value of labor, mitigate exploitative practices, and reduce wage disparities.

Unionization. As described in the *Legal Framework*, the formation of labor unions that are independent of the CPV/GOVN have no legal basis in Vietnam. Indeed, no labor unions exist in Vietnam that are independent of the state-run and -controlled VGCL. In addition, although the *Labor Code (2019)* has enabled the formation of GEROs, which were intended to be independent from the GOVN, none have been successfully formed thus far. According to an academic report, although 3,000 to 6,000 labor unions have been established each year since 2019, they are all affiliated with the VGCL.¹⁷⁹ According to the U.S. Department of State *2023 Investment Climate Statement*, “{a}lthough Vietnam has made some progress on labor issues in recent years,” the state-controlled VGCL is the only labor organization “that has any real authority.”¹⁸⁰ Fair Wear Foundation, an independent organization that works to improve labor conditions in the garment industry, also notes that, even within the VGCL system, workers are frequently enrolled in a trade union automatically and are precluded from forming a union of their own choosing.¹⁸¹

At times, the VGCL has taken pro-labor positions.¹⁸² For example, during the COVID-19 pandemic, the VGCL attempted to persuade landlords to reduce rent for workers whose salaries had fallen and worked with local unions to help workers understand the relief measures they were entitled to and how to apply for them.¹⁸³ The VGCL also helped develop the GOVN’s pandemic-era financial and economic relief packages, providing feedback for simplifying bureaucratic and administrative processes, and ensuring support reached people in need. Despite this, according to an article in *The Diplomat*, “the VGCL has huge problems, and is largely

¹⁷⁶ Lawrence Mishel and Josh Bivens, “Identifying the Policy Levers Generating Wage Suppression and Wage Inequality,” *Economic Policy Institute*, (May 13, 2021).

¹⁷⁷ OECD, *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, (2019).

¹⁷⁸ Toke Aidt and Zafiris Tzannatos, *Unions and Collective Bargaining - Economic Effects in a Global Environment*, World Bank Directions in Development Report, (2002).

¹⁷⁹ The number of labor unions established each year is: 5,219 (in 2019), 4,057 (in 2020), 3,524 (in 2021), and 4,413 (in 2022). See Dao Xuan Hoi, Le Dang Khoa, and Pham Van Tan, “Establishment of Workers’ Representative Organizations under the Current Laws of Vietnam,” *Revista De Gestao Sociale Ambiental* 18(6) (March 2024): 7.

¹⁸⁰ U.S. Department of State, *2023 Investment Climate Statements: Vietnam*, Section 11: Labor Policies and Practices, (July 2023).

¹⁸¹ Fair Wear Foundation, *Freedom of Association and the Right to Collective Bargaining: A Guide for Brands*, (November 2020), 79.

¹⁸² Fairwork, *Labor Standards in the Platform Economy: Vietnam Ratings*, (2023), 24.

¹⁸³ Joe Buckley, “COVID-19 Turned Vietnam’s State-Run Union’s Greatest Weakness into Its Biggest Strength,” *The Diplomat*, July 29, 2021.

ineffective when it comes to struggling for workers.”¹⁸⁴ The VGCL remains controlled by the CPV/GOVN, severely limiting the extent to which it can truly represent workers, especially when it comes to labor advancements that conflict with preferences of the GOVN or state employers.¹⁸⁵ Consequently, according to the U.S. Department of State, there have been “no legal strikes,” meaning that the VGCL has never called for or organized a strike, and it generally functions to relay GOVN and company policies to workers rather than to push against them for the benefit of workers.¹⁸⁶ VGCL-affiliated trade unions similarly do not have independence from the CPV/GOVN, with union representatives at the employer level often being company managers, who have no incentive to represent workers’ interests.¹⁸⁷

Collective Bargaining. As noted in the *Legal Framework*, because implementation guidance on the *Labor Law (2019)* has not yet been passed, GEROs cannot be legally established.¹⁸⁸ The European Union Domestic Advisory Group under the EVFTA recently voiced its concern about this delay and its stymying effect on workers’ representation and collective bargaining.¹⁸⁹ Whenever implementation guidance allowing GEROs to legally form is passed, practical limitations still exist that would limit their ability to collectively bargain for wages. Even when reached, CLAs, also referred to as collective bargaining agreements (CBAs), suffer from inadequate monitoring and weak penalties for violations, especially due to the limited number of labor inspectors compared to the rapidly rising number of enterprises.¹⁹⁰ In 2021, a report by the Fair Wear Foundation and partners noted that there were just over 700 labor inspectors but nearly 500,000 enterprises.¹⁹¹ In addition, CLAs remain highly regulated by the GOVN.¹⁹² Fair Wear Foundation observes that many CLAs are of low quality, often simply mirroring the labor law, and can be complicated to implement.¹⁹³ It also reports that CBAs “are not the result of real collective bargaining efforts between parties” and that the negotiation of wages and allowances is very limited.”¹⁹⁴

¹⁸⁴ Joe Buckley, “COVID-19 Turned Vietnam’s State-Run Union’s Greatest Weakness into Its Biggest Strength,” *The Diplomat*, July 29, 2021.

¹⁸⁵ Anne Cox and Stephane Le Queux, “Towards an Independent Workers’ Voice in Vietnam?” *Labor and Industry* 33(3) (September 2023).

¹⁸⁶ U.S. Department of State, *2023 Country Reports on Human Rights Practices: Vietnam*, Subsection A. Freedom of Association and the Right to Collective Bargaining, (April 2024); and Joe Buckley, “COVID-19 Turned Vietnam’s State-Run Union’s Greatest Weakness into Its Biggest Strength,” *The Diplomat*, July 29, 2021.

¹⁸⁷ Fairwork, *Labor Standards in the Platform Economy: Vietnam Ratings*, (2023), 24.

¹⁸⁸ U.S. Department of State, *2023 Investment Climate Statements: Vietnam*, Section 11: Labor Policies and Practices, (July 2022),

¹⁸⁹ European Economic and Social Committee, *Statement from the European Union Domestic Advisory Group*, (November 27, 2023).

¹⁹⁰ Anne Cox and Stephane Le Queux, “Towards an Independent Workers’ Voice in Vietnam?” *Labor and Industry* 33(3) (September 2023): 388.

¹⁹¹ The Fair Wear Foundation professes to be an independent, non-profit organization that works to improve conditions for workers in garment factories.

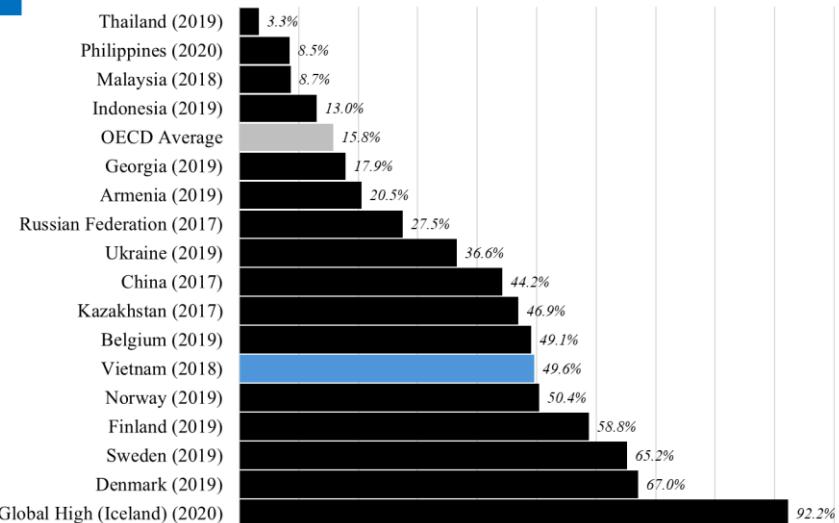
¹⁹² Anne Cox and Stephane Le Queux, “Towards an Independent Workers’ Voice in Vietnam?” *Labor and Industry* 33(3) (September 2023): 388.

¹⁹³ Fair Wear Foundation, *Vietnam Country Study*, (2021), 48.

¹⁹⁴ Fair Wear Foundation, *Vietnam Country Study*, (2021), 49.

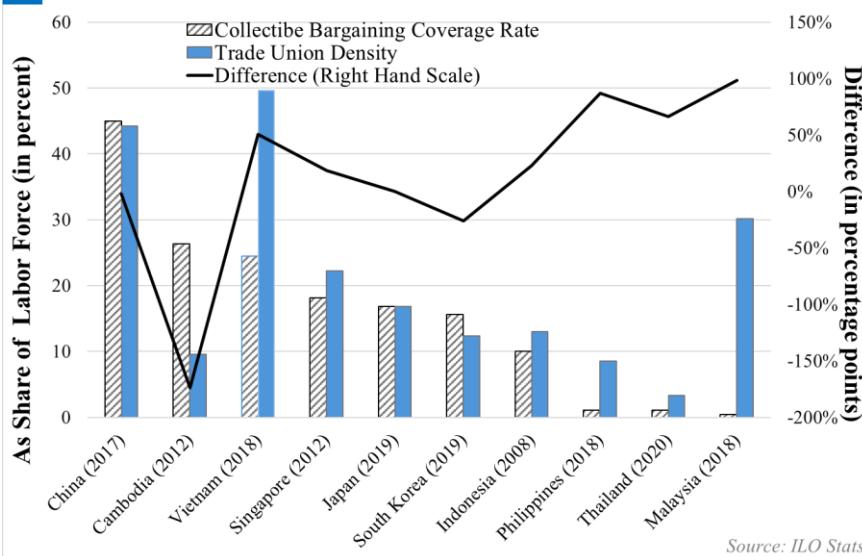
Union Membership and Collective Bargaining. In its comments that were placed on the administrative record of this report, the GOVN noted that union membership in Vietnam has increased significantly in recent years, highlighting the admittance of 4.5 million new trade union members since 2018 and the establishment of over 24,000 trade union chapters, which are all affiliated with the VGCL.¹⁹⁵ ILO data (Figures 2.2 and 2.3) indicate that around 50 percent of Vietnam's workforce belongs to labor unions, one of the highest compared to other Asian countries.

Figure 2.2: Share of Unionized Workers by Country, Latest Data



Source: ILO and OECD

Figure 2.3: Collective Bargaining and Trade Union Density Rates in Vietnam and Select Asian Countries, Latest Available Data



Source: ILO Stats

¹⁹⁵ Viet Nam News, "Trade Unions Look to Build Strong Force, Working to Protect Laborers' Rights," December 1, 2023.

The collective bargaining agreements that exist in Vietnam do not always serve to improve workers' rights or wages. While the garment, footwear, and electronic industries account for more than half of strikes in Vietnam, only 15 percent of the collective bargaining agreements in these industries have indicated worker participation in their formulation.¹⁹⁶ According to the Industrial Relations Department of the VGCL, only about 11 percent of the registered firm-based CBAs can be categorized as adhering to collective bargaining procedures and significantly improving working conditions and wages.¹⁹⁷ Fair Wear and partner organizations similarly report that Vietnam suffers from a dearth of genuine collective bargaining.¹⁹⁸

The ineffectiveness of the VGCL in meaningfully advocating for workers is not surprising due to the extent of GOVN/CPV control. An academic article in the *Global Labor Journal* finds that the VGCL often prioritizes maintaining social stability over advocating for workers' wages and other interests. Author Joe Buckley notes the VGCL's "harmonious labor relations" "is a euphemism meaning 'stop strikes'."¹⁹⁹ The labor unions that have been created, which as noted above are all affiliated with the VGCL, are similarly ineffective at representing workers largely because they are similarly controlled by the GOVN/CPV and also because, unlike if they were truly independent, they do not have to compete with each other for the right to represent workers.²⁰⁰

2. Minimum Wage Dynamics

Since *Commerce's Vietnam NME Review (2002)*, Vietnam has experienced steady minimum wage growth. The GOVN noted in its comments that the minimum wage grew at double-digit annual rates during the 2007-2015 period, far exceeding that of per capita GDP, Consumer Price Index (CPI), and labor productivity.²⁰¹ ILO data (Figure 2.4) confirms that there has been a gradual increase in Vietnam's minimum wage over the past decade, but also shows that Vietnam's minimum wage has remained low compared to other Asian countries, including Indonesia, Thailand, and Malaysia. In addition, in real (*i.e.*, inflation-adjusted) terms, the average real minimum wage in Vietnam only increased by around 4 percent per year from 2012 to 2020.²⁰² This is particularly notable since World Bank data (Figure 2.5) indicates that Vietnam's per capita GDP growth rate has outpaced that of other Asian countries.

¹⁹⁶ CNV International, *Country Information & Practical Advice on Freedom of Association & Collective Bargaining – Vietnam*, (2021), 11-12.

¹⁹⁷ Fair Wear Foundation, *Vietnam Country Study*, (2021), 41.

¹⁹⁸ Fair Wear Foundation, *Vietnam Country Study*, (2021), 40.

¹⁹⁹ Joe Buckley, "Freedom of Association in Vietnam: A Heretical View," *Global Labor Journal* 12(2) (2021): 89.

²⁰⁰ Trang Thi Kieu Tran, "Collective Bargaining and Collective Agreements in Vietnam: From Legislation to Practice," *Japan Labor Issues* 1(3) (November-December 2017): 62.

²⁰¹ Viet Nam News, "Minimum wage in Viet Nam rises, productivity stagnates," September 14, 2017.

²⁰² Cuong Viet Nguyen, "The Impact of Minimum Wages on Employment: Evidence from a Lower Middle-Income Country," *Global Labor Organization Discussion Paper Series* 1253, (2023), 4.

Figure 2.4: Gross Monthly Minimum Wage in Vietnam & Select Asian Countries, 2013-2022

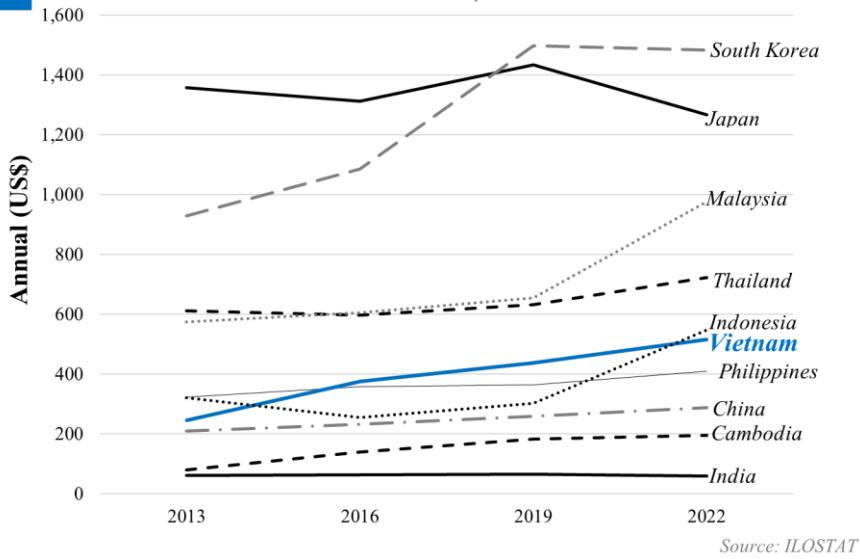
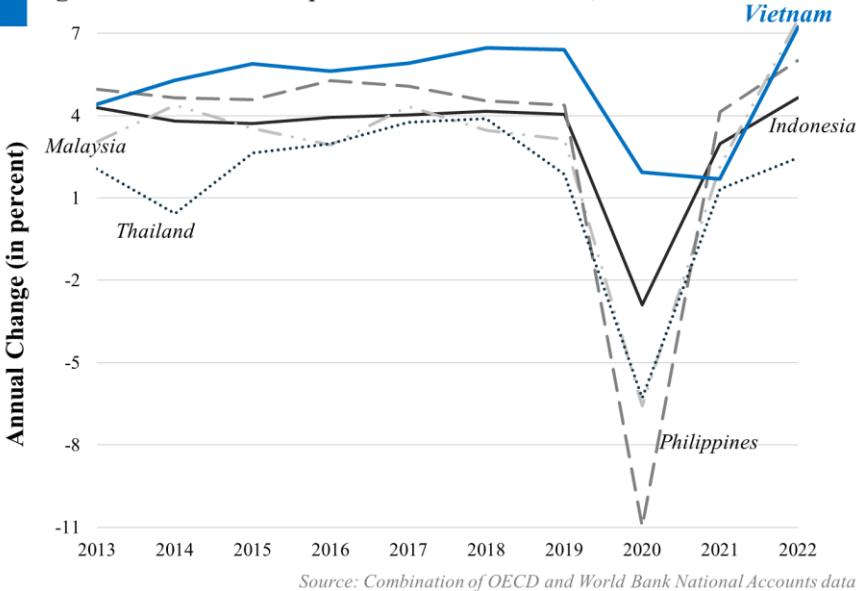


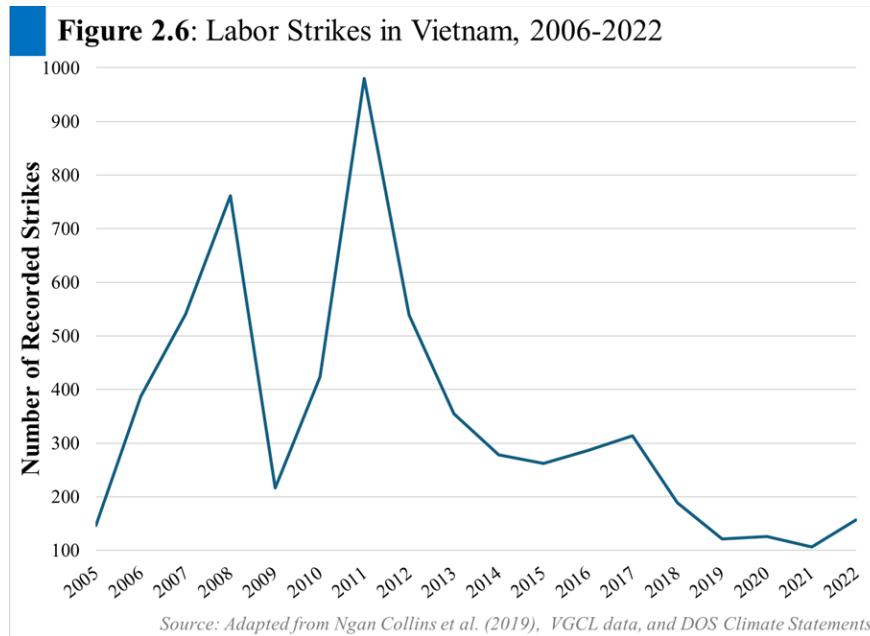
Figure 2.5: GDP Per Capita Annual Growth Rate, 2013-2022



3. Labor Disputes and the Right to Strike

Labor Strike Trends. As can be seen in Figure 2.6 below, labor strikes in Vietnam peaked at 981 in 2011 and have declined drastically since then, with only 157 strikes occurring in 2022. This trend can be attributed to several factors. On one hand, the GOVN has made efforts to strengthen labor laws and regulations. Improvements in labor rights and protections may have contributed to reducing the need for strikes as workers have more formal avenues to address grievances legally. Additionally, minimum wage increases and increased job opportunities resulting from robust

economic growth may have reduced the need for strikes related to wage demands and improved working conditions. However, as discussed in the *Legal Framework*, regulatory restrictions limit the extent to which strikes can legally occur. For example, given that GEROs still cannot register and establish themselves, currently strikes can only be legally organized and led by trade unions under the VGCL system. Thus far, the VGCL has never organized a strike, so all of the strikes that have occurred are unlawful (and sometimes referred to as “wildcat” strikes).²⁰³



Efficacy of Labor Strikes. For workers seeking to engage in legal strikes, bureaucratic procedures effectively undercut the efficacy of such collective action by providing the authorities and employers time to minimize their impacts.²⁰⁴ For example, the requirements for employees’ representative organizations (both trade unions and GEROs) to collect employee opinions on a strike, to provide employers one day advance notice of this opinion collection process, and to notify employers at least 5 working days in advance of a strike’s commencement serve as structural limitations that allow employers to neutralize the impact of a strike, including by hiring scab labor.²⁰⁵ Such bureaucratic impediments may also incentivize workers to engage in other forms of low-level collective action, specifically “microstrikes” and other “decentralized labor resistance” that are informally organized, “do not threaten overall production,” and are limited to the enterprise level.²⁰⁶

²⁰³ CNV International, *Country Information & Practical Advice on Freedom of Association (FoA) & Collective Bargaining (CB)*, (2021), 5.

²⁰⁴ Joe Buckley, “Freedom of Association in Vietnam: A Heretical View,” *Global Labour Journal* 12(2) (2021): 80.

²⁰⁵ Joe Buckley, “Freedom of Association in Vietnam: A Heretical View,” *Global Labour Journal* 12(2) (2021): 86.

²⁰⁶ Joe Buckley, *Vietnamese Labour Militancy: Capital-Labour Antagonisms and Self-Organized Struggles*, (London: Routledge, 2022).

4. Labor Mobility

Under the *Ho Khau* system, described in the *Legal Framework*, permanent residence in a particular locality grants citizens the ability to access key public services, including healthcare, education, and social security. The inability to access these services may make many internal migrant workers, particularly those from rural areas, reluctant to relocate to urban centers where more diverse and potentially lucrative job opportunities are available.²⁰⁷ According to the World Bank, at least 5.6 million individuals lacked permanent *Ho Khau*, and thus had only temporary registration status in their place of residence.²⁰⁸ Notably, the average wages of temporary registrants are similar to or even slightly higher than those of permanent registrants and trade union participation is actually higher for temporary workers.²⁰⁹ This is largely due to the large number of temporary registrants working wage jobs served by trade unions.²¹⁰ That being said, the World Bank has found that the exclusion of temporary registrants from public sector employment and the barriers they face accessing services “are unfair and create social costs.”²¹¹ As workers, they also face real, economic costs, including limitations on their ability to move freely in search of better jobs, and “challenges temporary registrants may face in formalizing businesses as well as the time and travel costs they face in returning to their place of origin for many procedures.”²¹² Additionally, due to their ineligibility for the progressive rate structure of electricity, temporary registrants who are renting “face relatively high costs for electricity.”²¹³ One academic report notes that temporary migrants still find it challenging to attain permanent household registration in urban places where they work, particularly in localities with more favorable public services and goods.²¹⁴ While the *Ho Khau* system’s recent digitalization with the introduction of a national population and residence database has streamlined the management of citizens’ residence, this is “a step forward to enhancing the controlling mechanisms of *Ho Khau*, not ending them.”²¹⁵ Moreover, the World Bank Group reports observed that despite an overall legal relaxing of the system, the acquisition of permanent registration status remains cumbersome: “actual administrative practice varies from what is stipulated in the legal regime” and given the power delegated to local authorities, “some cities have tightened the requirements for obtaining permanent status.”²¹⁶

²⁰⁷ World Bank has pointed out that the *Ho Khau* system has significantly restricted workers’ ability to move freely in search of better jobs. See World Bank, *Vietnam’s Household Registration System*, (June 2016).

²⁰⁸ World Bank, *Vietnam’s Household Registration System*, (June 2016), ix.

²⁰⁹ World Bank, *Vietnam’s Household Registration System*, (June 2016), xi and 33.

²¹⁰ World Bank, *Vietnam’s Household Registration System*, (June 2016), xi and 33.

²¹¹ World Bank, *Vietnam’s Household Registration System*, (June 2016), 67.

²¹² World Bank, *Vietnam’s Household Registration System*, (June 2016), xiii.

²¹³ World Bank, *Vietnam’s Household Registration System*, (June 2016), xi and 37.

²¹⁴ Jake Lin and Jingyu Mao, *Changing Household Registration and Worker Welfare in China and Vietnam*, European Research Council, Bielefeld University Policy Brief 1, (2022), 5.

²¹⁵ Jake Lin and Jingyu Mao, *Changing Household Registration and Worker Welfare in China and Vietnam*, European Research Council, Bielefeld University Policy Brief 1, (2022), 5-6.

²¹⁶ World Bank, *Vietnam’s Household Registration System*, (June 2016), x.

5. Child labor and Forced Labor

In the context of this NME review, multiple parties, including U.S. domestic industries, international organizations, and human rights groups, have raised concerns of child and forced labor in their comments.²¹⁷ These issues have the potential to not only violate ethical and legal standards but also distort the market by unfairly lowering labor costs and undermining fair competition. Companies that exploit children and rely upon forced labor can reduce their operational costs dramatically, as they do not need to comply with fair wage laws or provide safe working conditions. This gives such companies an unfair competitive advantage over businesses that adhere to labor standards, which face higher operational costs due to compliance with legal and ethical labor practices.

Although the GOVN has taken steps to address child and forced labor concerns, including ratifying ILO Conventions 29 and 105 on forced labor and Conventions 138 and 182 on child labor,²¹⁸ these issues remain a concern. According to UNICEF, over one million children in Vietnam are engaged in child labor activities, accounting for 5.7 percent of the population of Vietnamese children.²¹⁹ Despite this share being about 2 percentage points lower than the Asia-Pacific regional average and more than 4 percentage points lower than global average, it is higher than that of other Asian countries, including the Philippines (~1.0 percent), Indonesia (1.7 percent), and Thailand (2.9 percent).²²⁰ However, it is not clear whether child or forced labor are more prevalent in Vietnam than in market economy countries. Due to the uncertainty surrounding these issues and their effects on free bargaining for wage rates in Vietnam compared to market economy countries, the topics of child and forced labor will be further described in Appendix II of this NME review.

D. Assessment of the Factor

Over the past two decades, Vietnam has demonstrated notable progress in labor market reforms. The most notable improvements include the comprehensive revision of the *Labor Code (2019)*, which introduced enhanced protections for workers, improved safety standards, and established more robust labor contract regulations. Vietnam's commitment to aligning with international labor standards is evident through the ratification of multiple ILO conventions. Additionally, the gradual increase in minimum wage levels reflects a concerted effort to elevate living standards and reduce poverty among workers.

²¹⁷ Domestic Interested Parties' Comments, 19-22; Petitioners' Comments, 56.

²¹⁸ ILO, "International Labour Standards in Viet Nam," available at www.ilo.org/regions-and-countries/asia-and-pacific-deprecated/viet-nam/areas-work/international-labour-standards-viet-nam, accessed July 1, 2024.

²¹⁹ ILO, *Viet Nam National Child Labour Survey 2018: Key Findings*, (December 2020), ix. According to Vietnam's Second Child Labor Survey 2018, the figure was 5.4%.

²²⁰ ILO, *Viet Nam National Child Labour Survey 2018: Key Findings*, (December 2020), x; and UNICEF, "How Many Children are in Child Labor?" available at <https://data.unicef.org/how-many/how-many-children-are-in-child-labor/>, accessed on July 1, 2024.

Despite these legislative advancements, several fundamental deficiencies persist, undermining the effectiveness of these reforms. A critical issue is the continued dominance of the state-controlled VGCL as the sole national labor union. This centralization severely restricts the development of independent labor unions, which are crucial for effective collective bargaining, and deprives workers of an autonomous platform to negotiate wages and working conditions, thereby deviating from the principles of a market-oriented economy. Moreover, the absence of necessary decrees and implementation guidelines further exacerbates this issue, creating a disconnect between *de jure* rights and *de facto* practices. Additionally, the ineffective dispute resolution mechanisms and the procedural complexities involved in initiating lawful strikes further diminish workers' ability to assert their rights and seek redress against unfair labor practices.

The government's intervention in setting minimum wages and controlling labor unions highlights significant structural deficiencies, contrasting sharply with the autonomy expected in a market economy, where wage rates and labor conditions are typically determined through free negotiations between employers and independent labor unions. Independent research and reports corroborate these findings, underscoring the gaps in labor rights implementation due to the VGCL's dominance and government intervention.

Finally, the informal economy and informal employment, which constitute slightly less than a quarter of the workforce, remain largely unprotected by the *Labor Code (2019)* and relevant labor laws, exposing workers to exploitative conditions without legal recourse. This lack of protection extends to vulnerable groups such as child laborers and forced laborers, whose rights are often overlooked due to inadequate enforcement of existing laws (or gaps in existing legislation, such as the treatment of debt bondage). These ongoing issues indicate that while legislative frameworks are in place, their practical application falls short, leading to a labor market that does not fully adhere to market economy principles. Additionally, limited labor mobility, exacerbated by stringent residency registration systems (*Ho Khau*), hampers workers' ability to seek better employment opportunities, further entrenching wage disparities and poor working conditions.

FACTOR THREE: THE EXTENT TO WHICH JOINT VENTURES OR OTHER INVESTMENTS BY FIRMS OF OTHER FOREIGN COUNTRIES ARE PERMITTED IN THE FOREIGN COUNTRY

Since *Commerce's Vietnam NME Review (2002)*, Vietnam has made notable progress in liberalizing its regulatory environment for foreign direct investment (FDI) and joint ventures, aligning its legal framework more closely with market economy principles. Significant legal reform, such as the enactment of a new *Law on Investment, No. 61/2020/QH14 (Investment Law (2020))* and the *Law on Enterprises, No. 59/2020/QH14 (Enterprise Law (2020))*, have aimed to streamline procedures, reduce bureaucratic barriers, and improve the protection of foreign investment. Noteworthy reform since 2002 has also opened the number of commercial activities that are now available for foreign investment, and the depth of ownership that foreign investors are permitted to acquire in varying sectors. Despite these market-oriented improvements, several significant structural and practical challenges persist. These challenges include an excessive number of prohibited or restricted commercial activities in which foreign investment is not permitted, limitations on how much foreign ownership is allowed in specific sectors, market access barriers, restrictions and discrimination that exist with respect to operational issues, transparency problems that exist in regulatory processes, and problems with protecting firms' intellectual property rights. There are also considerable gaps between the legal framework and its implementation, which highlight the need for further market-oriented reform. This section describes these legal and economic developments in greater detail, and assesses their overall effects given the progress that has been both realized and unfinished.

This part of the analysis examines foreign investment permissiveness in Vietnam. After the introductory section in Part A, Part B examines Vietnam's legislative environment, focusing on laws and regulations governing FDI, including key documents such as the *Investment Law (2020)* and *Enterprises Law (2020)*. Part C evaluates developments in the economy, including an empirical examination of FDI trends, the operational realities faced by foreign investors, and the reflection of the legal framework in actual economic practices.

A. Introduction

The degree to which joint ventures or other investments by foreign firms are permitted into Vietnam plays an essential role in assessing a country's market economy status under U.S. trade remedy laws. This factor reveals the country's level of economic openness and global market integration. In market economy countries, FDI and joint ventures are driven by supply and demand conditions and individual business interests, such as economic stability, growth prospects, and a favorable legal and regulatory environment. Conversely, in NME countries, government control and intervention often influence supply side conditions for FDI. Such government control is manifested through restrictive regulations, preferential treatment for domestic firms (particularly for SOEs), and barriers to profit repatriation. Moreover, these distortive practices can place foreign firms at a disadvantage relative to their domestic counterparts.

In *Commerce's Vietnam NME Review (2002)*, Vietnam's regulatory environment was characterized by stringent government controls, limited foreign ownership, and significant bureaucratic hurdles. Foreign investors were found to be facing challenges such as complex approval processes and restrictions on profit repatriation.²²¹ The government's heavy involvement in the economy through SOEs further deterred foreign investment.²²² Since *Commerce's Vietnam NME Review (2002)*, Vietnam has made substantial progress in its regulatory environment for FDI and joint ventures. The GOVN has implemented legal reform, through such measures as an update to its *Investment Law (2020)* and the *Enterprises Law (2020)*. Both of these laws have helped streamline FDI-related procedures, reduce bureaucratic barriers, and enhance foreign investor protection. Several sectors previously restricted to foreign investment have been liberalized, and foreign ownership caps in various industries have been raised.

Despite these improvements since 2002, structural challenges persist, including an excessive number of prohibited and restricted sectors in which foreign investment is not permitted, limitations on how much foreign ownership in individual companies is allowed, sustained market entry barriers, operational restrictions and discrimination, transparency issues with regard to regulatory processes, and weak intellectual property right protection. Additionally, while Vietnam has liberalized many sectors and raised foreign ownership caps, there are still significant gaps between the legal framework and its implementation.

B. Legal Framework

1. Legal Reforms and Limitation

According to GOVN, Vietnam has undertaken notable legal reforms to protect and grow foreign investments, aiming at creating a more attractive and secure environment for investors. Since *Commerce's Vietnam NME Review (2002)*,²²³ Notable legislative changes include the promulgation of the new *Law on Investment, No. 61/2020/QH14 (Investment Law (2020))* and the *Law No. 64/2020/QH14 on Investment in the /Form of Public-Private Partnership in 2020 (PPP Law (2020))*, which reflect Vietnam's attempted alignment of its legal framework with international investment standards.²²⁴ Additionally, the *Law on Enterprises, No. 59/2020/Q14 (Enterprises Law (2020))*, effective from January 1, 2021, aims to streamline business registration processes, enhance corporate governance, and improve the overall business environment for both domestic and foreign enterprises. *Decree No. 31/2021/NĐ-CP (Decree No. 31)*, issued on March 26, 2021, provides detailed guidance on implementing the *Investment Law*.

²²¹ *Commerce's Vietnam NME Review (2002)*, 16-22.

²²² *Commerce's Vietnam NME Review (2002)*, 22.

²²³ Ministry of Industry and Trade of the Socialist Republic of Vietnam, *Request for the U.S. Commerce to Initiate a Changed Circumstances Review on Behalf of the Socialist Republic of Viet Nam*, (September 8, 2023) (GOVN 2023 NME Request), 10-14.

²²⁴ GOVN Comments (2023), 18-25.

(2020), including provisions on investment procedures, investment incentives, and support for specific projects.²²⁵

To better understand the impact of these reforms, the following analysis provides an overview of the relevant legal changes and their effects on the FDI environment, with a particular focus on the *Investment Law (2020)* and relevant *Decree No. 31*. Although these reforms aim to protect and grow foreign investment, ongoing structural deficiencies continue to limit the overall effectiveness of those reforms.

1.1 Liberalization and Protection of Foreign Investment

Vietnam's Transition to a "Negative List" Approach to Inbound Investment. A key aspect of Vietnam's investment reforms since 2002 entails moving away from a more restrictive "positive list" approach, which identified certain sectors in which FDI was permitted. *The Law on Investment, No. 64/2014/QH13 (Investment Law (2014))* introduced the transition to a less restrictive "negative list" approach, which identifies only the sectors that are restricted or prohibited from foreign investment, signaling the GOVN's interest in opening a broader segment of its economy to foreign investment.²²⁶ Vietnam's *Investment Law (2020)*, which appears to mostly apply uniformly to both domestic and foreign investors, further aims to reduce bureaucratic barriers and simplify regulatory requirements.²²⁷ For example, foreign entities are granted the same rights as their domestic counterparts except in restricted sectors like national defense, security, social safety, and public health. Such equal treatment is indicative of market-oriented reforms that aim to lower discriminatory treatment to foreign enterprises.

Protection Measures. In addition to liberalizing foreign investment, the GOVN has also implemented measures to protect foreign investors, ensuring that their investments are secure and their legal rights are upheld. The *Investment Law (2020)* guarantees that the government will not nationalize or confiscate investors' assets, except in necessary cases for national defense and security, and with appropriate compensation.²²⁸ The law further ensures that investors are entitled to own, use, and dispose of their investments in accordance with the law, providing security over their capital and assets.²²⁹ Furthermore, the law includes provisions to protect the rights of investors, ensuring that their investments are not subject to arbitrary changes in laws and

²²⁵ GOVN Comments (2023), 19-20.

²²⁶ U.S. Department of State, *2018 Investment Climate Statements: Vietnam*, Section 3: Legal Regime - Laws and Regulations on Foreign Direct Investment, (July 2018); and GOVN, *Investment Law (2020)*, Appendix IV: List of Sectors and Trades Subject to Conditional Business Investment.

²²⁷ Other relevant laws with positive pieces of legislation encouraging FDI in certain sectors include: *Decree 35/2022/NĐ-CP* in 2022 to attract FDI in the development of eco-industrial parks, transforming existing industrial parks into eco-industrial facilities; and *The Power Development Plan 8 (2021-2030)*, which encourages private sector participation and investment. See ASEAN, *A Special ASEAN Investment Report 2023 - International investment trends: Key issues and policy options*, (December 2023), 32; and World Bank, *2022 Investment Policy and Regulatory Review: Vietnam*, (2022).

²²⁸ GOVN, *Investment Law (2020)*, Article 6.

²²⁹ GOVN, *Investment Law (2020)*, Article 7.

regulations.²³⁰ Additionally, the *PPP Law* complements these protections by detailing the types of state support and guarantees available to investors in PPP projects, including revenue guarantees, foreign exchange balance, and financial risk-sharing, along with mechanisms for dispute resolution, such as arbitration.²³¹

1.2 Sector and Commercial Activity Regulations and Restrictions on Foreign Investment

Prohibited Sectors. Under *Decree No. 31*, issued on March 26, 2021, there are 25 commercial activities where foreign investment is entirely prohibited. These include services associated with the production of military equipment, broadcasting, and press activities.²³² See Table 3.1 for the complete list of prohibited commercial activities.

Table 3.1: List of Prohibited Commercial Activities and Sectors²³³

1. Trading in goods and services on the list of goods and services subject to state monopoly in the field of commerce
2. Press activities and collection of news in all forms
3. Fishing or marine resource exploitation
4. Investigation and security services
5. Judicial administrative services, including judicial expertise services, bailiff services, property auction services, notarization services, and asset administrator services
6. Service of sending guest workers abroad
7. Investment in building infrastructure of cemeteries and graveyards for the purpose of transferring land use rights combined with infrastructure
8. Direct collection of garbage from households
9. Public survey service (opinion poll)
10. Blasting service
11. Production of and trading in weapons, explosive materials and supporting tools
12. Import and demolition of used seagoing vessels
13. Public-utility postal services
14. Border-gate transfer of goods
15. Temporary import for re-export
16. Exercise of the rights to import, export and distribute goods on the list of goods which foreign investors and foreign-invested economic organizations may not exercise the rights to export, import and distribute
17. Collection, purchase and handling of public assets at armed forces units
18. Production of military materials or equipment; trading in military equipment and supplies for the armed forces, military weapons, equipment, techniques, ammunitions, specialized military and

²³⁰ GOVN, *Investment Law (2020)*, Article 20.

²³¹ GOVN, *PPP Law (2020)*, Articles 6 and 9.

²³² GOVN, *Decree No. 31*. Appendix I List of Sectors and Trades in which Foreign Investors are Subject to Market Access Restrictions.

²³³ GOVN, *Decree No. 31*.

police vehicles, components, spare parts, supplies and special equipment, and specialized technologies for manufacturing thereof
19. Provision of industrial property representation and intellectual property examination services
20. Services of establishment, operation, sustainment and maintenance of navigational signals, water zones, waters, public navigational channels and navigational routes; services of surveying water zones, waters, public navigational channels and navigational routes serving the publication of marine notices; services of surveying, drawing up and publishing charts of waters, seaports, navigational channels and routes; compilation and distribution of maritime safety documents and publications
21. Regulatory services to ensure maritime safety in water zones, waters and public navigational channels; maritime electronic information services
22. Services of inspection (examination and testing) and grant of certificates for means of transport (including systems, assemblies, equipment and components of means of transport); inspection and grant of technical safety and environmental protection certificates for special-use vehicles and equipment, containers, dangerous goods packaging equipment used in transportation; inspection and grant of technical safety and environmental protection certificates for means and equipment for oil and gas exploration, exploitation and transportation at sea; technical inspection of occupational safety for machinery and equipment that are subject to strict requirements on occupational safety and installed on means of transport and means and equipment for oil and gas exploration, exploitation and transportation at sea; and fishing vessel registration
23. Services of investigation, assessment and exploitation of natural forests (including logging, hunting, trapping of rare and precious wild animals, management of genetic resources of plants, domestic animals and microorganisms used in agriculture)
24. Research or use of genetic resources of new livestock breeds before they are appraised and evaluated by the Ministry of Agriculture and Rural Development
25. Provision of travel services, except for international travel services serving inbound international tourists

Restricted Commercial Activities and Sectors. In addition to the above 25 prohibited commercial activities and sectors, the *Investment Law (2020)* provides a framework that includes 227 sectors and commercial activities subject to conditional business investment, incorporating changes from the *Investment Law (2020)*. This general list includes sectors such as water sanitization and architectural services, reflecting evolving national priorities, while sectors like franchising and logistics have been removed, indicating a shift towards a more open investment environment. Additionally, *Decree No. 31* lists 59 specific commercial activities (Table 3.2)²³⁴ within these 227 sectors where foreign investment is allowed but subject to additional restrictions. These restricted activities include critical sectors such as telecommunications, banking, and transportation, and often involve conditions like foreign ownership limits, joint venture requirements with local partners, and other regulatory constraints. These adjustments underscore the government's efforts to balance national security and public welfare concerns with the goal of attracting foreign investment.

²³⁴ GOVN, *Decree No. 31*.

Table 3.2: List of Restricted Sectors and Commercial Activities

1. Production and distribution of cultural products, including video recordings
2. Production, distribution and broadcasting of TV programs, music and dance works, stage performances and cinematographic works
3. Provision of radio and television broadcasting services
4. Insurance; banking, securities trading and services related thereto
5. Post and telecommunications services
6. Advertising services
7. Printing and publication distribution services
8. Geodetic and cartographic services
9. Aerial photography services
10. Education services
11. Survey, exploitation and processing of natural resources, minerals and oil and gas
12. Hydropower, offshore wind power and nuclear power
13. Transportation of goods and passengers by rail, air, road, river, sea and pipeline
14. Aquaculture
15. Forestry and hunting
16. Betting and casino business
17. Security services
18. Construction, operation and management of river ports, seaports and airports
19. Real estate business
20. Legal services
21. Animal health services
22. Trade in goods and activities directly related to trade in goods of foreign service providers in Vietnam
23. Technical inspection and analysis services
24. Tourism services
25. Health and social services
26. Sports and entertainment services
27. Paper production
28. Manufacture of vehicles with more than 29 seats
29. Development and operation of traditional marketplaces
30. Operation of goods exchanges
31. Inland less-than container load (LCL) services
32. Audit, accounting, book-keeping and tax services
33. Valuation services; enterprise valuation consultation for equitization
34. Services related to agriculture, forestry and fishery
35. Production and manufacture of aircraft
36. Production and manufacture of locomotives and railway carriages

37. Production of and trading in cigarettes, tobacco materials, machinery and equipment of the tobacco industry
38. Operations of publishing houses
39. Building and repair of seagoing vessels
40. Waste collection and environmental monitoring services
41. Commercial arbitration and arbitration mediation services
42. Logistics services
43. Coastal transport services
44. Cultivation, manufacture or processing of precious and rare plants, rearing and breeding of precious and rare wild animals and processing and disposal thereof, including also live animals and products made thereof
45. Production of building materials
46. Construction and relevant technical services
47. Motorcycle assembly
48. Services related to sports, fine arts, performing arts, fashion shows, beauty and model contests, and other entertainment activities
49. Auxiliary services for air transport; ground technical services at airports and airfields; inflight catering services; communication, navigation and surveillance services and aviation meteorological services
50. Shipping agency services; ship towage services
51. Services related to cultural heritages, copyright and related rights, photography, video recording, audio recording, art exhibitions, festivals, libraries, and museums
52. Tourism promotion and advertising services
53. Representation, recruitment agency, and booking and management services for artists and athletes
54. Family-related services
55. E-commerce activities
56. Cemetery business, cemetery services and funeral services
57. Aerial seeding and chemical spraying services
58. Maritime pilotage services
59. Investment sectors and trades under pilot mechanisms applied by the National Assembly, National Assembly Standing Committee, Government and Prime Minister

Additional Sector-Specific and Commercial Activity Laws and Restrictions. Foreign investors in Vietnam face additional hurdles due to various sector-specific and commercial activity laws, which impose distinct regulations and restrictions tailored to particular industries. For instance, the new *Law on Credit Institutions*, No. 32/2024/QH15 governs foreign investment in the banking sector by capping foreign ownership and requiring joint ventures with local partners.²³⁵ The *Law on Petroleum*, No. 12/2022/QH15 sets certain restrictions and requirements for foreign investment in the oil and gas industry, including mandatory partnerships with SOEs and

²³⁵ World Bank, 2022 *Investment Policy and Regulatory Review: Vietnam*, (2022), 7; and VTN Partners, *Law on Credit Institutions 2024: Key Changes*, (February 26, 2024).

restrictions on certain operational activities.²³⁶ While these sector-specific restrictions aim to protect national interests and ensure local control over critical sectors, they can significantly distort competition and limit foreign investors' operational freedom.²³⁷

1.3 Foreign Ownership Limitations (FOLs)

Foreign Equity Restrictions. The conditions imposed on the above-mentioned 59 restricted commercial activities and sectors typically involve restrictions on the share of allowable foreign ownership, mandatory partnerships with local entities, specific investment forms, and compliance with additional regulatory requirements. These restrictions include majority state ownership restrictions and control mechanisms. Majority state ownership restrictions apply when, even after equitization, the state is required to retain majority ownership, capping foreign equity at levels that do not threaten state control. Control mechanisms are where the GOVN is required to maintain a 35 percent stake, which allows it to maintain veto power over management decisions in the enterprise.²³⁸

1.4 Challenges and Limitations

Ambiguous National Security Provisions. As noted, the *Investment Law (2020)* grants the government broad authority to suspend, stop, or terminate business investment activities if the GOVN believes the investment harms or could potentially harm “national defense and security.”²³⁹ While such authorities are not limited to non-market economies, under Vietnam’s *Investment Law (2020)*, “national defense and security” is a broad and largely undefined term, creating uncertainties for foreign investors due to the GOVN’s interpretive freedom in applying this provision.²⁴⁰ According to the U.S. Department of State, such discretionary power, combined with the vague language used to define threats, can lead to arbitrary decisions and an unpredictable investment climate.²⁴¹ This uncertainty, and the breadth of sectors that are impacted by this in Vietnam, undermine market principles that emphasize a stable and predictable regulatory environment.

Lack of Stability and Predictability. Foreign investors often require stability and predictability for effective, long-term investment decision making. This introduces a problem for foreign investment in Vietnam, as GOVN imposed restrictions on commercial and sector-specific activities are often adjusted based on strategic and economic policy objectives, and often done in

²³⁶ World Bank, 2022 *Investment Policy and Regulatory Review: Vietnam*, (2022), 7; and Deloitte, *Tax Alert: 2022 Petroleum Law*, (February 2023).

²³⁷ World Bank, 2022 *Investment Policy and Regulatory Review: Vietnam*, (2022), 20.

²³⁸ EIU, “Political/Commercial Background: State Role in the Economy,” available at <https://viewpoint.eiu.com/analysis/article/1033952086>, accessed April 1, 2024.

²³⁹ GOVN, *Investment Law (2020)*, Article 5.

²⁴⁰ Samuel Scoles, “Key Outcomes for Foreign Investors in Vietnam’s New Law on Investment,” White & Case, November 30, 2020.

²⁴¹ U.S. Department of State, 2023 *Investment Climate Statements: Vietnam*, (July 2023).

a non-transparent manner.²⁴² Vietnam's real estate market serves as an illustrative example. While foreign investors were initially restricted from owning residential properties, adjustments subsequently allowed for limited foreign ownership in certain projects. However, the criteria for determining which projects would be eligible, and what the approval process would entail, still lacks transparency.²⁴³ Of course, it is difficult to assess the depth of FDI that did not materialize for this reason, but also reasonable to assume that such opacity has deterred at least some long-term foreign investment decisions. Furthermore, as discussed in the next section, foreign firms face additional hurdles in strategic sectors where SOEs are granted significant privileges, as well as other regulatory complexities. These issues highlight significant departures from market principles, where transparency, predictability, and equal treatment are key components.²⁴⁴

2. *Investment Procedures and Bureaucracy*

In addition to the sector-specific and commercial activity prohibitions, restrictions, and conditions described above, there are additional market entry barriers and operational restrictions in place in Vietnam that foreign investors must navigate. The following analysis highlights how these issues complicate the investment landscape and contribute to an unpredictable and uneven investment climate in Vietnam.

2.1 Market Entry Barriers

Complex Approval Process. The *Investment Law (2020)* outlines the procedures for obtaining the Investment Registration Certificate (IRC), describing the various steps and approvals required from different government entities.²⁴⁵ *Decree No. 31* provides further guidance on implementing the *Investment Law (2020)*, specifying conditions and procedures for foreign investments in sectors requiring conditional business investment. While *Decree No. 31* does not provide any market entry conditions (e.g., foreign ownership limitations, investment form requirements such as joint ventures, conditions on the scope of investments, investor qualifications, etc.) for these restricted commercial activities, it establishes a framework for their coordination and

²⁴² World Bank, *2019 Investment Policy and Regulatory Review: Vietnam*, (January 1, 2020).

²⁴³ TMF Group, "Top Challenges of Doing Business in Vietnam," available at www.tmf-group.com/en/news-insights/articles/doing-business-in/top-challenges-business-vietnam/, March 13, 2023; and Jamille Tran, "Foreign Investors' Concerns Mount as Vietnam's Regulatory Gaps Threaten Growth Efforts," available at www.businesstimes.com.sg/international/asean/foreign-investors-concerns-mount-vietnams-regulatory-gaps-threaten-growth-efforts, accessed July 1, 2024.

²⁴⁴ The IMF emphasized the importance of clear and consistent investment regulations for attracting FDI, as uncertainties and broad discretionary powers can undermine investor confidence and deter investment, particularly in sectors critical for technological advancement and economic growth. The OECD has also noted that restrictions on foreign investment in sensitive sectors can create a perception of an inhospitable investment climate, particularly if the criteria for restrictions are not transparent and consistently applied. Additionally, the World Bank has reported that while Vietnam's efforts to protect national security through investment restrictions are understandable, there is a need for greater clarity and consistency in the application of these rules. Overall, IMF, OECD, and World Bank have all emphasized the importance of clear and consistent investment regulations for attracting FDI, noting that uncertainties and broad discretionary powers can undermine investor confidence and deter investment.

²⁴⁵ GOVN, *Investment Law (2020)*, Article 37.

publication. The Ministry of Planning and Investment (MPI) is mandated to coordinate with other ministries to review and collect all market entry conditions and publish them on the National Foreign Investment portal. If the relevant market entry conditions are satisfied, then foreign investment in the Restricted List sectors is permitted.²⁴⁶

These complex regulations and approval processes add layers of bureaucracy and complexity. For substantial projects,²⁴⁷ high-level approvals from entities like the National Assembly, the Prime Minister, or Provincial People's Committees are mandatory, depending on the project's nature, scale, and scope.²⁴⁸ Consequently, the complex approval process poses challenges for foreign investors, creating uncertainty and increasing administrative burdens for investors, which are not typically found in market-driven economies.²⁴⁹

Economic Needs Test. The Economic Needs Test (ENT) in the retail sector serves as another barrier to market entry for foreign investors, adding layers of complexity and potential delays to the investment process. The ENT requires foreign retailers to undergo a rigorous assessment to justify the necessity of additional outlets beyond their first store. Specifically, *Decree No. 09/2018/NĐ-CP (Decree No. 09)* states that foreign retailers must pass the ENT for any outlet beyond the first, unless the outlet is under 500 m², located in a shopping mall, and not classified as a mini-supermarket or convenience store.²⁵⁰ The same decree outlines both the conditions under which foreign investors may establish retail outlets and the requirement for an ENT for outlets beyond the first.²⁵¹ *Circular No. 08/2013/TT-BCT* details the criteria and procedures for the ENT, including the assessment of the number of existing retail establishments, market stability, and the potential impact on local businesses.²⁵²

While intended to protect domestic enterprises and ensure balanced market development, the ENT effectively limits the expansion capabilities of foreign investors. It introduces uncertainty and bureaucratic obstacles, as the criteria for approval are often subjective and inconsistently applied across different jurisdictions. The assessment process is managed by a committee comprising local authorities, whose decisions can vary widely, causing delays and inconsistent outcomes.

²⁴⁶ World Bank, 2022 *Investment Policy and Regulatory Review: Vietnam*, (2022), 13.

²⁴⁷ Substantial projects refer to large-scale investments that have significant economic, environmental, or social impacts. These projects might include large infrastructure projects, significant industrial investments, real estate developments and nature resource exploitation. For these types of projects, the approval process is more stringent to ensure that they align with national strategic objectives.

²⁴⁸ World Bank, 2022 *Investment Policy and Regulatory Review: Vietnam*, (2022), 17-18.

²⁴⁹ World Bank, 2022 *Investment Policy and Regulatory Review: Vietnam*, (2022), 17-18.

²⁵⁰ Prema-Chandra Athukorala and Nguyen Trung Kien, "Transition to a Market Economy, Foreign Direct Investment and Export Performance in Vietnam," Australian National University, *ARNDT-Corden Department of Economics Working Paper*, (October 2020); and Koushan Das (ed.), "New Regulations for Establishing Retail Stores in Vietnam," *Vietnam Briefing*, February 19, 2018.

²⁵¹ GOVN, *Decree No. 09*, Article 5.

²⁵² GOVN, *Circular No. 08/2013/TT-BCT*, Article 4.

This unpredictability can deter foreign retailers from investing in the Vietnamese market, as they face significant hurdles in scaling up their operations. According to a study by the World Bank, by imposing such restrictive conditions, the ENT not only hampers foreign investment but also limits the potential benefits of increased competition, consumer choice, and innovation that foreign retailers could bring to the market.²⁵³

2.2 Operational Restrictions and Discrimination

Operational restrictions further complicate the investment landscape in Vietnam. Laws and decrees, including the *Investment Law* (2020) and *Decree No. 31*, outline stringent operational restrictions and conditions for foreign investors.²⁵⁴ The requirement for foreign investments to undergo appraisal by the Ministry of National Defense (MND) and the Ministry of Public Security (MPS) introduces ambiguity and potential for discretionary restrictions.

Preferential Treatment for Domestic Sectors and SOEs. The *Enterprise Law (2020)* mandates that enterprises in the public and private sectors be subject to equal treatment under the law. However, the *Investment Law (2020)* subjects enterprises with over 50 percent foreign ownership to a more rigorous approval processes than other enterprises. These majority-foreign enterprises are required to obtain both an Enterprise Registration Certificate (ERC) under the *Enterprise Law (2020)* and an Investment Registration Certificate (IRC) under the *Investment Law (2020)* before they can begin operations.²⁵⁵ In contrast, purely domestic companies and those with foreign capital not exceeding 50 percent are only required to secure an ERC.²⁵⁶ Moreover, there are additional regulations that appear to favor domestic contractors over their foreign counterparts.²⁵⁷ These operational restrictions and preferential treatments illustrate a regulatory environment that includes protective measures for domestic interests.

Additionally, SOEs continue to enjoy advantages that are not accessible to foreign investors. These advantages include easier access to financing, preferential terms in public procurement, and regulatory support from the government.²⁵⁸ In sectors such as energy, telecommunications, and transportation, SOEs often receive priority in bidding for large-scale projects and may benefit from less stringent regulatory scrutiny.²⁵⁹ Foreign firms must navigate complex regulatory requirements, such as joint ventures and production-sharing contracts, which limit

²⁵³ World Bank, 2022 *Investment Policy and Regulatory Review: Vietnam*, (2022), 19.

²⁵⁴ GOVN, *Investment Law (2020)* and *Decree No. 31*.

²⁵⁵ GOVN, *Enterprise Law (2020)* and *Investment Law (2020)*; and EIU, "Political/Commercial Background: State Role in the Economy," available at <https://viewpoint.eiu.com/analysis/article/1033952086>, April 1, 2024.

²⁵⁶ GOVN, *Enterprise Law (2020)*, Article 4(15); and *Investment Law (2020)*, Article 22(1c).

²⁵⁷ For example, the newly enacted *Bidding Law (2023)* restricts international investors from participating in bids for infrastructure projects that cost less than \$34.8 million USD (800 bn VND). See GOVN *Bidding Law (2023)*; and EIU, "Political/Commercial Background: State Role in the Economy," available at <https://viewpoint.eiu.com/analysis/article/1033952086>, April 1, 2024.

²⁵⁸ World Bank, 2022 *Investment Policy and Regulatory Review: Vietnam*, (2022), 15.

²⁵⁹ World Bank, 2022 *Investment Policy and Regulatory Review: Vietnam*, (2022), 15.

operational autonomy and increase costs.²⁶⁰ The U.S. Department of State Vietnam 2023 Investment Climate Statement (*DOS Investment Climate Statement 2023*) highlights the challenging climate foreign investors face, including confusing tax regulations, retroactive changes in laws and regulations, preferential treatment of SOEs, and difficulties in extending and renewing investment certificates.²⁶¹ These challenges distort market competition, making it difficult for foreign investors to compete on equal terms. Consequently, foreign investors face higher operational risks and uncertainties, as their investments may be disadvantaged compared to those of SOEs.

3. Intellectual Property Rights (IPR) and Dispute Resolution

Intellectual property right (IPR) protection and effective dispute resolution mechanisms are crucial for a favorable FDI environment. Strong IPR protection aligns with market principles by ensuring fair competition and fostering an environment where businesses can innovate without fear of infringement. According to the OECD, clear and consistent investment regulations are important for attracting FDI, as uncertainties and broad discretionary powers can undermine investor confidence and deter investment, particularly in sectors critical for technological advancement and economic growth.²⁶² Similarly, the IMF has also stressed the importance of a stable and predictable regulatory environment for fostering investment and economic development.²⁶³

3.1 Complex and Opaque Approval Processes for Foreign Investments

Key legislation governing IPR and dispute resolution includes the *Law on Intellectual Property*, No. 42/2019/QH14 (*Intellectual Property Law (2019)*), which outlines the protections available for patents, trademarks, copyrights, and trade secrets,²⁶⁴ and the *Law No. 12/2017/QH14 (Penal Code (2017))*, which provides criminal sanctions for IPR infringements. Additionally, the *Law on Handling Administrative Violations*, No. 15/2012/QH13 (*Administrative Violations Law (2012)*) establishes administrative penalties for IPR violations. These regulatory reforms, adopted since Commerce last evaluated Vietnam's market economy status, have aimed to reduce bureaucratic hurdles and move Vietnam towards a friendlier climate for foreign investment. Despite these developments, high-level authorization for certain projects and difficulties in obtaining government approvals persist.

²⁶⁰ TMF Group, "Top Challenges of Doing Business in Vietnam," available at www.tmf-group.com/en/news-insights/articles/doing-business-in/top-challenges-business-vietnam/, March 13, 2023; and Jamille Tran, "Foreign Investors' Concerns Mount as Vietnam's Regulatory Gaps Threaten Growth Efforts," available at www.businesstimes.com.sg/international/asean/foreign-investors-concerns-mount-vietnams-regulatory-gaps-threaten-growth-efforts, accessed July 1, 2024.

²⁶¹ U.S. Department of State, *2023 Investment Climate Statements: Vietnam*, (July 2023).

²⁶² OECD, *OECD Regulatory Policy Outlook 2021*, (October 6, 2021).

²⁶³ IMF, *Vietnam: Staff Report for the 2022 Article IV Consultation*, (July 2022).

²⁶⁴ Vietnam Ministry of Science and Technology: Intellectual Property Office of Vietnam, "Codes and Law, Resolutions of the National Assembly," available at <https://ipvietnam.gov.vn/web/english/legal-documents>, accessed June 29, 2024.

Complex Procedure and Documentation Requirements. The IPR application process involves a complex procedure and submission of extensive documentation. While such requirements are not uncommon, the complexity of the IPR application process is particularly pronounced. For example, the IPR application process involves multiple agencies such as the National Office of Intellectual Property (NOIP), the Ministry of Science and Technology, and the Ministry of Culture, Sports, and Tourism, each with overlapping responsibilities. This bureaucratic web creates a complex and burdensome process for foreign investors seeking IPR protection. Additionally, the documentation process requires extensive and detailed submissions, including descriptions, proof of originality, and legal ownership documents, which further encumbers the application process. This intricacy, combined with regulatory inconsistencies, significantly complicates, delays, and raises the costs of obtaining IPR protection. These issues highlight a significant departure from market economy practices, where such procedures are generally more efficient, predictable, and transparent.²⁶⁵

Lack of Transparency. According to the World Bank, the approval process in Vietnam lacks transparency, and is associated with unclear criteria and little information on the status of applications, leading to perceptions of unfair treatment and potential bias.²⁶⁶ For example, the *Investment Law (2020)* stipulates the confidentiality of information submitted by investors, yet it lacks clear guidelines on transparency of the approval process.²⁶⁷ Decree No. 31 provides detailed steps but does not ensure transparency in decision making, reflecting significant state intervention and control.²⁶⁸ The opaque approval process, coupled with broad discretionary powers held by government agencies, allows for decisions influenced by non-legal factors, leading to arbitrary rejections or delays and ultimately undermining investors' confidence.

3.2 Limitations and Barriers of Dispute Resolution

In addition to the challenges associated with complex approval processes and lack of transparency in IPR protection, foreign investors also face significant hurdles in resolving disputes. The *Law on Commercial Arbitration, No. 54/2010/QH12 (Commercial Arbitrational Law (2010))*, which governs dispute resolution in Vietnam, does not allow foreign investors to refer investment disputes to foreign courts. In many market economies, as highlighted by OECD Guidelines for Multinational Enterprises, it is common for foreign investors to have the option to refer investment disputes to international arbitration or foreign courts. This is particularly important in cases where the local legal systems may be perceived as less impartial or less experienced in handling complex international business issues.²⁶⁹

²⁶⁵ OECD, *OECD Regulatory Policy Outlook 2021*, (October 6, 2021).

²⁶⁶ World Bank, "Vietnam: Doing Business 2020, Challenges and Solutions," available at 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, January 8, 2020.

²⁶⁷ GOVN, *Investment Law (2020)*, Article 42.

²⁶⁸ GOVN, *Decree No. 31*, Article 25.

²⁶⁹ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, (June 8, 2023).

4. Portfolio Investment

Portfolio investment (PI), which typically involves the acquisition of financial assets like stocks, bonds, and other securities without seeking direct control over the companies or assets, plays a crucial role in Vietnam's economic development by providing essential capital and fostering integration into the global financial system. PI enhances market liquidity and depth, stabilizes the economy, supports business growth, and boosts the country's attractiveness to further investments.

4.1 Regulatory Framework

The key legislation governing PI foundation and activities is the *Law on Securities, No. 54/2019/QH14 (Securities Law (2019))*. This law outlines the conditions under which foreign investors can participate in the Vietnamese securities market, ensuring transparency and investor protection, including the following key provisions:

- Foreign Ownership Limits: The law specifies foreign ownership limits for listed companies, which generally cap foreign holdings at 49 percent.²⁷⁰ For companies operating in certain conditional sectors, these limits can be lower, sometimes restricting foreign ownership to as little as 30 percent.²⁷¹
- Market Access: The law simplifies procedures for foreign investors to access the Vietnamese securities market. It includes provisions for the establishment of foreign-invested fund management companies and securities companies, facilitating easier entry and operation in the market.²⁷²
- Investor Protection: Provisions in the law to protect investors include requirements for information disclosure, transparency in operations, and penalties for violations. These measures aim to enhance market integrity and investor confidence.²⁷³

4.2 Challenges and Limitations

While improvements have been made to the regulatory framework surrounding PI, restrictions and requirements remain, including the restrictive foreign ownership caps, the complexity of regulatory requirements, and the need for continuous adaptation to evolving laws, which continue to limit PI. These factors contribute to an investment landscape that is not fully aligned with market principles, where transparency, consistency, and predictability are essential.

²⁷⁰ GOVN, *Securities Law (2019)*, Article 77.

²⁷¹ GOVN, *Securities Law (2019)*, Article 77.

²⁷² GOVN, *Securities Law (2019)*, Article 78.

²⁷³ GOVN, *Securities Law (2019)*, Articles 101 and 102.

Foreign Ownership Limits. One substantial limitation is the foreign ownership cap included in the *Security Law (2019)*, which limits foreign ownership for listed companies at 49 percent in most cases, however, for companies operating in certain conditional sectors, these limits can be even lower, sometimes restricting foreign ownership to as little as 30 percent.²⁷⁴ This restriction, although aimed at protecting national interests, can deter foreign investments and restrict the inflow of foreign capital, significantly deviating from market economy principles where such restrictions are minimal or non-existent, promoting a more open and competitive investment environment.²⁷⁵ Moreover, the “negative list” promulgated in the *Investment Law (2020)* described above applies to PI in addition to FDI and therefore completely precludes foreign PI in certain sectors.²⁷⁶

Complex Requirements and Regulatory Uncertainty. The regulatory environment surrounding PI remains complex, with frequent changes and updates to the laws and regulations governing securities. For example, the reporting and compliance requirements, as outlined by the law, make it more difficult for foreign investors to navigate the market.²⁷⁷ These requirements can be particularly burdensome as they often involve intricate procedures and frequent updates to stay compliant with evolving regulations. This can create uncertainty for foreign investors, who may find it challenging to stay compliant with the evolving legal framework.²⁷⁸

Underdeveloped Infrastructure for Securities Trading and Settlement. Another limitation is the relatively underdeveloped infrastructure for securities trading and settlement. For example, according to the *Securities Law (2019)*, the foreign ownership limits in various business sectors are defined by the government and subject to change without prior notice, which can lead to inconsistent application, causing uncertainty for investors and hindering market efficiency.²⁷⁹ In a market economy, efficient and transparent infrastructure for trading and settlement is essential to ensure smooth and reliable market operations. The infrastructural challenges in Vietnam create

²⁷⁴ GOVN, *Securities Law (2019)*, Article 4(4).

²⁷⁵ OECD, *OECD Economic Surveys: Viet Nam 2023*, (April 26, 2023); and ECOVIS Vietnam Law, “Economy in Vietnam and opportunities for foreign investors,” available at www.ecovis.com/vietnam/law/economy-in-vietnam-and-opportunities-for-foreign-investors/, March 30, 2021.

²⁷⁶ World Bank, *Taking Stock: Vietnam Economic Update – Harnessing the Potential of the Services Sector for Growth*, (March 13, 2023).

²⁷⁷ GOVN, *Securities Law (2019)*, Articles 9 and 21.

²⁷⁸ KPMG, “Vietnam 2024 Outlook - The Investor’s Guide to Growth,” available at <https://kpmg.com/vn/en/home/insights/2024/03/vietnam-2024-outlook-the-investor-guide-to-growth.html>, accessed May 24, 2024; and Freshfields Bruckhaus Beringer, “Top 10 Issues When Foreign Investors Invest in Vietnam and How to Deal with Them,” available at www.freshfields.com/en-gb/our-thinking/knowledge/insight/2021/09/top-10-issues-when-foreign-investors-invest-in-vietnam-and-how-to-deal-with-them/, September 16, 2021.

²⁷⁹ GOVN, *Securities Law (2019)*, Article 35(2); and U.S. International Trade Administration, “Vietnam - Country Commercial Guide: Market Challenges,” available at www.trade.gov/country-commercial-guides/vietnam-market-challenges, accessed May 25, 2024.

a perception of higher risk among investors, as they may prefer markets where the legal and regulatory environment is more predictable and stable.²⁸⁰

C. Developments in the Economy

To better understand the impact of the described legal reforms in Vietnam, this section explores the depth to which joint ventures or other foreign investments have been permitted in the country.²⁸¹ The market-oriented reforms Vietnam has attempted to open its economy up to foreign investment have been considerable, ultimately culminating in an investment climate that the OECD has characterized as being one of the most open in Asia. As a result, Vietnam has attracted increasing FDI levels since 2002. While this represents a noteworthy achievement, the rise in FDI has been roughly in line with simultaneous growth in Vietnam's GDP, suggesting that there hasn't been a dramatic change in the country's overall dependence on foreign investment during that period. A deeper analysis of official Vietnam FDI flows, as well as an investigation into comparative, dynamic, and other economic indicators from third party sources, suggest that challenges in conducting regular business operations, managing regulatory restrictions, and protecting IPRs may have hindered greater FDI inflows into Vietnam since 2002.

Joint ventures have also played a significant role in Vietnam's FDI landscape. The legal framework governing joint ventures, particularly the *Enterprise Law (2020)* and *Investment Law (2020)*, has been designed to encourage collaboration between foreign investors and local firms. However, these joint ventures often require foreign investors to partner with local entities, particularly in strategic sectors such as banking, telecommunications, and energy. While this can facilitate local knowledge and resource sharing, it also means that foreign investors face limitations on control and profit repatriation, not to mention additional risk exposure to their intellectual property. The requirement for joint ventures can add complexity to investment decisions and potentially deter investors seeking more straightforward investment opportunities via more fully owned and controlled business entities operating in Vietnam.

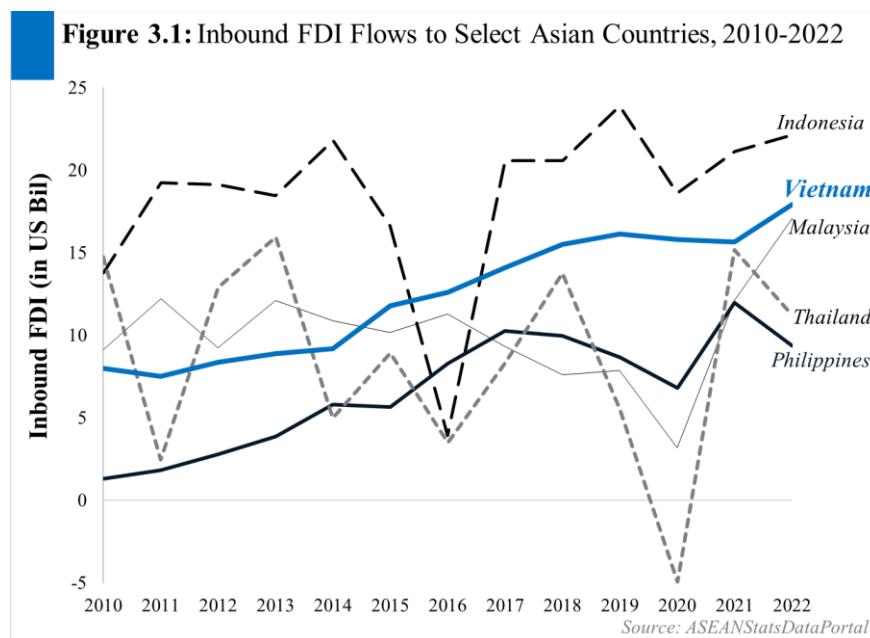
1. FDI Inflows

In its official comments that were submitted for the administrative record of this study, the GOVN highlighted FDI inflows into Vietnam as an indicator of its market-oriented economic reforms. This has been a noteworthy development, as the OECD has recently stated that Vietnam "is one of the most open markets in Southeast Asia," whose "restrictions on competition are

²⁸⁰ OECD, "OECD-Viet Nam Investment Forum: Vietnam and the OECD Declaration on International Investment and Multinational Enterprises – Background Note for Session 2", (October 27, 2023); and Doan Anh Sang, "How Vietnam's attracting foreign investment despite global market instability," *World Finance*, available at www.worldfinance.com/wealth-management/how-vietnams-attracting-foreign-investment-despite-global-market-instability, accessed May 29, 2024.

²⁸¹ A joint venture is a business established between two or more parties, comprising at least two foreign entities or at least one foreign and at least one local entity.

lower than in other emerging market economies.”²⁸² As Figure 3.1 shows, the value of FDI inflows to Vietnam has steadily increased since 2010, at rates that have been generally higher than traditional recipients of FDI inflows in Asia. This growth in FDI to Vietnam has been largely attributable to increased investment into its manufacturing sector, which accounted for approximately 61 percent of foreign investment commitments in 2022, and surges in investment inflows from a variety of Asian economies including Singapore, Japan, and China (see Figure 3.1).²⁸³ Measured against GDP, net inflows of FDI into Vietnam have not substantially increased since *Commerce’s Vietnam NME Determination (2002)*. As of 2022, FDI accounted for 4.4 percent of GDP compared to 4.0 percent in 2002.²⁸⁴ This lack of substantial increase in FDI inflows as a share GDP is a general trait shared by many other Asian countries.



In their submissions to the administrative record of this investigation, several U.S. domestic interested parties emphasized the disproportionately large role China has played in Vietnam’s economy, thereby making Vietnam allegedly prone to perpetuating and extending the non-market practices of its foreign direct Chinese investors.²⁸⁵ China accounts for about a third of Vietnam’s imports in recent years, and approximately double the share of the next leading source of Vietnamese imports (South Korea).²⁸⁶ Investment and interactions with Chinese firms can also exacerbate the flow of counterfeit goods, which tends to be prevalent in NMEs. In spite of these issues, however, China is not the most dominant source of FDI in Vietnam. Figure 3.2 illustrates the fact that China represents the fourth largest source of FDI flows to Vietnam (after Singapore,

²⁸² OECD, *OECD Economic Surveys: Vietnam 2023*, (April 2023), 10.

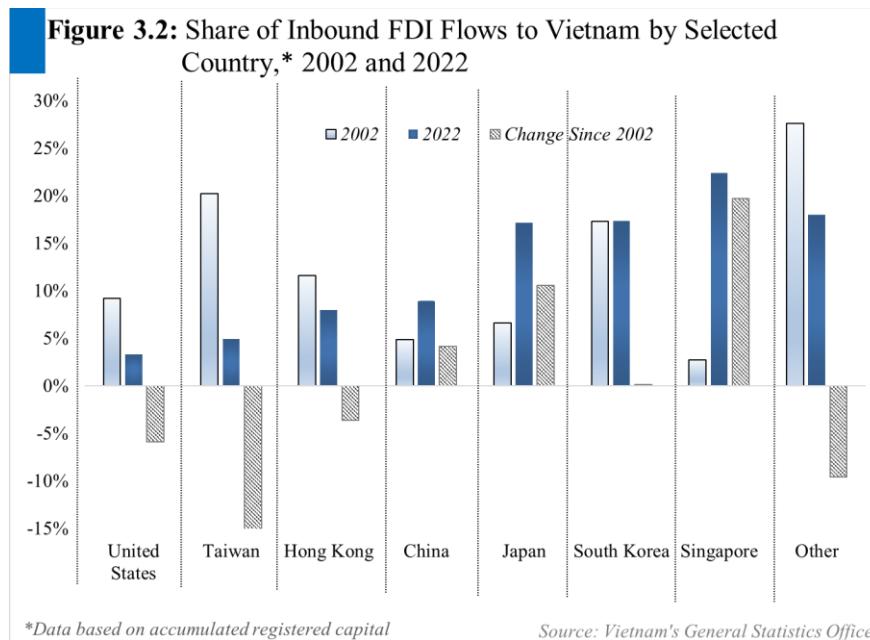
²⁸³ EIU, *Country Commerce Report: Vietnam*, (April 2023), 10.

²⁸⁴ World Bank, “Foreign direct investment, net inflows (% of GDP),” available at <https://data.worldbank.org/indicator/bx.klt.dinv.wd.gd.zs>, accessed May 25, 2024.

²⁸⁵ Domestic Interested Parties’ Comments, 31-48.

²⁸⁶ World Integrated Trade Solution, “Vietnam Trade,” available at <https://wits.worldbank.org/CountrySnapshot/en/VNM>, accessed April 14, 2024.

South Korea, and Japan). It also illustrates how Vietnam has become increasingly dependent on Chinese FDI over the past two decades.



2. The Gap Between Registered Capital vs. Implemented Capital in FDI Inflows

Figure 3.3 highlights the gap between total registered capital and implementation capital for FDI projects licensed in Vietnam over the past two decades.²⁸⁷ This gap ranges from 30 to 50 percent since 2002, indicating challenges in project execution and investment realization. While the value of FDI inflows and the value of registered FDI indicate interest by foreign investors, actual implementation lags, suggesting that investors can be reluctant to act upon what they registered for. This hesitation is, on its own, not necessarily demonstrative of a reluctance to invest in Vietnam, as other emerging market economies follow this trend. It does further suggest, however, that Vietnam's FDI potential is yet unrealized.

OECD FDI Regulatory Restrictiveness Index. The OECD's FDI Regulatory Restrictiveness Index (FDI Index) measures economy-wide and sector-specific (22 in all) FDI restrictions in a variety of countries. The index assesses four main types of FDI restrictions, including those related to (i) foreign equity limitations; (ii) discriminatory screening or approval mechanisms; (iii) restrictions on the employment of foreigners as key personnel; and (iv) other operational areas, e.g., restrictions on branching and on capital repatriation or on land ownership by foreign-owned enterprises. Restrictions are evaluated on a 0 (open) to 1 (closed) scale, with the overall index representing the economy-wide scores, which are the average across sectors.

²⁸⁷ Implementation capital is the portion of registered capital that is actually realized in foreign investment projects.

According to the OECD, Vietnam is “one of the biggest reformers over time of any country covered in the FDI Index” and possesses “few of the statutory barriers found in other large ASEAN member states.”²⁸⁸ Having said this, it also states that Vietnam’s system is also in need of further reforms.²⁸⁹ Figure 3.3 illustrates that Vietnam still has a regulatory environment that is considerably more restrictive than the OECD average, and one of the highest among NME-designated countries.

The OECD also found that FDI in Vietnam would benefit from improved SOE governance, including reducing SOE dominance in the energy, transport, and telecommunications sectors.²⁹⁰ Such governance challenges are attributable to complex ownership structures, weak management, and ambiguous financial and debt obligations of SOEs that are involved in FDI or joint venture operations in Vietnam, according to the World Bank. These factors “may distort competitive environments.”²⁹¹ The same World Bank analysis found that SOEs are “insulated from the competitive pressures introduced by FDI” due in large part to preferential financing, subsidies, or other advantages.²⁹² The OECD has also noted that the Competition and Consumer Agency “lacks independence and a sufficient budget” and requires greater power to act against SOEs abusing their market power.²⁹³

²⁸⁸ OECD, *OECD-Viet Nam Investment Forum: Viet Nam and the OECD Declaration on International Investment and Multinational Enterprises - Background Note for Session 2*, (October 27, 2023), 12.

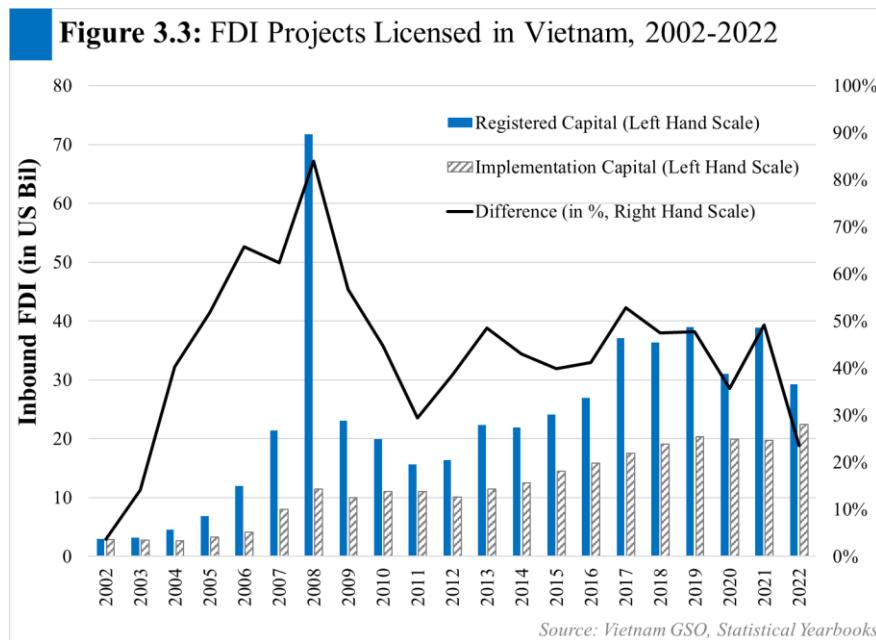
²⁸⁹ OECD, *OECD-Viet Nam Investment Forum: Viet Nam and the OECD Declaration on International Investment and Multinational Enterprises - Background Note for Session 2*, (October 27, 2023), 11.

²⁹⁰ OECD, *OECD-Viet Nam Investment Forum: Vietnam and the OECD Declaration on International Investment and Multinational Enterprises – Background Note for Session 2*, (October 27, 2023), 3; and OECD, *OECD Economic Surveys: Vietnam 2023*, (April 2023).

²⁹¹ Yue Li, Ryan Kuo, Mauricio Pinzon-Latorre, and Mark Albertson, “FDI, Market Power, and Markups: Evidence from Vietnam,” World Bank Policy Research working paper no. 9998, (April 6, 2022), 2.

²⁹² Yue Li, Ryan Kuo, Mauricio Pinzon-Latorre, and Mark Albertson, “FDI, Market Power, and Markups: Evidence from Vietnam,” World Bank Policy Research working paper no. 9998, (April 6, 2022), 18.

²⁹³ OECD, *OECD Economic Surveys: Vietnam 2023*, (April 2023).



As the OECD's regulatory restrictiveness index (see Figure 3.4) represents an economy-wide average of all sectors, a more granular look at this indicator's subcomponents reveals deeper insight. Specially, as shown in Figure 3.5, Vietnam appears to be relatively restrictive in air, maritime and road transportation, and telecommunication sectors relative to other ASEAN countries.²⁹⁴ One research paper from the Economic Research Institute for ASEAN and East Asia analyzing investment trends in East and Southeast Asia notes that Vietnam has exceptionally high FDI restrictions for transportation and communication, as it is shown in Figure 3.5.²⁹⁵ The World Bank also found that despite WTO members' General Agreement on Trade in Services (GATS) agreement to unconditionally extend MFN treatment to service suppliers of all other WTO members, "Vietnam has made reservations in that regard...to differentiate between foreign investors in certain communication and transport services."²⁹⁶ Indeed, the OECD notes that "key telecommunication markets are dominated by three state-owned enterprises, holding back potential economy-wide productivity gains."²⁹⁷ It recommends that the GOVN reduce barriers to foreign entry and ease foreign ownership restrictions in this sector.²⁹⁸

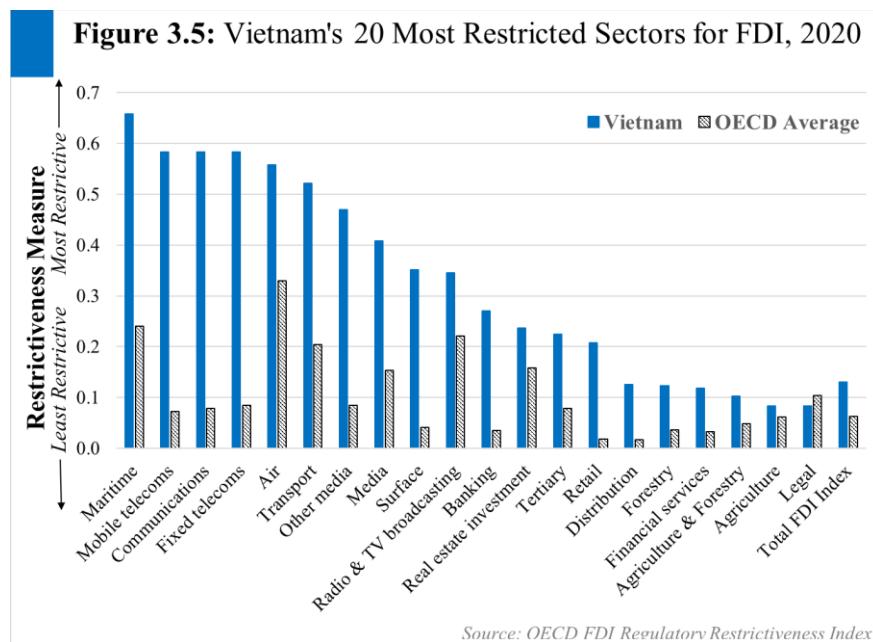
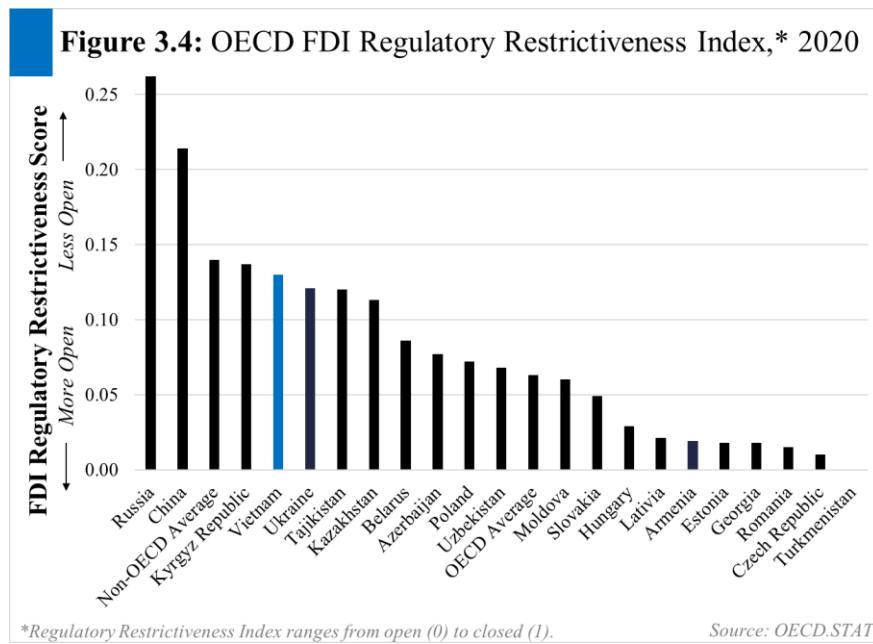
²⁹⁴ OECD, *OECD-Viet Nam Investment Forum: Viet Nam and the OECD Declaration on International Investment and Multinational Enterprises - Background Note for Session 2*, (October 27, 2023), 12.

²⁹⁵ Toshiyuki Matsuura, "Investment Liberalization in East and Southeast Asia," *Economic Research Institute for ASEAN and East Asia*, Paper Series No. 457, (October 2022), 19.

²⁹⁶ World Bank, *2022 Investment Policy and Regulatory Review: Vietnam*, (2022), 9.

²⁹⁷ OECD, *OECD Economic Surveys: Vietnam 2023*, (April 2023), 12.

²⁹⁸ OECD, *OECD Economic Surveys: Vietnam 2023*, (April 2023), 12.

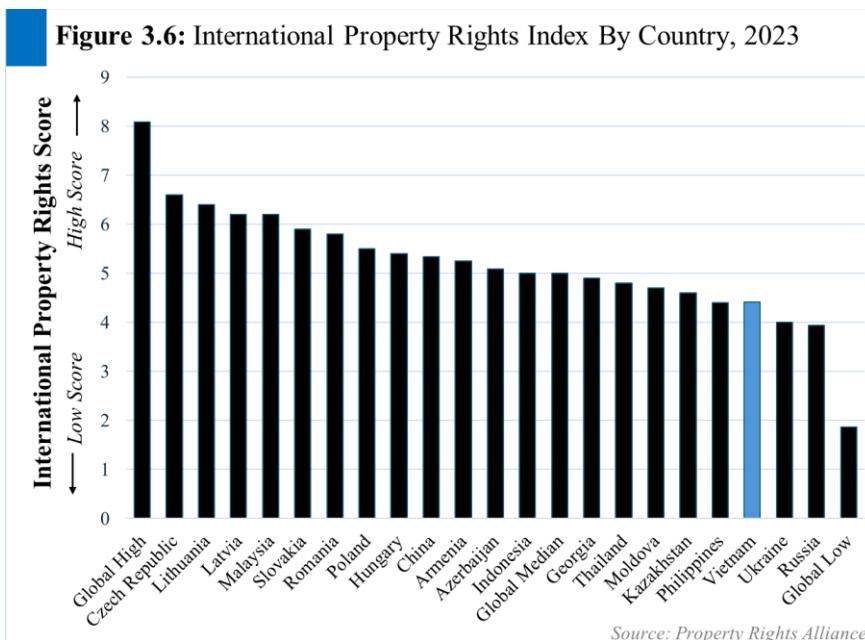


3. International Property Rights Index

IPR protection and effective dispute resolution mechanisms are essential for fostering a favorable FDI environment by safeguarding innovations and promoting fair competition. Strong IPR protection ensures that businesses can operate and innovate without fear of infringement, providing a secure and predictable environment. This protection attracts foreign investors,

boosting economic growth by encouraging technological advancement and increased investment in critical sectors. Ultimately, effective IPR protection supports a thriving, innovation-driven economy and aligns with market principles of fairness and transparency.

The International Property Rights Index (IPRI), published by the Property Rights Alliance, underscores some of the concerns about the strength of IPR protection in Vietnam. The IPRI evaluates the fundamental institutions that underlie a state's property rights regime, scoring 11 factors across three subindexes on a scale of 0 (worst) to 10 (best): legal and political environment, physical property rights, and intellectual property rights. As per data in Figure 3.6, Vietnam score (4.41) is not only below the global average (5.21), ranking 84 out of 125 globally, but also lower than almost all comparable regional neighbors, ranking 14 out of 19 in the Asia and Oceania region. According to IPRI, Vietnam's particular shortcomings include copyright protection, registering physical property, judicial independence, and access to financing.²⁹⁹



Despite signing up to various free trade agreement with IPR provisions, such as the CPTPP and EVFTA, and international treaties like the Trade-Related Aspects of IPR (TRIPS), the Hague Agreement Concerning the International Registration of Industrial Designs, the World Intellectual Property Organization Copyright Treaty, and the BERNE Convention, Vietnam suffers from inconsistent and insufficient IPR enforcement. The OECD has highlighted that weak

²⁹⁹ Property Rights Alliance, "International Property Rights Index 2023: Vietnam," available at www.internationalpropertyrightsindex.org/country/vietnam, accessed April 16, 2024.

IPR enforcement in Vietnam can undermine investor confidence and deter investment in high-tech and innovative sectors.³⁰⁰ The International Intellectual Property Alliance (IIPA) has reported persistent issues with counterfeit goods, fake brands, and pirated products proliferating Vietnam's marketplace, and "international companies have had problems protecting their IP through the courts, where a lack of specialist knowledge and failure to keep up with fast-changing digital trends has hampered efforts to implement domestic legislation and international agreements."³⁰¹

The Office of the U.S. Trade Representative has been outspoken about prominent piracy websites operating from Vietnam, as well as physical marketplaces, such as Tan Thanh Market and Saigon Square Shopping Mall, "known for the sale and distribution of Chinese-made counterfeit goods, including apparel, shoes, luxury goods, and electronics."³⁰² These harm both foreign and domestic brands and indicate a gap between the legal framework and its enforcement, creating an uncertain environment for foreign investors. According to the *DOS Investment Climate Statement 2023*, "fractured authority and lack of coordination among ministries and agencies responsible for enforcement are the primary obstacles," as well as a lack of IP expertise and specialized IP courts and judges.³⁰³

D. Assessment of the Factor

Over the past two decades, Vietnam has made notable progress in liberalizing its investment environment, particularly in terms of FDI. The introduction of the *Law on Investment* and *Decree No. 31* marked significant steps towards creating a more predictable and transparent regulatory framework. The shift to a market access "negative list" approach, which grants national treatment to foreign investors in a wider set of sectors, represents a more open investment policy compared to previous regulations. Another improvement is Vietnam's active participation in international trade agreements and efforts to comply with global trade norms, reflecting a commitment to market-oriented policies and international economic integration.

Despite these market-oriented improvements, significant challenges remain that hinder Vietnam from operating an FDI regime that is more closely associated with practices in market economies. The most prominent issues lie in the broad set of sectors that remain restricted to foreign investment and the persistent structural restrictions and implementation gaps within the country's economic framework. While Vietnam's legislative environment has evolved to support foreign investment, the practical application of these laws often falls short. The requirement for foreign investments to undergo a complex review process by the Ministry of Planning and

³⁰⁰ OECD, *OECD Regulatory Policy Outlook 2021*, (October 6, 2021).

³⁰¹ APFL & Partners Legal Vietnam, *30 Years of Foreign Direct Investment in Vietnam*, (July 2021), 58; and International Intellectual Property Alliance, *Special 301 Report on Copyright Protection and Enforcement*, (January 31, 2022).

³⁰² Office of the U.S. Trade Representative, *2023 Review of Notorious Markets for Counterfeiting and Piracy*, (January 2024), 53.

³⁰³ U.S. Department of State, *2023 Investment Climate Statements: Vietnam*, (July 2023).

Investment or the Prime Minister introduces delays and adds bureaucratic hurdles. Inconsistencies in the application of laws and preferential treatment for domestic firms, particularly SOEs, further complicate the investment landscape. Furthermore, the broad discretionary powers granted to the government under the Law on Investment 2020 create uncertainties for foreign investors. For example, the lack of clear guidelines on what constitutes a threat to national defense and security allows for arbitrary decisions, undermining the predictability and stability of the investment environment. While Vietnam's lack of transparency, regulatory inefficiencies, and high costs associated with investor uncertainties are not unique to NMEs, they call into question the efficacy of the countries' legislative reforms in this area to date. Additionally, the weak enforcement of intellectual property rights and the necessity for local partnerships in certain sectors pose significant barriers to foreign investment.

The above referenced issues create an uneven playing field for foreign investors, undermining the openness promised by the legal framework. The systemic limitations in Vietnam's economy are interconnected with other statutory factors such as currency convertibility, labor wage determinations, and government control over production and resource allocation. These non-market characteristics are evident in various sectors, indicating a high level of government influence that distorts market dynamics. These issues highlight the gap between the *de jure* framework and the *de facto* realities, suggesting that while legislative reforms are in place, their implementation remains problematic.

FACTOR FOUR: THE EXTENT OF GOVERNMENT OWNERSHIP OR CONTROL OF THE MEANS OF PRODUCTION

Vietnam's "Doi Moi" economic reforms, launched in 1986 and focusing on the state sector since 1992, have helped liberalize the economy from pervasive government ownership and control over the means of production. This has resulted in the initiation of two important and simultaneous market-oriented changes to its economy in which the state sector is now shouldering a smaller share of overall production relative to 2002, and enterprises in the non-state sector (notably the foreign invested sector, not the private sector) are filling the void. While these developments are critical, Vietnamese law still requires SOEs to play the leading role in its economy, and benefits are still disproportionately bestowed upon state sector firms relative to their private sector counterparts. Deeper structural reforms are therefore still needed before the economy becomes more tied to and dependent upon free-forming supply and demand conditions.

Continued state ownership and control over land, an important means of production, in Vietnam is an illustrative example of how the government's extensive involvement in the market. Although the GOVN has marginally improved policies governing government pricing and allocation of land-use rights, the government continues to own all land in Vietnam and exercise significant control over its pricing and allocation. Individual land-use rights remain limited and land users are often not able to sell their land-use rights or convert the land for different uses.

The assessment of GOVN ownership and control over Vietnam's means of production is described below in four sections. After the introductory section in Part A, Part B offers a description of Vietnam's legal framework governing SOEs and non-state enterprises (*e.g.*, private firms, foreign firms). Part B then evaluates related developments in the economy that have unfolded since *Commerce's Vietnam NME Determination* (2002), focusing on the prevalence of SOEs in Vietnam's economy. Part C describes legal and economic developments associated with government ownership and control over Vietnam's land system. Finally, Part D describes Commerce's overall assessment of the GOVN ownership and control over Vietnam's means of production in greater detail. It should be noted that since the extent of GOVN ownership and control over the means of production is linked to the extent of GOVN control over resource allocations described in Factor 5, some topics covered in factors 4 and 5 will overlap both by definition and scope.

A. Introduction

Excessive government ownership or control over the means of domestic production undermines the free and efficient functioning of market-based economic systems. While government ownership in an economy is not, on its own, determinative of NME conditions, SOE non-market practices can lower domestic prices and costs, rendering international competition of those domestically produced goods unfairly advantaged. In such cases, the size of the SOE sector can materially impact the extent of distortions in the economy.

Non-market practices include the disproportionate allotment of benefits to SOEs compared to what the government provides private or foreign enterprises, such that beneficiary SOEs no longer compete on a level playing field. Government influence over the operations of SOEs is also a form of non-market practice, especially when associated with the fulfillment of non-market-based government objectives. Such distortions erode the fundamental role of scarcity in determining supply and demand conditions, and ultimately distort market prices and output levels. They can also lead to unpredictable responsiveness to changing conditions.

According to GOVN statistics, the size of the state sector has declined from 40 percent in 2002 to 20 to 30 percent today, although the figure would be higher if it accounted for minority or indirect government ownership. As shall be explained, the reason for the range in today's estimate lies in certain definitional, measurement, and transparency issues in data collection. SOEs exist in most areas of Vietnam's economy and play a predominant role in certain sectors (*e.g.*, manufacturing) even where there is little justification for it. Vietnamese law still requires SOEs to play the leading role in the Vietnamese economy, as it did in 2002.³⁰⁴ To ensure this happens, SOEs are afforded government benefits compared to the private sector that result in a lack of competition, especially in industries where SOEs are predominant. Corporate governance over SOEs in Vietnam does not appear to reach OECD standards in many areas and SOEs do not operate at arm's length from the GOVN. Instead, the GOVN uses SOEs to carry out government objectives and exercises direct control over their operations to accomplish this. In recent years, the GOVN has created agencies responsible for exercising increased control over SOEs, including SOEs in which the government holds less than a majority of shares. The GOVN often uses state economic groups, which operate in specific fields, to carry out specific government objectives.

Although the private sector, whose small and informal (*i.e.*, unregistered) enterprises comprise almost half of GDP, is an important component of the Vietnamese economy, this sector has not grown as a share of GDP since the time of *Commerce's Vietnam NME Determination* (2002), due in part to the private sector's limited access to resources (*e.g.*, capital). The decline in the size of the SOE sector as a share of GDP is instead accounted for by the growth of the foreign investment sector.

Concerning the land system, *Commerce's Vietnam NME Determination* (2002) found that private ownership of land was not permitted in Vietnam and the GOVN controlled the granting, leasing, and transfer of land-use rights.³⁰⁵ Since then, although the GOVN has marginally improved policies governing government pricing and allocation of land-use rights, the government continues to own all land in Vietnam and exercise significant control over its pricing and allocation. Individual land-use rights remain limited and land users are often not able to sell their land-use rights to others or convert the land to a different use. Only the government can convert

³⁰⁴ *Commerce's Vietnam NME Determination* (2002), 29.

³⁰⁵ *Commerce's Vietnam NME Determination* (2002), 29.

land from one use to another. This results in land-use silos, where land is either over-allocated or under-allocated. The government also expropriates land from land users with low rates of compensation to the former land users. In addition to the lack of individual property rights over land, the GOVN is responsible for creating land-use plans, which allow the government, at all levels, to maintain control over land use and direct economic outcomes.

B. The State-owned Enterprise Sector and the Extent of Privatization

This section evaluates the roles of SOEs and private sector firms in Vietnam's economy. Many of the issues addressed in this section relate to corporate governance of SOEs, which is the institutional framework that regulates the division and the exercising of power in a corporation.³⁰⁶ Whether the government implements OECD best practice principles in corporate governance over SOEs is strongly suggestive of whether the government exercises excessive state intervention in the enterprises it owns, whether SOEs are operating transparently, and/or whether SOEs are operating in an accountable manner.³⁰⁷ These principles include: (i) evaluating and disclosing the rationales for justification of state ownership; (ii) governing SOEs in a transparent and accountable manner; (iii) ensuring a level playing field and fair competition in the marketplace when SOEs engage in economic activities; (iv) treating SOE shareholders equally; (v) SOEs adhering to the same disclosure, transparency, and accountability standards as private enterprises; and (vi) ensuring that boards of SOEs have the necessary authority, competencies, and objectivity to carry out their functions.³⁰⁸ If governments adhere to the principles listed above with respect to the companies they own, state ownership is less likely to result in non-market-based outcomes.

1. Legal Framework

1.1 Legislation Defining the SOE Sector and Governing Shareholder Control Over Companies in Vietnam

SOE definition. According to the 2020 *Law on Enterprises No. 59/2020/QH14 (Vietnam Law on Enterprises (2020))*, enterprises are considered SOEs when the GOVN either holds: (i) 100 percent of the charter capital, or (ii) at least 50 percent of the charter capital or voting shares.³⁰⁹ This is more encompassing than the SOE definition in place prior to 2020, which only included

³⁰⁶ A.N. Licht, "Chapter 34 - Corporate Governance," in *Handbook of Key Global Financial Markets, Institutions, and Infrastructure*, edited by Gerard Caprio, Douglas W. Arner, Thorsten Beck, Charles W. Calomiris, Larry Neal, Nicolas Veron, (Academic Press, 2013), 369.

³⁰⁷ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 3.

³⁰⁸ OECD, *Recommendation of the Council on OECD Legal Instruments Guidelines on Corporate Governance of State-Owned Enterprises*, (2024), 11-16.

³⁰⁹ GOVN, *Law on Enterprises No. 59/2020/QH14* (June 17, 2020) (*Vietnam Law on Enterprises (2020)*), Article 88 (1). According to Article 4(34) of the *Vietnam Law on Enterprises (2020)*, charter capital is "the total value of assets which the members and owners of a company have contributed or committed to contribute upon establishment of a limited liability company or partnership; or the total par value of shares sold or registered to be purchased at the time of establishment of a joint stock company."

limited liability companies with the state as the sole owner (*i.e.*, enterprises that were wholly owned by the GOVN).³¹⁰ While this definition is broader than the previous version and more accurately captures enterprises in which the GOVN exercises control over, companies in which the GOVN holds under 50 percent of shares are not considered SOEs by the GOVN. Similarly, enterprises that are indirectly owned by the GOVN (*i.e.*, through another SOE) are also not considered SOEs.

Legislation allows the government to exercise control over enterprises when it holds over 35 percent of shares. Although enterprises that have less than 50 percent state ownership are not officially characterized as SOEs, Vietnamese law grants veto rights over important corporate decisions to stakeholders who hold over 35 percent of voting rights.³¹¹ Therefore, legally, the GOVN has veto power over decisions of companies in which it holds over 35 percent of ownership shares. The legal basis for this comes from the *Vietnam Law on Enterprises (2020)*, which requires consensus of shareholders representing at least 65 percent of total votes for certain types of decisions to pass.³¹² The required 65 percent level of shareholder consensus implies that one shareholder with over a 35 percent stake in the company to have veto power over certain company decisions. This requirement applies for:

- (1) resolutions and decisions concerning the company;
- (2) decisions relating to the shares of the company;
- (3) decisions relating to business sectors the company operates in;
- (4) changes in the organizational structure of the company;
- (5) investment projects;
- (6) reorganization or dissolution of the company; and
- (7) other issues specified in the company charter.³¹³

These provisions in the *Vietnam Law on Enterprises (2020)* apply to all shareholders and therefore grant any holder of over 35 percent of shares in a company veto rights over important company decisions.

Vietnamese Law Grants Shareholders the Right to Hold Special Shares in Companies That Grant Them More Control. In addition to “ordinary shares,” the *Vietnam Law on Enterprises (2020)* states that “preference shares” (sometimes referred to as “golden shares”) may exist for joint-stock companies (JSCs).³¹⁴ Preference shares may be in the form of dividend preferred shares, redeemable preferred shares, voting preferred shares, or “other preferred shares as

³¹⁰ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 22.

³¹¹ GOVN, *Vietnam Law on Enterprises (2020)*, Articles 59 and 148. EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 8; and Alexander Ewart, “State-Owned Enterprises in Viet Nam,” in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 307-308, 319, 322.

³¹² GOVN, *Vietnam Law on Enterprises (2020)*, Article 148.

³¹³ GOVN, *Vietnam Law on Enterprises (2020)*, Articles 59 and 148.

³¹⁴ GOVN, *Vietnam Law on Enterprises (2020)*, Article 114.

specified in the company charter and the law on securities.”³¹⁵ Dividend preferred shares pay shareholders higher dividends compared to ordinary shares, while redeemable preferred shares are refunded by the company at the request of the owner or according to conditions stated in the company charter.³¹⁶ Most relevant for the purpose of evaluating control over companies are the voting preferred shares.³¹⁷ Voting preferred shares therefore allow their holders, who could be the GOVN, the ability to exercise more control over the enterprise than their ownership levels alone would suggest.

1.2 Legislation Governing the Scope of State Investment in the Economy

The GOVN’s rationale for state ownership. Governments have discretion in determining the rationale for state ownership and which areas of the economy SOEs are permitted to exist.³¹⁸ However, best practice of corporate governance of SOEs calls for governments to develop a concrete and unified state ownership policy.³¹⁹ In other words, a government should state explicitly where state ownership is permitted in the economy and allow SOEs to exist only for those explicitly stated purposes. For example, it is common for governments to permit SOEs to provide public services.³²⁰

Vietnam’s Law No. 69/2014/QH13 on Management and Utilization of State Capital Invested in the Enterprise’s Manufacturing and Business Activities (Law No. 69) identifies areas in the economy where the GOVN allows for state investment to be made, which can be interpreted as the government’s rationale for maintaining state ownership.³²¹ These areas of the economy include:

- (1) enterprises providing basic public products and services;
- (2) enterprises operating for the purpose of national defense and security;
- (3) enterprises operating in the natural monopoly sector; and
- (4) “hi-tech enterprises and those making large-scale investment in serving as the driving force behind the fast growth of different industries, sectors as well as the entire economy.”³²²

Overall, the government’s rationales are broad enough that they could encompass many industries. As described below, other pieces of legislation call for state investment that arguably does not fall within the rationales listed above. For these reasons, the GOVN is not considered by the OECD to have a concrete or unified state ownership policy.³²³

³¹⁵ GOVN, *Vietnam Law on Enterprises* (2020), Article 114.

³¹⁶ GOVN, *Vietnam Law on Enterprises* (2020), Articles 117 and 118.

³¹⁷ GOVN, *Vietnam Law on Enterprises* (2020), Article 116.

³¹⁸ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 11.

³¹⁹ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 17.

³²⁰ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 7.

³²¹ GOVN, *Law No. 69*, Article 10(1).

³²² GOVN, *Law No. 69*, Article 10(1).

³²³ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 51.

Areas of the Economy Legally Subject to State Monopolies. In 2017, the GOVN promulgated Decree No. 94/2017/NĐ-CP on Goods, Services and Geographical Areas Subject to State Monopoly in Commercial Activities, which provides a list of 20 “goods, services, and geographical areas” that are subject to state monopolies.³²⁴ This list is provided in Table 4.1 below. Some of these areas are commonly subject to state monopolies in market economies while others are not. For example, publishing activities are not commonly monopolized by the government in market economies.

Table 4.1: List of Goods and Services Subject to State Monopoly²

1. Goods and services for national defense or security
2. Industrial explosives
3. Gold bars
4. Gold materials
5. Lottery tickets
6. Cigarettes, cigars
7. National reserves
8. Banknotes and coins
9. Vietnamese postage stamps
10. Fireworks and firework-related services
11. National power grid, multi-purpose hydropower plants and nuclear power facilities of special socio-economic importance
12. Public maritime services
13. Public coastal information services
14. Flight assurance activities (air traffic services, aeronautical information services, and aviation search and rescue services)
15. State-invested national and urban railway infrastructure systems
16. Inter-provincial and inter-district irrigation works; and sea embankments
17. Forestry services in special-use forests
18. Publications (excluding printing and distribution activities)
19. Public postal service networks
20. Public services in newspaper distribution activities

³²⁴ GOVN, Decree No. 94/2017/NĐ-CP on Goods, Services and Geographical Areas Subject to State Monopoly in Commercial Activities (August 10, 2017).

Areas of the Economy Legally Subject to State Ownership. In addition to the decree described above, *Decision No. 22/2021/QD-TTg on Criteria for Classification of Wholly State-owned Enterprises and Partially State-owned Enterprises Subject to Ownership Transformation, Reorganization or State Capital Withdrawal in the 2021-2025 Period* (*Decision No. 22*) lists 13 economic activities in which SOEs are subject to being wholly state owned, seven economic activities where SOEs are subject to at least 65 percent state ownership, and seven economic activities where SOEs are subject to at least 50 to 65 percent state ownership.³²⁵ All three lists can be found in Tables 4.2, 4.3 and 4.4 below.

The list of economic activities where SOEs are required to be wholly state owned largely overlaps with the types of economic activities in Table 4.1 above. There are, however, some notable exceptions including “policy-oriented credit for socio-economic development;” “high-tech activities and large investments;” and petroleum exploration, mine development, and oil and gas exploitation. Taken together, these lists are extensive, and it is unclear why the GOVN requires high levels of state ownership in many of the economic activities included. For example, the justification for state monopolies in publishing, production of scientific films and information concerning ideological and cultural security, high-tech activities, petroleum exploration, mine development, and oil and gas exploitation is not clearly articulated. State ownership requirements in these industries and sectors suggest that the GOVN plans to retain strategic control over them for the foreseeable future.³²⁶

³²⁵ GOVN, *Decision No. 22*, Appendix.

³²⁶ EIU, “Political/Commercial Background: State Role in the Economy,” April 1, 2024, 2.

Table 4.2: Economic Activities Subject to 100% State Ownership³

1. Surveying and mapping for purposes of national defense and security
2. Production and trading of industrial explosives
3. National power transmission and load dispatch, management of the power distribution grid, construction and operation of large hydropower plants
4. Management and operation of national railway and urban railway infrastructure systems
5. Air traffic services, aeronautical information services, and search and rescue services
6. Maritime safety services
7. Postal services
8. Lottery business
9. Publishing (excluding printing and distribution of publications); production of scientific films and information concerning ideological and cultural security
10. Banknote printing, coin minting, and production of gold bars and golden souvenirs
11. Management and operation of inter-provincial and inter-district hydraulic structures and agricultural irrigation works
12. Policy-oriented credit for socio-economic development, deposit insurance, and trading and handling of non-performing loans associated with restructuring of the system of credit institutions
13. High-tech activities and large investments, creating a driving force for rapid development of other sectors and fields and the economy; petroleum exploration, mine development, and oil and gas exploitation

Table 4.3 Economic Activities Subject to at Least 65% State Ownership³²⁷

1. Management and operation of airports and airfields
2. Communication, navigation and surveillance services, aeronautical meteorology services
3. Management and operation of seaport terminals
4. Large-scale mineral mining
5. Production of cartoons for children
6. Banking (excluding insurance, securities, fund management companies, finance companies, and financial leasing companies)
7. Food wholesale, playing the role to ensure major balances of the economy, stabilizing the market and performing political tasks

³²⁷ GOVN, Decision No. 22, Appendix.

Table 4.4: Economic Activities Subject to at Least 50-65% State Ownership³²⁸

1. Extraction, production and supply of clean water, and water drainage
2. Production of base chemicals
3. Air transportation
4. Enterprises acting as focal-point petrol and oil importers that have at least 30% of the total market share, playing the role to ensure major balances of the economy and stabilizing the market
5. Production of cigarettes
6. Provision of telecommunications services accompanied with network infrastructure, that are of special importance to operation of the whole national telecommunications infrastructure and directly affect socio-economic development and national defense and security maintenance
7. Enterprises that provide essential goods and services for ethnic minority people in mountainous, deep-lying and remote areas

1.3 The Legal Mandate for the SOE Sector to Play the Leading Role in the Economy and Carry Out Governmental Objectives

The Legal Mandate for the SOE Sector to Play the Leading Role in the Economy. Vietnamese legislation simultaneously calls for equality of all types of enterprises and requires the SOE sector to play the leading role in the economy. The *Vietnam Law on Enterprises (2020)* calls for “equality before law for all enterprises, regardless of their form of ownership and economic sector...”³²⁹ The *Vietnam Constitution (2013)* similarly states that “{e}ntities in different economic sectors are equal,”³³⁰ including state, private, and foreign enterprises.³³¹ However, the *Vietnam Constitution (2013)* also states that “{t}he Vietnamese economy is a socialist-oriented market economy with multi-forms of ownership and multi-sectors of economic structure,”³³² and that “*the state economic sector plays the leading role.*”³³³ {emphasis added} As the foundational legal document for the GOVN and CPV, the *Vietnam Constitution (2013)* sets the basic rules for society, principles by which the state is governed, and overall economic development strategy for the country.³³⁴ According to the Economist Intelligence Unit, “Vietnam’s constitution, revised most recently in 2013, re-affirms the leading role of the state in the country’s economy

³²⁸ GOVN, *Decision No. 22*, Appendix.

³²⁹ *Vietnam Law on Enterprises (2020)*, Article 5(1).

³³⁰ GOVN, *Vietnam Constitution (2013)*, Article 51(2).

³³¹ World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity, and Democracy*, (2016), 62. Equal treatment of all enterprises, regardless of ownership was already a requirement of the *Law on Enterprises* which was passed in 2005. See GOVN, *The Law on Enterprises*, (November 29, 2005), Article 5(1).

³³² GOVN, *Vietnam Constitution (2013)*, Article 51(1).

³³³ GOVN, *Vietnam Constitution (2013)*, Article 51(1).

³³⁴ Vietnam is a one-party state that is effectively ruled by a single political party, the objectives of which are aligned with the government. The CPV and its role in Vietnam are codified into the *Vietnam Constitution (2013)*, which states that “{t}he Communist Party of Vietnam...is the leading force of the State and society.” See GOVN, *Vietnam Constitution (2013)*, Article 4.

and the continued dominance of state-owned enterprises (SOEs) in nearly all sectors and industries.”³³⁵

To ensure the SOE sector plays the leading role in the economy, either the private sector must be legally excluded from certain sectors or economic activities (discussed above) or SOEs must be provided benefits or favorable treatment that are not provided to private sector firms. The benefits provided by the GOVN to the SOE sector are described in the Developments in the Economy section.

Legislation Requiring SOE Investment, Management, and Utilization of State Capital to Carry Out the GOVN’s Development and Industrial Policy Objectives. Law No. 69 states that “principles of investment, management and utilization of state capital in an enterprise {shall}...conform to the strategy and proposal for socio-economic growth as well as the planning for sector development.”³³⁶ {emphasis added} The same law also states that state investment in enterprises “shall be made within...hi-tech enterprises, and those making large-scale investment {s} in serving as the driving force behind the fast growth of different industries, sectors, as well as the whole economy.”³³⁷ These provisions together indicate that SOEs are legally required to carry out the GOVN’s state planning and economic growth objectives.

Some SOEs are Established by Decisions that Require Them to Pursue Government Objectives. In addition to the requirements described above that apply to all SOEs, many SOEs in Vietnam are also required to fulfill specific government objectives in the legislation that established them. These objectives vary by company since SOEs in Vietnam operate in a variety of different sectors and industries in order to fulfill different objectives. Some SOEs are intended to provide public goods and services, while others carry out economic and political objectives. These objectives may not necessarily be in the interest of the enterprise or its other shareholders.

One example of an SOE that is required by its establishing decision to pursue objectives that are in the interest of the state and may not be in the interest of the enterprise is Vietnam National Textile and Garment Corporation (Vinatex). Vinatex’s 1995 establishing decision places it with responsibility of all stages of textile and garment production.³³⁸ The decision also states that Vinatex is a “{s}tate enterprise...with a view to increasing capital accumulation and concentration, specialization and cooperation for production, *in implementation of the State-assigned tasks...*”³³⁹ {emphasis added} Vinatex was equitized in 2014 and remains majority state

³³⁵ EIU, “Political/Commercial Background: State Role in the Economy,” April 1, 2024, 1.

³³⁶ GOVN, *Law No. 69*, Article 5.

³³⁷ GOVN, *Law No. 69*, Article 10.

³³⁸ GOVN, *Statute on the Organization and Operation of the Vietnam National Textile and Garment Corporation (Issued in conjunction with Decree No.55-CP of September 6, 1995, of the Government)* (September 6, 1995), Article 1.

³³⁹ GOVN, *Statute on the Organization and Operation of the Vietnam National Textile and Garment Corporation (Issued in conjunction with Decree No.55-CP of September 6, 1995, of the Government)* (September 6, 1995), Article 1.

owned with the SCIC holding 53.49 percent of its shares.³⁴⁰ This decision that established Vinatex remains in place even though Vinatex has been equitized.

1.4 Legislation Allowing the GOVN to Exercise Meaningful Control Over SOEs' Operations

This section reviews legislation that either limits state owners' rights concerning SOE operations or grants them the right to excessively intervene in their operations. Governments have the right to exercise control over enterprises in which they are the largest shareholder simply by the virtue of being the largest shareholder.³⁴¹ However, according to the OECD, "it is important that the state doesn't abuse its role as a dominant shareholder, for example by pursuing objectives that are not in the interest of the enterprise and are thereby to the detriment of other shareholders."³⁴² OECD best practices recommend that the state owner to develop broad mandates and objectives of SOEs but not to be involved in their operations.³⁴³ They also call for ensuring that boards of SOEs have the necessary authority, competencies, and objectivity to carry out their functions.³⁴⁴ This ensures that SOEs have the independence to behave as market actors and that they steer clear of non-market practices. As noted above, Vietnamese law requires SOEs to play the leading role in the economy and carry out government objectives.

Law No. 69 prescribes the rights and responsibilities of SOEs' "owner's representative agencies", which are regulatory bodies or entities that have been assigned by the GOVN to represent the state as the owner in the enterprise.³⁴⁵ This law states that the owner's representative agency "shall not directly get involved in manufacturing and business activities of an enterprise, and administrative work of the enterprise's management."³⁴⁶

However, the same law lists numerous powers and responsibilities for the owner's representative agencies concerning the operations of the SOEs they own, some of which include directly managing operations of the enterprise. For SOEs that are wholly owned by the GOVN, the owner's representative agency has the power and responsibility to:

- (1) make decisions on restructuring, ownership transfers, dissolutions, and bankruptcy;
- (2) make decisions on transferring state investment in the enterprises between state owners;
- (3) introduce and revise the charter;
- (4) approve the enterprise's five-year plans for investment and development;
- (5) approve the enterprise's annual production and business plans;

³⁴⁰ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 187.

³⁴¹ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 51-52.

³⁴² OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 51-52.

³⁴³ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 34.

³⁴⁴ OECD, *Recommendation of the Council on OECD Legal Instruments Guidelines on Corporate Governance of State-Owned Enterprises*, (2024), 11-16.

³⁴⁵ GOVN, *Law No. 69*, Article 3(1).

³⁴⁶ GOVN, *Law No. 69*, Article 5(4).

- (6) make decisions on appointments, salaries, *etc.*, for the chairperson, president, members of boards of directors and other high-level positions in the enterprise;
- (7) approve investment and development projects;
- (8) make decisions on capital contribution and acquisition of other companies;
- (9) approve financial statements and profit distribution plans;
- (10) supervise and examine the management and utilization of capital; and
- (11) evaluate the operations and efficiency of the manufacturing and trading activities of the enterprise.³⁴⁷

Most of these responsibilities and powers are also granted to the owner's representative agency of JSCs and multiple-member LLCs, which the GOVN often holds fewer ownership shares in than SOEs that are wholly owned by the GOVN.³⁴⁸

Other laws and decrees echo the powers and responsibilities of the state owners enumerated in *Law No. 69*. For example, *Decree No. 131/2018/NĐ-CP of the Government on Defining the Functions, Tasks, Powers and Organizational Structure of the Commission for the Management of State Capital at Enterprises* (*Decree No. 131*) grants state owners responsibilities over SOEs including, “perform{ing} tasks and exercis{ing} powers over enterprises...”³⁴⁹ *Decree No. 131* and *Decree No. 10/2019/NĐ-CP on the Exercise of Rights and Performance of Responsibilities of the State Owner's Representatives* (*Decree No. 10*) state that the state owners have the rights and responsibilities to, *inter alia*: promulgate, adopt, amend or supplement company charters; and approve of the company’s five-year plans and annual production and business plans.³⁵⁰ *Decree No. 10* also requires representatives of state capital to consult with the owner’s representative agencies before giving opinions, voting or making certain decisions.”³⁵¹ This applies to, *inter alia*:

- (1) objectives, tasks and business decisions;
- (2) charters and revision of charters of enterprises;
- (3) production and business strategies and plans;
- (4) financial statements, profit distribution, *etc.*;
- (5) recruitment regime; and
- (6) remuneration, salaries and bonuses.³⁵²

Vietnamese law does not clearly define the responsibilities of line ministries (*i.e.*, government departments or agencies) with regard to SOEs.³⁵³

³⁴⁷ GOVN, *Law No. 69*, Article 42.

³⁴⁸ GOVN, *Law No. 69*, Article 43.

³⁴⁹ GOVN, *Decree No. 131*, Article 5(3).

³⁵⁰ GOVN, *Decree No. 131*, Article 5; and GOVN, *Decree No. 10*, Article 9.

³⁵¹ GOVN, *Decree No. 10*, Article 13(5).

³⁵² GOVN, *Decree No. 10*, Article 13(5).

³⁵³ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 89.

In another example, the *Vietnam Law on Enterprises (2020)* states that it is the responsibility of supervisors to “exercise their rights and perform their obligations...*in order to protect interests of the State...*” and “*to be faithful to interests of the State and company.*”³⁵⁴ {emphasis added} If interests of the state conflict with interests of the company, this provision has the potential to cause a conflict of interest where the SOE supervisors are forced to choose between prioritizing either state or company interests.

1.5 Legislation Governing Appointments and Independence of Boards SOEs

Appointments of Boards of Directors. As a shareholder in SOEs, the state often has the right to appoint members of boards of directors and other management roles in SOEs. However, OECD best practice calls for the state to not have undue influence over the selection of board members of enterprises with both state and non-state shareholders.

In Vietnam, members of boards of directors and supervisory boards for JSCs, including both those with and without state ownership, are elected using a method of “cumulative voting.”³⁵⁵ In this system, the total number of votes for each shareholder is equal to that shareholder’s total shares multiplied by the total number of vacant positions.³⁵⁶ However, shares with preferential votes are entitled to a greater number of votes.³⁵⁷ Each shareholder may pool its votes for specific candidates.³⁵⁸ This method does not grant the GOVN special privileges for electing members of boards of directors of such companies except for when some shareholders are entitled to preferential votes. However, the *Vietnam Law on Enterprises (2020)* specifies that other methods may be used if specified in the company charter.³⁵⁹ The *Vietnam Law on Enterprises (2020)* further states that boards of directors have between 3 and 11 members and that their terms of office must not exceed five years.³⁶⁰ However, members may be re-elected for an unlimited number of terms.³⁶¹

Independence of Boards of Directors. OECD-based best practice calls for boards of directors and other governing boards of SOEs to have independence from the government with respect to exercising their responsibilities.³⁶² However, *Law No. 69* requires members of boards of directors of SOEs to consult with the owner’s representative agency before “giving opinions, voting and making decision{s}” on various issues, including:

- (1) business decisions, company objectives, tasks, strategies, and plans for investment and development;

³⁵⁴ GOVN, *Vietnam Law on Enterprises (2020)*, Article 107(3).

³⁵⁵ GOVN, *Vietnam Law on Enterprises (2020)*, Article 148(3).

³⁵⁶ GOVN, *Vietnam Law on Enterprises (2020)*, Article 148(3).

³⁵⁷ GOVN, *Vietnam Law on Enterprises (2020)*, Article 148(3).

³⁵⁸ GOVN, *Vietnam Law on Enterprises (2020)*, Article 148(3).

³⁵⁹ GOVN, *Vietnam Law on Enterprises (2020)*, Article 148(3).

³⁶⁰ GOVN, *Vietnam Law on Enterprises (2020)*, Article 154(2).

³⁶¹ GOVN, *Vietnam Law on Enterprises (2020)*, Article 154(2).

³⁶² OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 34.

- (2) introduction and revision of the charter;
- (3) distribution of profits;
- (4) reorganization, dissolution, or bankruptcy; and
- (5) “other matters” managed by the boards of directors.³⁶³

GOVN presence in and control over boards of directors is important because, as required by the *Vietnam Law on Enterprises (2020)*, boards of directors have “full competence to make decisions in the name of the company and to exercise the rights and perform the obligations of the company.”³⁶⁴

1.6 Disclosure and Transparency Requirements of SOEs

OCED best corporate governance practices call for high standards of transparency, disclosure, compliance, and auditing standards for SOEs.³⁶⁵ This helps ensure, among other things, that SOEs are not involved in market-distorting activities. Vietnam’s *Law No. 69* states that “{p}ublic disclosure and transparency in investment, management and utilization of state capital invested in an enterprise must be respected.”³⁶⁶ The *Anti-corruption Law (2018)* provides more specific guidance on the information SOEs are required to disclose. It requires SOEs to disclose information concerning, *inter alia*, organizational structure and operations, implementation of policies related to the interests of officials of the SOE, and the management and use of public funds.³⁶⁷ The law provides disclosure exemptions for state secrets, business secrets and “other information prescribed by law.”³⁶⁸

The *Vietnam Law on Enterprises (2020)* streamlined the classification of private enterprises and SOEs such that they both operate as limited liability companies and joint stock companies.³⁶⁹ This made private enterprises and SOEs subject to the same disclosure and transparency requirements.

Although the disclosure and transparency requirements have improved in recent years, concerns remain with the legal framework that have the potential to result in poor implementation.³⁷⁰ For example, multiple state bodies are responsible for monitoring SOEs financial and non-financial disclosure, which has the potential to leave gaps in oversight.³⁷¹

³⁶³ GOVN, *Law No. 69*, Article 48(1).

³⁶⁴ GOVN, *Vietnam Law on Enterprises (2020)*, Article 153(1).

³⁶⁵ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 24.

³⁶⁶ GOVN, *Law No. 69/2014/QH13 on Management and Utilization of State Capital Invested in the Enterprise’s Manufacturing and Business Activities* (November 26, 2014), Article 5(7).

³⁶⁷ GOVN, *Anti-Corruption Law (2018)*, Article 9(1) and 10.

³⁶⁸ GOVN, *Anti-Corruption Law (2018)*, Article 9(1).

³⁶⁹ GOVN, *Vietnam Law on Enterprises (2020)*, Article 88(1).

³⁷⁰ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 130-131.

³⁷¹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 130-131.

1.7 Legislation Governing Competition

An important component of the analysis of state ownership and control over the means of production is whether SOEs compete fairly with private enterprises, especially when they operate in the same industries. Although the state plays both roles as enterprise owner and market regulator, it is the state's responsibility to ensure that, where competition between the private and SOE sectors occur, it is conducted on a level playing field.³⁷² A robust legislative system governing competition can loosen government control and oversight over the means of production and resource allocation.

Enterprise classification. As noted above, the *Vietnam Law on Enterprises (2020)* streamlined the classification of private enterprises and SOEs such that they both operate as limited liability companies and joint stock companies.³⁷³ Since private companies and SOEs now operate under the same legal forms, they are subject to the same legal rights and requirements.³⁷⁴ Vietnamese law does not grant SOEs special rights that protect them from insolvency or bankruptcy.³⁷⁵

Competition law. The *Competition Law, No. 23/2018/QH14 (Vietnam Competition Law (2018))* is the primary law governing competition between the private and SOE sectors. This law codifies the equal treatment of all enterprises, regardless of ownership, and established agencies to enforce it.³⁷⁶ Amendments made to the *Vietnam Competition Law (2018)* strengthened the legal framework surrounding competition.³⁷⁷ However, they did not address deficiencies of the previous version of the *Vietnam Competition Law (2018)*.³⁷⁸ For example, although the 2018 *Vietnam Competition Law (2018)* created a new government agency to regulate competition, the National Competition Committee (NCC),³⁷⁹ this agency was placed under the Ministry of Industry and Trade,³⁸⁰ which is a shareholder of many significant SOEs.³⁸¹ This results in conflicts of interest where the NCC faces the choice of protecting competition in the Vietnamese economy or providing favorable treatment to the companies in which the Ministry of Industry and Trade holds ownership shares in.³⁸² According to the OECD, being placed under the Ministry of Industry and Trade “jeopard {izes} the independence” of the competition agency.³⁸³ The *Vietnam Competition Law (2018)* also grants the GOVN discretion in determining whether economic concentration (defined as mergers, consolidations, acquisitions, and the creation of

³⁷² OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 11.

³⁷³ GOVN, *Vietnam Law on Enterprises (2020)*, Article 88(1).

³⁷⁴ GOVN, *Vietnam Law on Enterprises (2020)*, Article 88; and OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 87-88.

³⁷⁵ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 88.

³⁷⁶ OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam* (2018), 13; and GOVN, *Competition Law (2004)*.

³⁷⁷ OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 67.

³⁷⁸ OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 67.

³⁷⁹ GOVN, *Vietnam Competition Law (2018)*, Article 13.

³⁸⁰ GOVN, *Vietnam Competition Law (2018)*, Article 46(1).

³⁸¹ OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 56-57.

³⁸² OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 85, 98.

³⁸³ OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 85.

joint ventures)³⁸⁴ has “positive effects on the development of the sector, domain, science and technology in accordance with the state’s strategies and planning.”³⁸⁵ If the GOVN determines the effects of economic concentration are positive, it is permitted.³⁸⁶ Granting such discretion to the GOVN in the Vietnamese context where large SOEs dominate important sectors of the economy is likely to result in *ad hoc* implementation in the interest of the SOE sector. In addition, the same law states that “competition must be implemented on the principles of honesty, fairness, *non-infringement upon the interests of the State...and interests of enterprises* and consumers.”³⁸⁷ {emphasis added} Therefore, while improvements to the *Vietnam Competition Law (2018)* have been made, weaknesses remain.

Government and SOE Procurement. SOEs can bid for government procurement contracts and can also procure goods and services from other companies. OECD-based best practice for SOE governance calls for both processes to be competitive, non-discriminatory, and transparent.³⁸⁸ Both government and SOE procurement have the potential to result in an uneven playing field between private sector enterprises and SOEs if not done competitively. This can happen if SOEs provide goods or services to the government at below-market prices, or if the government exhibits a preference to buy from its SOEs.³⁸⁹ If private entities are effectively excluded from business transactions, markets do not function freely.

The legal requirements for procurement procedures in Vietnam follow market-oriented principles. Enterprises classified as state owned by the GOVN (*i.e.*, enterprises in which the GOVN holds at least 50 percent of the charter capital or voting shares) are required to comply with the *Law on Bidding No. 43/2013/QH13 (Vietnam Law on Bidding (2013))* in instances where the SOE is either the bidder or bid solicitor.³⁹⁰ The *Vietnam Law on Bidding (2013)* requires government and SOE procurement to follow certain procedures to ensure competitiveness and transparency. Concerning competitiveness, potential contractors are required to be legally and financially independent from the project owner.³⁹¹ In an effort to increase transparency, the law requires bidding information to be published on the national bidding network and bidding newspaper.³⁹²

³⁸⁴ GOVN, *Vietnam Competition Law (2018)*, Article 29(1).

³⁸⁵ GOVN, *Vietnam Competition Law (2018)*, Article 32.

³⁸⁶ GOVN, *Vietnam Competition Law (2018)*, Article 32.

³⁸⁷ GOVN, *Vietnam Competition Law (2018)*, Article 5.

³⁸⁸ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 21.

³⁸⁹ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 180.

³⁹⁰ GOVN, *Vietnam Law on Bidding (2013)*, Article 1; and OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 108.

³⁹¹ GOVN, *Vietnam Law on Bidding (2013)*, Article 6.

³⁹² GOVN, *Vietnam Law on Bidding (2013)*, Article 8(2).

1.8 The Role of the CPV and its Presence in the SOE Sector

Role of the Communist Party of Vietnam. The CPV is the single ruling party in Vietnam and is essentially codified as such in the *Vietnam Constitution (2013)*. The *Vietnam Constitution (2013)* states that “{t}he Communist Party of Vietnam...is the leading force of the State and society” and “all party organizations...operate within the framework of the Constitution.”³⁹³ {emphasis added} According to the GOVN’s website, the CPV’s “mission is to lead the country in all fields” and that “all Party cells and members working in the State agencies as well as socio-political organizations must strictly observe the Party’s resolutions and direction.”³⁹⁴ The Economist Intelligence Unit states that, barring unforeseen circumstances, it “expects Vietnam to remain a one-party state, tightly controlled by the Communist Party of Vietnam, throughout 2023–27.”³⁹⁵ The CPV and GOVN will be treated as one-in-the-same for purposes of this analysis.

Party Committees. Party Committees, which are also referred to as Party Cells or Party Organizations, are organizations within SOEs that are made up of members of the CPV. *Decree No. 69/QD-TW on Functions, Duties, Powers, and the Organizational Structure of the Higher Level Grassroots Party Committee in State-owned Enterprises and Enterprises with Dominant State Capital* (*Decree No. 69*) grants Party Committees certain rights and responsibilities, including “directly lead {ing} all aspects of business activities, {and} ensuring that the enterprise and its socio-political organizations *operate in accordance with the Party’s guidelines* and the State’s policies.”³⁹⁶ {emphasis added} This decree also states that it is the duty of the Party Committee “to lead the development and effective implementation of enterprises’ long-term and medium-term development strategies and annual plans” and “to implement regimes and policies to employees and improve enterprise efficiency in accordance with policies and guidelines of the Party as well as policies and laws of the State.”³⁹⁷ Party Committees therefore serve as a means for the CPV/GOVN to directly exercise control over operations of SOEs.

Party Committee Members are Jointly Appointed to High-ranking SOE Positions. As described above, the GOVN/CPV is legally responsible for appointing presidents, management, and boards of directors of SOEs. According to *Decree No. 69/QD-TW on Functions, Duties, Powers, and Organizational Structure of the Higher Level Grassroots Party Committee in State-owned Enterprises and Enterprises with Dominant State Capital*, “it is the Party Committee’s responsibility to lead the coordination between the board of directors in performing its assigned functions and powers...”³⁹⁸ This decree also codifies the practice of jointly appointing CPV members on Party Committees and boards of directors in the same companies. It states that

³⁹³ GOVN, *Vietnam Constitution (2013)*, Article 4.

³⁹⁴ GOVN, “Political System,” <https://vietnam.gov.vn/political-system-68959>, accessed by July 15, 2024.

³⁹⁵ EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 5.

³⁹⁶ GOVN, *Decree No. 69*, Article 16.

³⁹⁷ GOVN, *Decree No. 69*, Article 3.

³⁹⁸ GOVN, *Decree No. 69*, Article 16.

“{t}he Secretary of the Party Committee is elected in accordance with the regulations of the Party Charters and is also the chairman of the Board of Directors (chairman of the Members' Council, the president of the company).”³⁹⁹

1.9 Legislation Governing Private Sector Development

The GOVN has long expressed its desire for further development of the private sector and has even codified its development in certain government resolutions. For example, *Resolution No. 10-NQ/TW on Development of the Private Economic Sector into an Important Driving Force of the Socialist-oriented Market Economy (Resolution No. 10)* of 2017 calls for “developing a healthy, effective and sustainable private economic sector to truly become an important driving force of the socialist-oriented market economy.”⁴⁰⁰ The resolution envisions achieving this by increasing the market participation of the private sector and encouraging fair competition, fostering the private sector’s access to resources, including by developing “the infrastructure of industrial parks, industries, industrial clusters, and economic zones,” and supporting the private sector’s innovation, technological modernization, and productivity.⁴⁰¹ It set specific targets for private sector growth, and envisioned the private sector to account for half of the economy’s GDP by 2020.⁴⁰²

Resolution No. 45/NQ-CP on Private Economic Development to Become a Dynamic Important Force of Socialist Oriented Market Economy of 2023 expanded the GOVN’s goals for the private domestic sector, aiming for it to account for 60 to 65 percent of GDP by 2030.⁴⁰³ To achieve these goals, the resolution expresses the government’s commitment to certain reforms, including, *inter alia*:

- (1) amending regulations on bidding and public-private partnerships;
- (2) continuing “to review and propose cuts in conditional investment and business sectors;”
- (3) evaluating and potentially amending the *Law on Support for Small and Medium Enterprises* “to suit reality;”
- (4) establishing a legal framework that would better position business households “to expand their scale, improve operational efficiency and mechanisms,” and “transform into enterprises.”⁴⁰⁴

To encourage private (including foreign) investment in infrastructure in Vietnam, the GOVN passed the *Law No. 64/2020/QH14 on Investment in the Form of Public-private Partnership* in

³⁹⁹ GOVN, *Decree No. 69*, Article 11.

⁴⁰⁰ GOVN, *Resolution No. 98/NQ-CP dated October 03, 2017, of the Government on promulgating the Government’s action program on implementation of Resolution No. 10-NQ/TW of June 3, 2017, of the 5th plenum of the XIIth Central Committee of the Communist Party of Vietnam, on development of the private economic sector into an important driving force of the socialist-oriented market economy*, October 3, 2017, Article 3.

⁴⁰¹ GOVN, *Resolution No. 10*, part 2. Major Tasks, clause 3, subsection b.

⁴⁰² GOVN, *Resolution No. 10*, part 1. Purposes and Requirements, clause 4.

⁴⁰³ GOVN, *Resolution No. 45/NQ-CP Promotion of the Government’s Action Program to Continue Implementing Resolution No. 10-NQ/TW dated June 3, 2017, the Fifth Conference of the Central Executive Committee Term XII on Private Economic Development to become a Dynamic Important Force of Socialist Oriented Market Economy*, part 1. Objectives, clause 2. Specific Goals, March 31, 2023.

⁴⁰⁴ GOVN, *Resolution No. 45/NQ-CP*, Part 3 Major Tasks.

2020.⁴⁰⁵ This law outlines collaboration between the public and private sectors in public works and infrastructure projects in five areas:

- (1) transportation;
- (2) power grids and generation;
- (3) irrigation and clean water supply (excluding “hydropower plants and cases where the GOVN holds a monopoly”);
- (4) health; and
- (5) information technology infrastructure.⁴⁰⁶

In many cases, the GOVN will provide a certain amount of funding if private investors agree to take on a project. In certain instances, the law requires participation from private investors for projects to proceed. For example, it requires enterprises that are wholly state owned to enter into partnerships with private enterprises (forming a joint venture) for expressway construction projects to proceed.⁴⁰⁷ It remains unclear why such requirements are necessary, as they place the government in control of which forms of enterprises are allowed to conduct such business.

2. Developments in the Economy

2.1 The Size of the SOE Sector in Vietnam

To understand the extent of government ownership and control over the means of production in Vietnam, it is important to evaluate both the legal structure underpinning its system of corporate ownership as well as the related economic developments that have unfolded. Following the *de jure* analysis described above, this section will evaluate the extent of state ownership that exists in the Vietnamese economy today and describe how it has evolved since *Commerce’s Vietnam NME Determination* (2002).

While government ownership in an economy is not, on its own, demonstrative of NME conditions, the extent of SOE involvement in non-market practices can distort prices and costs in the economy. In these instances, the size of the SOE sector can impact the extent of distortions in the economy as a whole. Non-market practices concerning SOEs include benefits disproportionately being provided to SOEs compared to private enterprises such that they do not compete on a level playing field, and the government exercising undue influence over the operations of SOEs to use them to fulfill government objectives that are not consistent with market-based objectives.

2.1.1 Defining the SOE Sector in Vietnam

⁴⁰⁵ Don Lambert, “Viet Nam’s Public-Private Partnership Law is Up and Running. What’s Next?” *Asian Development Bank*, July 15, 2021.

⁴⁰⁶ GOVN, *Law on Public-Private Partnership No. 64/2020/QH* (July 1, 2020) (*PPP Law No. 64*), Article 4.

⁴⁰⁷ GOVN, *PPP Law No. 64*, Article 29(5).

Although the GOVN considers SOEs to be enterprises in which it holds at least 50 percent of shares, Commerce considers SOEs to be enterprises in which the GOVN, either directly or indirectly, either (i) holds over 35 percent of the shares or (ii) is the largest shareholder. The 35 percent ownership threshold that implies government control is specific to Vietnam since, as described in the Legal Framework (Part 1.1), shareholders with over 35 percent ownership in a company have veto power over major company decisions. Maintaining over 35 percent of shares in a company therefore allows the GOVN to exercise control over the company. As will be described throughout this section, the GOVN does indeed exercise control over enterprises in which it holds 35 percent of the shares. While Vietnamese law also allows the GOVN to hold preference shares in companies, which could allow the GOVN to exercise control over companies that it holds any ownership shares in, Commerce has not found any instances in which preferences shares have been used by the GOVN to exercise control over enterprises in which it holds significantly less than 35 percent of the shares unless the GOVN is the majority shareholder. It is difficult to assess whether Commerce's inability to find such information is attributable to lack of transparency in regard to such matters or a general absence of GOVN direction for such enterprises.

The second criterion listed above that implies GOVN control is when the government is the largest shareholder. This criterion is not specific to Vietnam. Rather, control is generally granted to the largest shareholders of companies. Where necessary, Commerce differentiates between "majority SOEs," or enterprises in which the GOVN holds over 50 percent of the shares, and "non-majority SOEs," or enterprises in which the GOVN holds less than 50 percent of the shares but is either the largest shareholder or holds over 35 percent of the shares of the company. Table 4.5 indicates Commerce's characterization of enterprises in Vietnam based on ownership levels.

Issues concerning GOVN data. Since the GOVN's definition of SOE is narrower than Commerce's definition, the estimates of the size of the SOE sector shown below underestimate what Commerce considers to be the true size of the SOE sector.⁴⁰⁸ Another characteristic of the GOVN's reporting of statistics that underestimates the true size of the SOE sector is that the GOVN does not include indirect government ownership (*i.e.*, when an entity is owned by another entity that is owned by the government, such as a company being owned by an SOE) in its statistics. For these reasons, it is reasonable to assume that the SOE sector in Vietnam is larger than the data suggests.

⁴⁰⁸ The *Vietnam Law on Enterprises* (2020) defines "state enterprise" as "an enterprise in which the State holds over 50% of charter capital or total voting shares..." See GOVN, *Vietnam Law on Enterprises* (2020), Article 4(11).

Table 4.5: Commerce's Definitional Characterizations of Enterprises in Vietnam

Enterprise Characterization	SOE?	State Ownership Level (Direct or Indirect)	GOVN is Largest Shareholder?	Legally Identifiable GOVN Control
Majority state-owned enterprise (majority SOE)	Yes	>50%	Yes	Full or majority
Non-majority state-owned enterprise (non-majority SOE)	Yes	≤50%	Yes	Partial (majority)
Non-majority state-owned enterprise (non-majority SOE)	Yes	>35%	No	Partial (veto rights)
Non-majority state-owned enterprise (non-majority SOE)	Yes	<35%	Yes	Partial (majority)
Joint-stock company with minority levels of state ownership	No	<35%	No	Possible but unlikely (e.g., preference shares)
Private enterprise	No	None	No	None

2.1.2 SOE Sector's Share of GDP

Since GDP is used to measure the size of economic activity, the SOE sector's contribution to GDP is one of the best metrics to measure the overall influence of the SOE sector on economic activity. As can be seen in Figure 4.1 below, the SOE sector, as defined by the GOVN as enterprises that are wholly or majority owned by the state, accounts for between roughly 20.6 and 30.2 percent of GDP as of 2022 or 2020, respectively, depending on which GOVN estimate is used.⁴⁰⁹ While the value has declined from roughly 40 percent of GDP at the time of *Commerce's Vietnam NME Determination (2002)*,⁴¹⁰ the exclusion of contributions from (i) SOEs that fall in the range of 35 to 50 percent government owned, and (ii) indirect levels of state ownership make this progress difficult to contextualize.

The difference in the 20.6 and 30.2 percent estimates can be explained, first, by the GOVN's General Statistics Office's change in methodology for calculating GDP that started in the first

⁴⁰⁹ GOVN, General Statistics Office, "Gross Domestic Product: GDP," data accessed via CEIC. SOE sector = greater than 50 percent of charter capital or total voting shares; private domestic sector = 50 percent or more private domestic ownership; foreign investment sector = 50 percent or more foreign investment.

⁴¹⁰ *Commerce's Vietnam NME Determination (2002)*, 25.

quarter of 2021.⁴¹¹ According to the General Statistics Office, the changes to GDP data are attributed to increased coverage of economic activity, the inclusion of measurements of intangibles (including research and development and computer software production), and changes in the computation of intermediate cost and price indices.⁴¹² The new methodology resulted in a sharp increase in GDP accounted for by the non-SOE sector (driven by the foreign-invested sector) and a reduction in the size of the SOE sector.

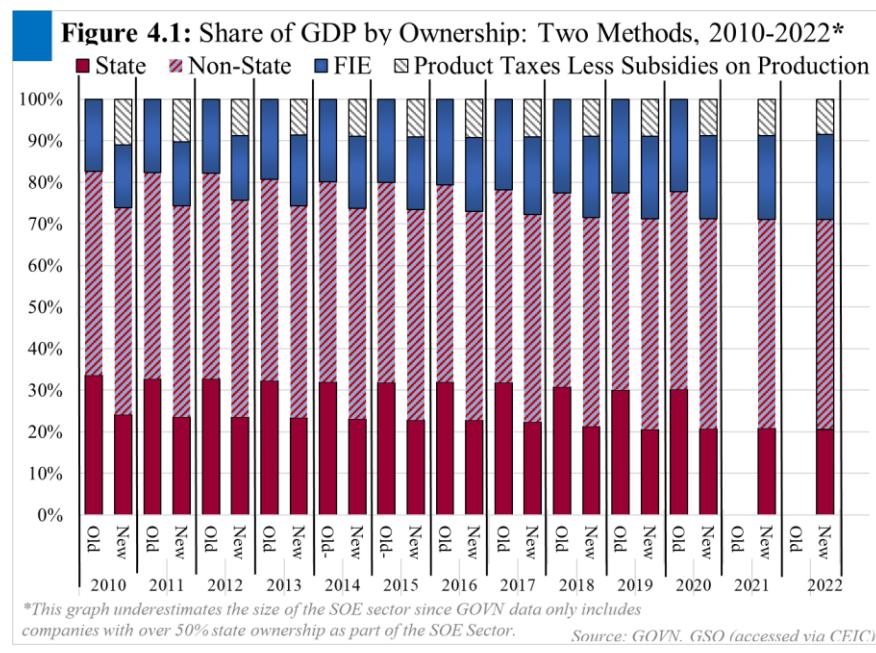
The other difference in the estimates is that the new GDP accounting method adds a category to those ownership categories previously included (*e.g.*, state, non-state, and foreign investment sectors). The additional category is “product taxes less subsidies on production.” However, the old measurement (*i.e.*, the 30.2 percent estimate) is more comparable to measurements of other countries since it only includes ownership categories (*i.e.*, does not include the non-ownership category “product taxes less subsidies on production”). The result of including the non-ownership category is that it reduces all ownership categories’ shares of GDP, and arguably underestimates the size of the SOE sector. Following the publication of the new data, some sources, including the OECD, continue to report that the SOE sector in Vietnam accounts for around 30.2 percent of GDP while others, including the Economist Intelligence Unit, report the new 20.6 percent figure.⁴¹³ Commerce believes that greater transparency in the identification of SOE output levels would result to a more accurate, and likely higher, estimate of state ownership over economic activity.

The shrinking of the SOE sector using the old methodology since the time of *Commerce’s Vietnam NME Determination (2002)* is accounted for by the growth of the foreign investment sector, whose share of GDP rose from 13 percent in 2000 to 22 percent in 2020. However, it should be noted that enterprises characterized by the GOVN as being in the foreign investment sector may also have minority or indirect levels of state ownership. The private domestic sector has remained the largest, accounting for about 48 percent of GDP. However, notably, this share is roughly the same as at the time of *Commerce’s Vietnam NME Determination (2002)*. As described, this sector also includes enterprises with less than 50 percent or indirect levels of state ownership. Since estimates of the private and foreign investment sectors both include enterprises that have minority and indirect levels of government ownership, the size of the overall SOE sector in these statistics underestimate the true extent of state ownership in the economy.

⁴¹¹ CEIC, “What is the Methodology of Vietnam Re-evaluation Gross Domestic Product?” February 22, 2024.

⁴¹² CEIC, “What is the Methodology of Vietnam Re-evaluation Gross Domestic Product?” February 22, 2024.

⁴¹³ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 22; and EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 8.



2.1.3 Number of SOEs

While the actual number of SOEs in Vietnam in 2002 is largely unknown, recent estimates suggest that it has fallen since the time of *Commerce's Vietnam NME Determination (2002)*. Data from the earliest year of comparison (2010) shows that the number of enterprises that were wholly owned by the GOVN has fallen from 1,801 to 877 in the 2010-2021 period.⁴¹⁴ The number of enterprises that were majority owned by the GOVN fell from 1,480 to 1,029 during that time period, while the number of enterprises with minority levels of GOVN ownership declined from 1,710 to 999.⁴¹⁵ An additional category of enterprises, as defined by the GOVN, is foreign joint ventures, which includes enterprises with both state and foreign owners. The number of these types of enterprises increased from 1,259 in 2010 to 2,887 in 2021.⁴¹⁶ It is unclear whether this is indicative of an increase in enterprises with foreign ownership.

Given these statistics and the unknown levels of ownership in foreign joint venture enterprises, the number of SOEs, as defined by Commerce, falls between 1,906 and 5,792 as of 2021.⁴¹⁷ Using either estimate, as can be seen in Table 4.6 below, the number of SOEs in Vietnam made up less than one percent of total enterprises, which was 718,697, in 2021.⁴¹⁸

⁴¹⁴ GOVN, General Statistics Office, "Business Survey: Number of Enterprises," data accessed via CEIC. More recent data from other sources indicate that the number of wholly state-owned enterprises has fallen to 820 as of end-2023. See EIU, "Political/Commercial Background: State Role in the Economy," April 1, 2024, 2.

⁴¹⁵ GOVN, General Statistics Office, "Business Survey: Number of Enterprises," data accessed via CEIC.

⁴¹⁶ GOVN, General Statistics Office, "Business Survey: Number of Enterprises," data accessed via CEIC.

⁴¹⁷ GOVN, General Statistics Office, "Business Survey: Number of Enterprises," data accessed via CEIC.

⁴¹⁸ GOVN, General Statistics Office, "Business Survey: Number of Enterprises," data accessed via CEIC.

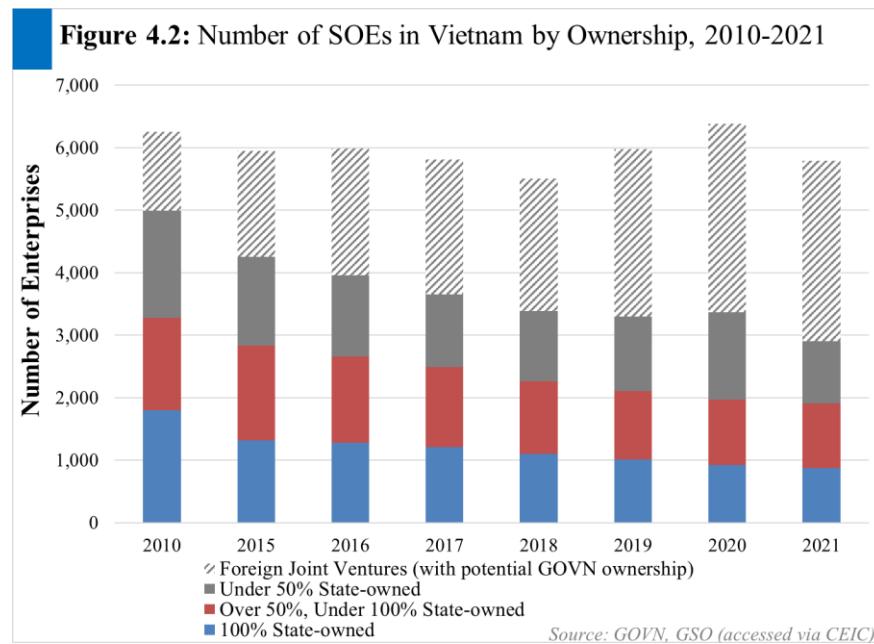


Table 4.6: Number of Enterprises in Vietnam in 2021⁴¹⁹

	Total	Non-SOE (range)	SOE (Range)	100% State Owned	SOEs with Majority State Ownership	Enterprises with Minority State Ownership	Foreign-Domestic Joint Ventures (with potential state ownership)
Number	718,697	712,905 – 717,601	1,906 – 5,792	877	1,029	999	2,887
% of Total	100%	<99%	>1%	0.12%	0.14%	0.14%	0.40%

⁴¹⁹ GOVN, General Statistics Office, “Business Survey: Number of Enterprises,” data accessed via CEIC.

The reason SOEs account for 20.6-30.2 percent of GDP but less than one percent of total number of enterprises is that SOEs are much larger than their private counterparts. This is mostly due to the fact that SOEs tend to operate in sectors that most benefit from economies of scale in production and the fact that they tend to disproportionately benefit from preferential access to resources (described further in following sections).⁴²⁰ SOEs also account for a larger share of Vietnam's large enterprises; seven out of ten of Vietnam's largest enterprises were wholly or majority state-owned enterprises.⁴²¹ According to the OECD, the number of SOEs in Vietnam indicates that state ownership in Vietnam is "well beyond" what would be justified by existing for public services and in industries that are strategically important to the national economy.⁴²²

2.1.4 Employment in the SOE Sector

Since *Commerce's Vietnam NME Determination (2002)*, employment in the SOE sector has declined significantly from between 30 and 40 percent to between 6 and 11 percent as of 2020.⁴²³ As can be seen in Figure 4.3 below, the private sector is predominantly comprised of micro-sized enterprises,⁴²⁴ whereas most large enterprises are in the SOE sector, with some being in the foreign-invested enterprise sector. According to official GOVN statistics, wholly or majority state-owned enterprises were 120 times larger than their non-state counterparts, in terms of capital, in 2019.⁴²⁵

⁴²⁰ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 175.

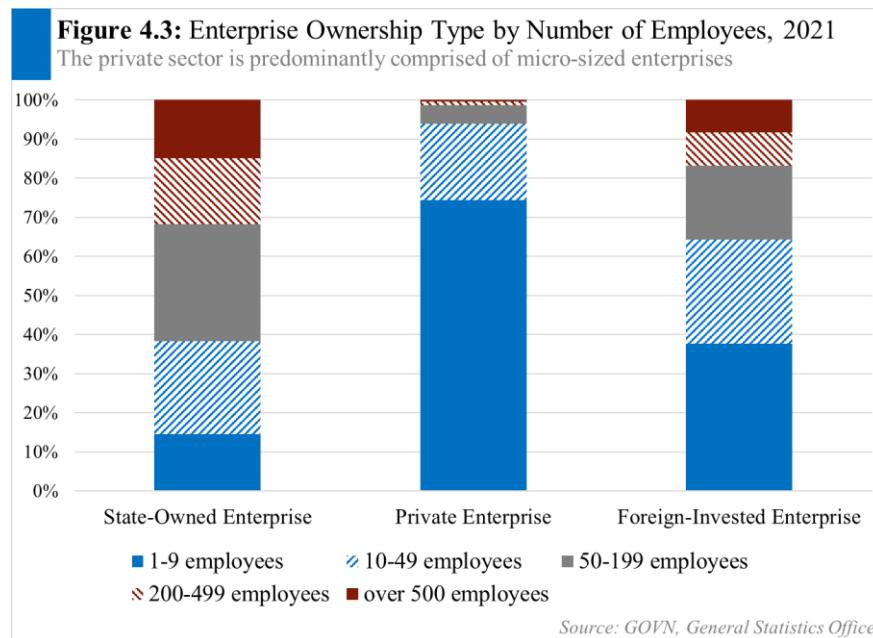
⁴²¹ Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 293.

⁴²² OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 174.

⁴²³ GOVN, General Statistics Office, "Business Survey: Number of Employees," data accessed via CEIC.

⁴²⁴ Micro-sized enterprises are defined as enterprises with less than ten employees. See OECD, "Enterprises by Business Size," (2020), data accessed via CEIC.

⁴²⁵ GOVN, General Statistics Office, *Statistical Yearbook of Vietnam 2019*, (June 30, 2020), 312, 329, and 356. This calculation compares enterprises with 100 percent state-owned capital and greater than 50 percent state-owned capital (collectively called "state-owned enterprises") vs. "non-state enterprises," which include private companies and joint stock companies (some of which have some amount of state-owned capital less than 50 percent); 2019 number of state-owned enterprises = 2,109; 2019 total annual average capital of state-owned enterprises = 9,357.8 trillion dong; 2019 average capital value of a state-owned enterprise = 9,357.8 / 2,109 = 4.44 trillion dong; 2019 number of non-state enterprises = 647,632; 2019 total annual average capital of non state enterprises = 24,204.5 trillion dong; 2019 average capital value of a non-state enterprises = 24,204.5 / 647,632 = .037 trillion dong; 4.44/.037 = 120x larger.



2.2 The Provision of SOE Benefits in Vietnam

Government provision of benefits to SOEs compared to private enterprises results in an unlevel playing field that does not allow the market to function freely. Similarly, private enterprises not being permitted to compete fairly for market share can distort prices and costs. This section evaluates the benefits provided to SOEs by the GOVN.

Enterprises that make up the SOE sector in Vietnam are afforded disproportionate access to a range of official and unofficial benefits, including preferential access to finance with favorable interest rates and payment terms, direct subsidies from state budgets, land, other resources, and lucrative opportunities such as public investment and procurement of government contracts.⁴²⁶ According to the OECD, “{w}hile Vietnamese law does not explicitly confer legal privilege to SOEs or board members, SOEs are treated ‘favorably’ in all aspects including by the government, sectoral ministries and local governments who give their affiliated SOEs privileges such as access to capital, natural resources, land, and human resources.”⁴²⁷

Preferential Access to Finance. SOEs receive preferential access to loans on more favorable terms, including rates and payment terms.⁴²⁸ A study by the IMF found that SOEs obtain credit at lower interest rates on average than their non-SOE counterparts, even after controlling for profitability and firm size (see Factor Five).⁴²⁹

⁴²⁶ OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 24; and OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181.

⁴²⁷ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 11.

⁴²⁸ OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 24.

⁴²⁹ Mitsuru Katagiri, “Credit Misallocation and Economic Growth in Vietnam,” IMF Working Paper WP/19/189, (June 2019), 7-8.

Soft Budget Constraints and Bankruptcy. Unlike private enterprises, SOEs are often not subject to hard budget constraints.⁴³⁰ Although SOEs are not legally protected from bankruptcy, the soft budget constraints they are afforded usually protect them from bankruptcy.⁴³¹ The GOVN requires banks to continue to lend to SOEs despite their credit history or unlikelihood of repayment, and, if the SOEs cannot repay the loans, either restructure, eliminate, or transfer the NPLs to other SOEs.⁴³²

Provision of Land. Provision of land-use rights is another important benefit extended to SOEs. Because the government owns all land in Vietnam and is responsible for granting land-use rights to individuals and enterprises who wish to use the land, it is an important resource that the government has complete control over. While private enterprises must generally pay the full price for land-use rights, SOEs in many cases are granted land-use rights in prime locations at below market rates or for no fee at all.⁴³³ According to the OECD, “an SOE wishing to expand will generally be provided with land free of charge.”⁴³⁴ Foreign enterprises that operate in strategic sectors may also be granted preferential access to land at reduced rates.⁴³⁵

SOEs also enjoy the benefit of government authorities converting land from agricultural-use land to industrial-use land, which effectively re-zones the land as needed by the SOE.⁴³⁶ Private enterprises do not enjoy this benefit and often have trouble acquiring land that can be legally used for industrial purposes because of the strict system of land being designated for specific uses.⁴³⁷ One study found that provinces with a high density of SOEs were found to take longer to issue land-use rights certificates to private sector firms.⁴³⁸ For more information on the land system in Vietnam, see the land system section within this factor.

⁴³⁰ OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 24- 25.

⁴³¹ OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 24- 25; and OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 88.

⁴³² OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 24 -25; and World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity, and Democracy*, (2016), 23.

⁴³³ Le Ngoc Dang, Dinh Dung Nguyen, and Farhad Taghizadeh-Hesary, “State-Owned Enterprise Reform in Vietnam: Progress and Challenges,” *Asian Development Bank Institute*, No. 1071, (January 2020), 12; and OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181.

⁴³⁴ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181.

⁴³⁵ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181.

⁴³⁶ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181.

⁴³⁷ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181.

⁴³⁸ World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity, and Democracy*, (2016), 22.

Government Procurement and Administrative Prioritization. SOEs often benefit from being granted priority access to business licenses and overcoming other administrative and bureaucratic procedures more easily than private enterprises.⁴³⁹ In addition, they often obtain government contracts on a non-competitive basis in a process that occurs behind closed doors.⁴⁴⁰

Disclosure and Transparency. Although private enterprises and SOEs are subject to the same disclosure and transparency requirements, in practice, SOEs do not consistently disclose the required information and there are no penalties for non-compliance.⁴⁴¹

Competition. Although the *Vietnam Competition Law (2018)* improved the legal framework surrounding competition in Vietnam, since it has been in force, competition enforcement actions by the NCC against anti-competitive behaviors of SOEs have remained limited.⁴⁴² It is therefore unclear whether improvements have been made to Vietnam's competition environment in practice.

2.3 GOVN Influence Over Operations of SOEs

As described in the Legal Framework (Part 1.4) section above, the GOVN has the right to exercise control over SOEs simply by being a dominant shareholder. However, for SOE operations to be based on market principles, the state should not exercise undue influence over the company, for example by using them to pursue objectives that are not in the interest of the enterprise and are thereby to the detriment of other shareholders.⁴⁴³ Best practice calls for the state owner to develop broad mandates and objectives of SOEs, but not to be directly involved in their operations.⁴⁴⁴ This section evaluates operational aspects of SOEs in Vietnam and the extent to which the GOVN exercises control over them.

GOVN Control Over SOE Operations in Vietnam. The OECD found that “{t}he {s}tate explicitly uses SOEs as a vehicle for achieving national economic development agenda, ensuring macroeconomic stability, curbing inflation, and generating revenue for the state budget.”⁴⁴⁵ These are government objectives, which SOEs are required to fulfil, and which may not be in the interest of the company or its other shareholders. Indeed, minority non-state shareholders complain about the state’s continued use of equitized SOEs to pursue non-commercial objectives including public policy objectives.⁴⁴⁶ The OECD also found that “management decisions of many equitized firms are still influenced by the state, marginalizing interests of minority

⁴³⁹ Martin Gainsborough, *Vietnam: Rethinking the State*, First Edition (Vietnam: Silkworm Books, 2010), 16 and 39.

⁴⁴⁰ Martin Gainsborough, *Vietnam: Rethinking the State*, First Edition (Vietnam: Silkworm Books, 2010), 16 and 39.

⁴⁴¹ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 185.

⁴⁴² OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 103.

⁴⁴³ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 51-52.

⁴⁴⁴ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, (2015), 34.

⁴⁴⁵ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 84.

⁴⁴⁶ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 177.

investors and shareholders.”⁴⁴⁷ Another OECD report found that “there is no full operational autonomy of SOEs in their decision making. In Viet Nam, the ownership entities play a more direct role in strategic management of SOEs.”⁴⁴⁸

Appointments in SOEs. As described in the Legal Framework (Part 1.5), as a shareholder in SOEs, the state often has the right to appoint members of boards of directors and other management roles in SOEs. However, the board members should still have the necessary authority, competencies, and objectivity to carry out their functions.⁴⁴⁹ In Vietnam, the government is closely involved with appointing the heads of SOEs, including approving all positions on boards of directors and boards of management.⁴⁵⁰ Boards of directors and boards of management of wholly state-owned enterprises are made up primarily of members of the CPV and therefore are not independent from the GOVN.⁴⁵¹ Members of boards of directors and other top management of SOEs that are not wholly owned by the GOVN are also often not independent from the GOVN, especially when the GOVN is the majority shareholder.⁴⁵² Such appointments are largely made behind closed doors, with vacancies to the boards of directors not widely advertised.⁴⁵³ Such appointments in SOEs is therefore a means through which the GOVN exercises control over the operations of SOEs.

Party Committees. As described in the Legal Framework (Part 1.8), Party Committees in SOEs are responsible for directly leading all aspects of business activities and ensuring that SOEs operate in accordance with the CPV’s “guidelines.” In practice, the vast majority, if not all SOEs, have Party Committees.⁴⁵⁴ Party Committees are indeed seen to exercise direct control over the operations of SOEs.⁴⁵⁵ In some cases, Party Committees benefit the SOEs in which they operate by, for example, reducing waste and corruption.⁴⁵⁶ Although this is a positive outcome, it is indicative of the control the CPV/GOVN exercises over SOEs and their lack of independence of from the CPV/GOVN. According to the OECD, Party Committees represent “substantial concern of political interference in SOE operations.”⁴⁵⁷

⁴⁴⁷ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 177.

⁴⁴⁸ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 90.

⁴⁴⁹ OECD, *Recommendation of the Council on OECD Legal Instruments Guidelines on Corporate Governance of State-Owned Enterprises*, (2024), 11-16.

⁴⁵⁰ Alexander Ewart, “State-Owned Enterprises in Viet Nam,” in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 324.

⁴⁵¹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 147-148.

⁴⁵² OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 147.

⁴⁵³ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 88, 91.

⁴⁵⁴ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 186.

⁴⁵⁵ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 123.

⁴⁵⁶ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 123.

⁴⁵⁷ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 123.

Joint Appointments. As described in the Legal Framework (Part 1.8), there is a legal basis for jointly appointing CPV members on Party Committees and boards of directors in the same companies. Press releases and official statements from various SOEs confirm that high-ranking Party Committee positions are generally filled by employees of the company, sometimes in the equivalent company position. For example, the vice secretary position within PVOil's 2020-2025 Party Committee is held by its vice president.⁴⁵⁸ Vinachem's description of its Party Committee also confirms much of the information provided above: the Party Committee secretary and deputy secretary are the first and second highest-ranking members of the company, and its list of functionalities includes "upholding the key role and position of state owned enterprises in socialist market economy" as a primary responsibility.⁴⁵⁹ It also mentions that the Party Committee has a total of 1,568 members.⁴⁶⁰ Its large size suggests that it is not intended to perform limited functions but rather to influence important decisions and day-to-day operations.

The GOVN's Five-year Plans for SOEs Guide the Actions of SOEs. As described in the Legal Framework (Part 1.8), the GOVN, at its highest levels, is required to approve SOEs' five-year plans, which cover various aspects of companies' operations, including business, production, and investment strategies. These five-year business plans follow the same five-year planning cycle that the GOVN uses to communicate its general plans for the economy, including its industrial policies. The GOVN's highest-level five-year plan (Socio-Economic Development Plan or SEDP) is binding to any plan subordinate to it.⁴⁶¹ Individual SOEs' five-year plans are based on the national SEDP, in addition to the five-year plans for the sector or industry of the economy relevant to each SOE.⁴⁶² The existence and fulfillment of these plans indicates that the GOVN exercises control over operations of SOEs.

Many SOEs, whether equitized or not, state on their company websites that they aim to fulfill the objectives of the government plans that are assigned to them. For example, Vietnam Rubber Group's *2019 Annual Report* states that its focus for the next five years is "to ensure the best fulfillment of its 2016–2020 plan that has been approved by the Prime Minister."⁴⁶³ Similarly, the development plans of Vietnam National Chemical Group (Vinachem) for 2018 and 2019 mention compliance with GOVN industrial plans, including the 2016-2020 SEDP.⁴⁶⁴ An article

⁴⁵⁸ PVOil, "Party Committee of PetroVietnam Oil Corporation successfully organizes 3rd Party congress term 2020 – 2025," May 29, 2020, available at www.pvoil.com.vn/en-US/party-committee-of-petrovietnam-oil-corporation-successfully-organizes-3rd-party-congress-term-2020-2025.

⁴⁵⁹ Vinachem, "Introduction of the Communist Party of Vietnam National Chemical Group," accessed by www.vinachem.com.vn/communist-party/communist-party-vnc/introduction_of_the_communist_party_of_vietnam_national_chemical_group.html, accessed by July 1, 2024.

⁴⁶⁰ Vinachem, "Introduction of the Communist Party of Vietnam National Chemical Group," accessed by www.vinachem.com.vn/communist-party/communist-party-vnc/introduction_of_the_communist_party_of_vietnam_national_chemical_group.html, accessed by July 1, 2024.

⁴⁶¹ Simon Benedikter and Loan T.P. Nguyen, "Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform," *Journal of Vietnamese Studies* 13(4) (2018): 8.

⁴⁶² OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 52.

⁴⁶³ VRG, *Annual Report* (2019), 53.

⁴⁶⁴ VinaChem, *Production, Business and Development Investment Plan*, (2018), III(2); and VinaChem, *Production, Business and Development Investment Plan*, (2019), III(2).

on PetroVietnam's website states that its primary goal was to "make its best efforts to over-fulfill all targets and plans as assigned by the Government."⁴⁶⁵

2.4 The GOVN Agencies that Exercise Control over SOEs' Operations

This section describes the government bodies that serve as owners of SOEs in Vietnam and the role each has in exerting meaningful control over the SOEs they own and manage. Most SOEs in Vietnam are either owned by: (i) the line ministries for the sectors in which they operate; (ii) the State Capital Investment Corporation (SCIC); (iii) the Commission for the Management of State Capital (CMSC); or (iv) provincial-level People's Committees.⁴⁶⁶ Evaluating these ownership structures sheds light on the mechanisms through which the GOVN exercises ownership and control over the companies it owns.

Line ministries. SOEs being owned by the line ministries that are responsible for regulating the industry in which the SOE operates can result in conflicts of interest where the line ministries can either enforce competition in the Vietnamese economy or provide favorable treatment to the companies in which they hold ownership shares in.⁴⁶⁷ These conflicts of interest often result in the line ministries providing favorable treatment to the SOEs they manage, including access to capital, natural resources, land, and human resources.⁴⁶⁸ For example, one of the ministries, the Ministry of Transport, has been known to give one SOE (Vietnam Airlines) an advantage over others, by granting it preferential access to airport runway slots and rights to international routes.⁴⁶⁹

Due to the conflicts of interest that arise from this ownership structure, some SOEs were moved under the purview of the SCIC or CMSC, as is further described below.⁴⁷⁰ However, the GOVN decided not to transfer some SOEs from line ministries to either the SCIC or CMSC, including:

- (1) SOEs under the Ministry of Finance;

⁴⁶⁵ PVN, "Petrovietnam Has Strong Influence on Socio-Economic Development of the Country," available at www.pvn.vn/sites/en/Pages/detail.aspx?NewsID=06a8b143-5c29-4a58-a8a1-1fc77a89c262, March 6, 2024.

⁴⁶⁶ Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 299.

⁴⁶⁷ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181; and Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 299.

⁴⁶⁸ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181; Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 299; and OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 21.

⁴⁶⁹ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181.

⁴⁷⁰ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181; and Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 299.

- (2) SOEs under the SBV;
- (3) state-owned credit institutions;
- (4) construction and lottery companies directly under the central government;
- (5) SOEs involved in defense, security, and production and supply of public goods and services; and
- (6) SOEs under the Hanoi People's Committee and Ho Chi Minh City People's Committee.⁴⁷¹

The 14 government ministries that continue to own SOEs are listed in Table 4.7 below.⁴⁷² Since line ministries have industry-specific knowledge of the SOEs they own or used to own, they are closely involved in important decisions of SOEs, including those related to the management and equitization of the companies.⁴⁷³ This is often true even when the line ministries no longer own the SOEs.⁴⁷⁴

Table 4.7: Line Ministries that Own SOEs in Vietnam⁴⁷⁵	
Ministry of Finance	Ministry of Science and Technology
Ministry of Public Security	Ministry of Agriculture and Rural Development
Ministry of Industry and Trade	Ministry of Defense
Ministry of Transport	Ministry of Natural Resources and Environment
Ministry of Information and Communications	Ministry of Culture, Sports and Tourism
Ministry of Construction	Vietnam Television Station
Bank of Vietnam	Vietnam News Agency

State Capital Investment Corporation. The GOVN established the SCIC in 2005 for the purpose of centralizing the management functions of SOEs and improving the efficiency of the use of state capital.⁴⁷⁶ The SCIC was intended to manage SOEs that were not currently under general corporations/State Economic Groups (SEGs), did not fall naturally under a specific ministry, or were smaller and less financially stable.⁴⁷⁷ Many of these companies were scheduled to be fully divested.⁴⁷⁸ These divestment efforts were successful at first, and, from 2015 to 2020, the SCIC sold its shares in over 250 of the enterprises it owned and managed.⁴⁷⁹

Around 2020, the GOVN's objective for the SCIC shifted from divesting in smaller and less financially stable enterprises to increasing the GOVN's meaningful control over enterprises in

⁴⁷¹ Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 299-300.

⁴⁷² OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 50.

⁴⁷³ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 48.

⁴⁷⁴ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 11.

⁴⁷⁵ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 50.

⁴⁷⁶ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 178; and GOVN, *Decision No. 151/2005/QD-TTg* (June 20, 2005).

⁴⁷⁷ Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 300.

⁴⁷⁸ Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 300.

⁴⁷⁹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 57.

which it owns less than 50 percent of, regardless of the company's size or financial stability.⁴⁸⁰ The SCIC now holds a portfolio of 145 firms operating in sectors including finance, energy, manufacturing, telecommunications, transportation, and real estate.⁴⁸¹ According to an SCIC press release from October 2020, between 2020 and 2025 the SCIC will gradually shift from receiving, selling, and governing corporate capital to serving as the GOVN's strategic investment fund, focusing entirely on "investments in important sectors and fields {in which} the state needs to continue to hold a dominant position."⁴⁸² {emphasis added} The SCIC's website also states that its primary objectives are "to represent the state capital interests in enterprises and invest in key sectors and essential industries *with a view to strengthening the dominant role of the state sector* while respecting market rules."⁴⁸³ {emphasis added} All of this indicates that the SCIC's objective has shifted from managing smaller and less financially stable SOEs, with the goal of reducing the state capital in them, to strategically investing in companies and exercising increased state ownership and control in the companies it manages.

In practice, the SCIC has retained around a 36 percent ownership stake in certain companies, which is roughly the minimum shareholding level that legally allows it to retain veto rights over important company decisions, including the passage of board resolutions and appointments.⁴⁸⁴ For example, the SCIC owns 36 percent of Vinamilk, which is a large and successful dairy company.⁴⁸⁵ The SCIC also owns 36 percent of Saigon Beer Company (Sabeco), a large and successful beer company.⁴⁸⁶

Commission for the Management of State Capital. In September 2018, another government body that manages state capital, the CMSC, was created.⁴⁸⁷ Its mandate is to centralize management

⁴⁸⁰ Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 300; GOVN, Decree No. 131; OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 178; and OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 57.

⁴⁸¹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 57.

⁴⁸² SCIC, "SCIC Works On Government Fund Plan," available at www.scic.vn/index.php/en/component/content/article/63-ews/the-most-outstanding-news/1946-scic-works-on-government-fund-plan?Itemid=641, October 22, 2020.

⁴⁸³ OECD, *Corporate Governance Frameworks in Cambodia, Lao PDR, Myanmar and Viet Nam*, (2019), 78; and Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 313.

⁴⁸⁴ EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 8; and Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 307-308, 319, and 322.

⁴⁸⁵ Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 307.

⁴⁸⁶ Vietnam Investment Review, "SABECO in Forbes Top 50 Listed Companies," available at <https://vir.com.vn/sabeco-in-forbes-top-50-listed-companies-102473.html>, June 8, 2023.

⁴⁸⁷ Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 300.

GOVN, Decree No. 131; and OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 178.

and coordinate efforts of the SOEs it owns.⁴⁸⁸ The CMSC is also tasked with increasing state capital, especially in priority industries.⁴⁸⁹ *Decree No. 131* defines the CMSC as a government agency and stipulates its functions, tasks, authority, and organizational structure.⁴⁹⁰ This decree states that the CMSC has the authority to appoint or re-appoint certain managerial personnel (e.g., the chairman of the board of members, members of the board of members, company's president, controllers, and financial controllers) for state economic groups and corporations wholly owned by the state, and to decide on state capital investment and transfer shareholders for SOEs.⁴⁹¹

The CMSC owns 18 SEGs and corporate groups, which are among the largest and most important companies in Vietnam.⁴⁹² Each of these 18 companies owns many additional enterprises, resulting in around 200 individual companies in total being under the purview of the CMSC, which represents around two-thirds of the total equity capital of Vietnam's SOEs.⁴⁹³ SOEs under the CMSC operate in the following fields: energy (oil and gas, electricity, and coal), industry (chemicals, petroleum, and tobacco), agriculture (rubber, coffee, forestry, and other agricultural production), and infrastructure (post, telecommunications, airlines, airports, shipping, railways, and expressways).⁴⁹⁴ The SCIC is also owned by the CMSC.⁴⁹⁵ While the CMSC generally has broad control over the SOEs it owns, it often lacks the sector-specific expertise to make important decisions for the companies it manages.⁴⁹⁶ Therefore, important decisions concerning SOEs under the CMSC often require approval of other government bodies.⁴⁹⁷ For these reasons, line ministries continue to play an important role in the decision-making of the SOEs that are technically under the CMSC's portfolio.⁴⁹⁸ However, while the CMSC may not have as much control over the decision making of SOEs as may have been envisioned upon its onset, it successfully fulfills its role of allowing the GOVN to exercise meaningful control over certain SOEs. According to the OECD, “the establishment of {the} CMSC could be considered as an attempt to tighten the government’s grip on the equitized enterprises and enterprises that are undergoing equitization process.”⁴⁹⁹

⁴⁸⁸ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 11 and 47.

⁴⁸⁹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 54.

⁴⁹⁰ GOVN, *Decree No. 131*, Article 1.

⁴⁹¹ GOVN, *Decree No. 131*, Article 5.

⁴⁹² Alexander Ewart, “State-Owned Enterprises in Viet Nam,” in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 300; and GOVN, *Decree No. 131*; and OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 178-179.

⁴⁹³ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 177; and OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 47.

⁴⁹⁴ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 55.

⁴⁹⁵ Alexander Ewart, “State-Owned Enterprises in Viet Nam,” in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 299.

⁴⁹⁶ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 11.

⁴⁹⁷ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 11.

⁴⁹⁸ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 11.

⁴⁹⁹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 49.

Provincial-level People's Committees. As of end-2023, 200 wholly state-owned enterprises (accounting for roughly 24 percent) were owned by the central government and 620 were owned by provincial governments (accounting for about 76 percent).⁵⁰⁰ Ownership over provincial-level SOEs is exercised by provincial-level People's Committees, which are executive branches of the government at the provincial level.⁵⁰¹

Provincial-level People's Committees exercise meaningful control over the operations of SOEs under their jurisdiction and often use them to pursue industrial policy objectives or other objectives of local governments.⁵⁰² They also grant the SOEs they own privileged access to capital, natural resources, land, and human resources.⁵⁰³ In some cases, local governments use SOEs to pursue central government objectives. For example, in *Resolution No. 68/NQ-CP 2022 on the Continuation to Innovate, Improve Operational Efficiency and Mobilize Resources of SOEs, Focusing on Economic Groups and Corporations*, the central government called upon provincial-level People's Committees to use the SOEs under their purview carry out its objectives concerning SOE reform.⁵⁰⁴ In other cases, when the objectives of local governments do not align with those of the central government, provincial governments sometimes intentionally do not comply with central government policies, including SOE reforms promulgated by the central government.⁵⁰⁵

2.5 State Economic Groups

To fulfil the government objective of SOEs playing the leading role in the economy, the GOVN created large conglomerations of SOEs that each fulfill a specific government objective.⁵⁰⁶ These SEGs have been characterized as being the “iron fists of the state” and representing the “commanding heights” of the economy.⁵⁰⁷ They typically have monopoly or near-monopoly status in the industries in which they operate, thereby inhibiting competition.⁵⁰⁸ Dominating entire industries allows the GOVN to target them with industrial policies that are ostensibly

⁵⁰⁰ EIU, “Political/Commercial Background: State Role in the Economy” (April 1, 2024), 2. Note that the total number of wholly state-owned enterprises seems to have declined since the GOVN last updated the data in 2021, so these values differ from the values presented in the section on number of SOEs.

⁵⁰¹ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 178.

⁵⁰² OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 183; and Konstantin M. Wacker, “Restructuring the SOE Sector in Vietnam,” *Journal of Southeast Asian Economies* 34(2) (2017): 288-289.

⁵⁰³ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 21.

⁵⁰⁴ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 81.

⁵⁰⁵ Konstantin M. Wacker, “Restructuring the SOE Sector in Vietnam,” *Journal of Southeast Asian Economies* 34(2) (2017): 289.

⁵⁰⁶ Alexander Ewart, “State-Owned Enterprises in Viet Nam,” in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 284.

⁵⁰⁷ Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 90 and 95; and OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 176.

⁵⁰⁸ Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 104.

intended to support an entire sector.⁵⁰⁹ This allows SEGs to be granted preferential access to resources.⁵¹⁰ Their monopoly positions also allow them and their government owners to set the rules in those industries.⁵¹¹ In many cases, SEGs and the government bodies that own them are tasked with drafting the development plan and strategy for the entire industry.⁵¹² SEGs therefore do not operate on market principles. Their size and scope of operations allows them to have significant and widespread impact on the Vietnamese economy. There are nine SEGs in existence today in Vietnam, which are listed in Table 4.8.

Table 4.8: State Economic Groups in Vietnam⁵¹³

State Economic Group	Industry	GOVN Owner(s)
Bao Viet Financial Insurance (Bao Viet)	Insurance	GOVN (65%), SCIC (3%)
Vietnam National Chemical Group (Vinachem)	Chemicals, incl. fertilizers, pesticides, basic chemicals, household chemicals, pharmaceutical chemistry, petrochemicals, rubber processing, mine exploitation, chemical machines/equipment	CMSC (100%)
Electricity Vietnam (EVN)	Electricity, including power generation, transmission, and distribution	CMSC (100%)
Vietnam National Textile and Garment Corporation (Vinatex)	Textiles and garments	SCIC (53%)
Vietnam National Coal-Mineral Industries Group (Vinacomin)	Coal and mineral mining	CMSC (100%)
Vietnam Military Telecommunications Group (Viettel)	Telecommunications	Ministry of National Defense (100%)
Vietnam National Post and Telecoms (VNPT)	Telecommunications (including mobile network operations) and post	CMSC (100%)
Vietnam National Oil and Gas Group (Petrovietnam or PVN)	Production and refining of energy, including oil and gas and renewable energy	CMSC (100%)
Vietnam Rubber Group (VRG)	Rubber, livestock, forestry, agricultural products, electricity, industrial equipment, construction materials, seaport management, real estate, water supply, wastewater treatment, mapping, high school gen education, hotels, restaurants, tourism	CMSC (97%)

⁵⁰⁹ Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 104.

⁵¹⁰ Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 104.

⁵¹¹ Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 104.

⁵¹² Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 104.

⁵¹³ Alexander Ewart, “State-Owned Enterprises in Viet Nam,” in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 284.

Since 2011, the GOVN has begun to pursue SEG reforms to restructure their business operations, including divestment from non-core business operations.⁵¹⁴ These reform efforts are consistent with the government's stated objective of restructuring and reorganizing state enterprises to make them more efficient and internationally competitive.⁵¹⁵ Although making SEGs more efficient is a positive reform, these developments, especially the objective to make SEGs more internationally competitive, are indicative of the GOVN's intention to grow these enterprises and not to reduce state ownership and control in the Vietnamese economy.

2.6 Sectors with High Levels of State Ownership and Control

SOEs in Vietnam are present across all major sectors of the economy and are either key players or maintain effective monopolies or oligopolies in important sectors.⁵¹⁶ The sectors and industries with high levels of state ownership and control are: public utilities (including electricity and water), extractions (including oil, gas, coal, and minerals), telecommunications, finance, transportation, agriculture, real estate, construction, wholesale and retail trade, and manufacturing.⁵¹⁷ High levels of state ownership in specific sectors of the economy can impede competition in those sectors. High levels of state ownership across a large share of the economy therefore impede the free formation of domestic supply and demand conditions, and distort market outcomes.

Table 4.9 below indicates the share of GDP accounted for by each of the industries with high levels of state ownership and control as of 2023, where such data was published by the GOVN. The GOVN does not publish sector- or industry-level data by ownership, so private and state ownership are included in these figures. This data shows that the sectors with high levels of state ownership and control collectively account for nearly 64 percent of the economy.

SOEs that play a leading role in certain industries are often tasked with carrying out GOVN objectives. According to the OECD, “{c}urrently, the government explicitly uses some SOEs in sectors such as textile, railways, energy and food for the implementation of the State’s sectoral and industrial policies.”⁵¹⁸ The GOVN’s use of SOEs to carry out government objectives in some of these sectors and industries are analyzed below.⁵¹⁹ The financial sector is evaluated under Factor Five. The information below indicates that SOEs are generally used to carry out government objectives which are often not consistent with market-based principles.

⁵¹⁴ Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 102.

⁵¹⁵ GOVN, *The Five-Year Socio-economic Development Plan: 2016-2020*, (2016).

⁵¹⁶ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 23.

⁵¹⁷ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 23-24.

⁵¹⁸ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 102.

⁵¹⁹ Where legislation is relevant, it will be discussed here rather than in the Legal Framework for the purpose of ease of reading.

Table 4.9: Share of the Vietnamese Economy Accounted for by Sectors with High Levels of GOVN Ownership and Control (2023)⁵²⁰

Industry or Sector	Share of Total GDP
Agriculture	9.4%
Mining and quarrying	2.1%
Manufacturing	24.4%
Electricity and Gas	3.5%
Water Supply and Waste Management	0.5%
Construction	7.0%
Transportation and Storage	4.6%
Information and Communication	3.2%
Financial, Banking, and Insurance Activities	5.3%
Real Estate	3.8%
Total	63.8%

2.6.1 Agriculture and Agri-business

The agriculture and agri-business sector has high levels of state ownership, including all stages of agricultural production, with rice, coffee, and food processing industries having particularly high levels of state ownership.⁵²¹ The largest agriculture and agri-food companies under the control of the CMSC are: Vietnam Rubber Group (VRG), Vietnam National Coffee Corporation (Vinacafe), Vietnam Northern Food Corporation (Vinafood-North), Vietnam Southern Food Corporation (Vinafood-South), and Vietnam Forestry Corporation (Vinador).⁵²² Most of these companies have many companies under them.⁵²³ Many of these companies are export-oriented, and together they pursue government objectives of revenue generation, employment, and other economic, socio-economic, and political goals of the GOVN.

For example, VRG has pursued the government objective of government revenue generation and developing the industry. Concerning VRG, an article on a GOVN news agency website states: “{a}s one of the backbones of Vietnam’s agricultural industry, rubber has been the focus of the government and related stakeholders. Like other industries, the promotion as a national brand is meant to further push the crucial role the industry has for the country.”⁵²⁴

⁵²⁰ GOVN, General Statistics Office, “GDP: by Industry: VSIC 2007: Current Price: Quarterly: Re-evaluation,” data accessed via CEIC.

⁵²¹ Alexander Ewart, “State-Owned Enterprises in Viet Nam,” in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 27; World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity, and Democracy*, (2016), 20; and OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 19.

⁵²² OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 55.

⁵²³ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 180-181, In the example provided, all of the companies appear under Vinacafe.

⁵²⁴ Vietnam Investment Review, “Rubber Industry Aims For Quality And Sound Solutions,” available at <https://vir.com.vn/rubber-industry-aims-for-quality-and-sound-solutions-89391.html>, November 22, 2021.

Vinafood North and South are SOEs that specialize in exporting rice and some other foods.⁵²⁵ They are provided many government benefits, such as not being bound by export quotas that other companies are subject to, and they also follow government directives.⁵²⁶ For example, they ensure the domestic price stability of rice.⁵²⁷ When the domestic price of rice is low, they and other rice-distributing SOEs purchase rice at a price determined by the GOVN that ensures farmers receive a 40 percent profit margin.⁵²⁸

Other SOEs that are not under the purview of the CMSC similarly carry out government objectives. One such example is Vinamilk, which has been used to carry out the GOVN's objectives concerning the Fourth Industrial Revolution. Notably, the GOVN only owns 36 percent of Vinamilk (via the SCIC).⁵²⁹ Although a 36 percent stake legally allows the GOVN veto power over important company decisions, Vinamilk has nonetheless pursued government objectives identified in *Resolution No. 52* on the Fourth Industrial Revolution, including the GOVN's calls for automating priority industries, including agriculture.⁵³⁰ To fulfill this requirement, Vinamilk has undertaken extensive efforts to automate almost all stages of dairy production.⁵³¹

Other examples of Vinamilk following government directives can be found in its annual reports. For example, its 2022 *Annual Report* states that “the Prime Minister of Vietnam announced the Decision to increase Vinamilk’s capital at Angkormilk to invest in a farm project in Cambodia,”⁵³² indicating that the GOVN at its highest levels controls the business decisions of the company. Its 2021 *Annual Report* lists numerous government objectives the company carried out in 2021, including “contributing to the national budget and economic growth,” “pioneering in the strategy of enhancing the competitiveness of Vietnamese brands in the international market,” “becoming one of the leading enterprises in creating jobs, improving living standards and increasing incomes for employees,” and “promoting the dairy industry, contributing to local economic development and national sustainable development.”⁵³³ It also indicates that the company pursued the GOVN’s socioeconomic objectives by stating that “...Vinamilk has contributed more than VND 100 billion in programs that supported the Government to control

⁵²⁵ Murray E. Fulton and Travis Reynolds, “The Political Economy of Food Price Volatility: The Case of Vietnam and Rice,” *American Journal of Agricultural Economics* 97(4) (May 25, 2015): 1207-1208.

⁵²⁶ Murray E. Fulton and Travis Reynolds, “The Political Economy of Food Price Volatility: The Case of Vietnam and Rice,” *American Journal of Agricultural Economics* 97(4) (May 25, 2015): 1207-1208.

⁵²⁷ Murray E. Fulton and Travis Reynolds, “The Political Economy of Food Price Volatility: The Case of Vietnam and Rice,” *American Journal of Agricultural Economics* 97(4) (May 25, 2015): 1208.

⁵²⁸ Murray E. Fulton and Travis Reynolds, “The Political Economy of Food Price Volatility: The Case of Vietnam and Rice,” *American Journal of Agricultural Economics* 97(4) (May 25, 2015): 1210.

⁵²⁹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 55.

⁵³⁰ GOVN, *Resolution No. 52*, III(6).

⁵³¹ Asia Pacific Economic Cooperation, *Industry 4.0 in Vietnam*, (2023), 10.

⁵³² Vinamilk, *2022 Annual Report: Growth -Reinvent*, (2022), 64; and Vinamilk, *Sustainable Development Report 2022: Rethink Sustainability - Reshape the Future*, (2022), 8.

⁵³³ Vinamilk, *2022 Annual Report: Growth -Reinvent*, (2022), 159.

the Covid-19 spread, purchase vaccines, lend a hand to frontline forces, take care of children, and share the burden with local communities.”⁵³⁴

2.6.2 Electricity

The GOVN accounts for at least 87 percent of the electricity market.⁵³⁵ Much of Vietnam’s electricity production is accounted for by Electricity Vietnam (EVN), which is one of the largest SEGs in Vietnam having many smaller SOEs under it and is wholly owned by the GOVN.⁵³⁶ Fitch Ratings assesses the level of GOVN control over EVN as “Very Strong” and states that the GOVN appoints EVN’s board of directors and senior management and directs investments, and that EVN receives government guarantees, loans from state-owned banks at preferential rates, project subsidies, and tax incentives.⁵³⁷ These government supports are necessary to keep EVN afloat since the GOVN sets electricity prices in Vietnam at levels that have caused EVN to consistently lose money.⁵³⁸

The *Electricity Law* previously granted EVN a monopoly on electricity transmission and distribution but was amended in 2022 to limit the state’s monopoly to: (1) the national load dispatch (*i.e.*, electricity quantity planning at the electricity generation stage); (2) “building and operation of big power plants of particular socio-economic, national defense, or security significance”; and (3) operation of transmissions grids, except those “built by non-state economic sectors.”⁵³⁹ The law also grants non-state economic sectors to operate the transmission grids they have built.⁵⁴⁰ These changes allow the private sector to participate in all three stages of the electricity market: (1) generation (*i.e.*, production), (2) transmission (*i.e.*, carry electricity long distances), (3) distribution (to factories, offices, homes, *etc.*). Importantly, the private sector can now invest in the transmission grid and operate the sections of the grid that it develops.⁵⁴¹ While these developments are positive, in practice, these reforms have not yet been fully implemented. According to the Economist Intelligence Unit, “{d}espite these reforms, Vietnam Electricity (EVN) and other state-owned companies continue to have a monopoly over electricity

⁵³⁴ Vinamilk, 2022 Annual Report: *Growth -Reinvent*, (2022), 110.

⁵³⁵ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 23.

⁵³⁶ David Dapice, “Vietnam’s Crisis of Success in Electricity Options for a Successful Clean Energy Mix,” *Harvard Kennedy School, Ash Center for Democratic Governance and Innovation* (December 2018), 8; and OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 23-24, 55, 169-170.

⁵³⁷ Fitch Ratings, “Fitch Affirms Vietnam Electricity at ‘BB’: Outlook Positive,” September 6, 2022.

⁵³⁸ In 2022, EVN lost 31 trillion dong. See Reuters, “Vietnam Hikes Electricity Floor Price by Nearly 14%,” available at www.reuters.com/article/business-energy/vietnam-hikes-electricity-floor-price-by-nearly-14-idUSL4N34M1SN#; February 6, 2023. For further information on electricity prices, see Factor Five.

⁵³⁹ GOVN, *Law No. 03/2022/QH15 Amending and Supplementing a Number of Articles of the Law on Public Investment, Law on Investment in the Form of Public-Private Partnership, Law on Investment, Housing Law, Bidding Law, Electricity Law, Law on Enterprises, Law on Excise Tax, and Law on Enforcement of Civil Judgements (Law No. 03)*, Article 6; David Dapice, “Vietnam’s Crisis of Success in Electricity Options for a Successful Clean Energy Mix,” *Harvard Kennedy School, Ash Center for Democratic Governance and Innovation* (December 2018), 8; and OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 23-24, 55, 169-170.

⁵⁴⁰ GOVN, *Law No. 03*, Article 6.

⁵⁴¹ GOVN, *Law No. 03*, Article 6.

transmission, distribution, wholesale, retail and regulation.”⁵⁴² A competitive retail power market was expected to be piloted in 2022 but has not yet begun in practice.⁵⁴³ The power generation stage of the electricity market remains the only stage with private participants and a competitive market structure.⁵⁴⁴

2.6.3 Infrastructure

SOEs in the infrastructure sector are used to create much of the infrastructure that exists in Vietnam.⁵⁴⁵ SOEs in this sector operate across a wide range of construction activities, including expressways, railways, airports, and ports. The largest of these SOEs are under the purview of the CMSC, including Vietnam Airlines (86 percent state owned), Airports Corporation of Vietnam (95 percent state owned), Vietnam Expressway Corporation (100 percent state owned), Vietnam National Shipping Lines (Vinalines) (100 percent state owned), and Vietnam Railways (100 percent state owned), many of which have subsidiary companies.⁵⁴⁶ Vietnam Expressway Corporation is responsible for implementing major highway projects assigned by the government.⁵⁴⁷ Vietnam Railways similarly is responsible for carrying out the GOVN’s objectives concerning railway construction, including to remote, border, and island areas, in addition to other public policy initiatives.⁵⁴⁸

2.6.4 Manufacturing

While it is common for governments to have state ownership in certain areas of the economy, including those providing public services, in most countries, private enterprises dominate the manufacturing sector. For this reason, there is often a high degree of competition in the manufacturing sector. The extent of state ownership and the extent to which SOEs in this sector pursue government objectives is therefore particularly important.

Although state ownership in Vietnam’s manufacturing sector has declined notably with SOE equitizations since 2010, it still has high levels of state ownership, with 446 SOEs total in this sector.⁵⁴⁹ Wholesale and retail trade of manufactured products also have high levels of state ownership with 292 SOEs operating in this sector.⁵⁵⁰ Notably, SOEs in the manufacturing sector make up the majority of the SOEs under the management portfolio of the SCIC (*i.e.*, 75 out of the total 145 enterprises managed by the SCIC as of 2022).⁵⁵¹ As noted, the SCIC is tasked with

⁵⁴² EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 66.

⁵⁴³ EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 65.

⁵⁴⁴ EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 66.

⁵⁴⁵ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 84.

⁵⁴⁶ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 55 and 179.

⁵⁴⁷ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 102.

⁵⁴⁸ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 125.

⁵⁴⁹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 23.

⁵⁵⁰ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 24.

⁵⁵¹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 58.

strengthening the dominant role of the state in key sectors. The GOVN therefore appears to view the manufacturing sector as a key industry in which it intends to increase its control.

Within the manufacturing sector, state ownership is particularly high in the textiles and garments industries.⁵⁵² Vinatex is a large manufacturing SOE under the SCIC.⁵⁵³ Vinatex has been used by the GOVN to carry out its objectives concerning the Fourth Industrial Revolution.⁵⁵⁴ An article on Vinatex's website states that, “{b}ased on the Prime Minister's direction and analysis of market trends in the context of Industry 4.0, the textile and apparel industry has launched major development programs in the next 10 years.”⁵⁵⁵ Vinatex's five-year plan in 2020 sets specific export growth targets for the company, which it states are to achieve the goals of the Fourth Industrial Revolution.⁵⁵⁶ It also states that “...the Prime Minister requested the textile and garment industry to maintain its stable position...”⁵⁵⁷

2.6.5 Oil and Gas

Vietnam's energy sector is dominated by SOEs.⁵⁵⁸ There is significant state ownership in the extractions sector, including oil, gas, coal, and minerals, with the state accounting for 84 percent of gasoline retail sale.⁵⁵⁹

Many of the SOEs in these industries are tightly controlled by the GOVN and are used by the GOVN to pursue government objectives. This is true for PetroVietnam, the largest oil and gas company in Vietnam, which is wholly owned by the CMSC and owns many additional SOEs.⁵⁶⁰ PetroVietnam's board of directors is made up of high-ranking CPV members.⁵⁶¹ PetroVietnam and the SOEs under it have been called upon by the GOVN in its promulgation of *Resolution No. 184-NQ/DU dated February 15, 2022, on implementing digital transformation at all subsidiaries*

⁵⁵² OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 23.

⁵⁵³ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 187.

⁵⁵⁴ Vinatex, “Developing Sustainable Value Chains in the Textile Industry,” available at <https://vinatex.com.vn/developing-sustainable-value-chains-in-the-textile-industry>, October 1, 2020.

⁵⁵⁵ Vinatex, “Developing Sustainable Value Chains in the Textile Industry,” available at <https://vinatex.com.vn/developing-sustainable-value-chains-in-the-textile-industry>, October 1, 2020.

⁵⁵⁶ Vinatex, “Developing Sustainable Value Chains in the Textile Industry,” available at <https://vinatex.com.vn/developing-sustainable-value-chains-in-the-textile-industry>, October 1, 2020.

⁵⁵⁷ Vinatex, “Developing Sustainable Value Chains in the Textile Industry,” available at <https://vinatex.com.vn/developing-sustainable-value-chains-in-the-textile-industry>, October 1, 2020.

⁵⁵⁸ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 11.

⁵⁵⁹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 23.

⁵⁶⁰ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 135, 170-171. Although the GOVN's Rebuttal Comment states that SOEs only accounted for four percent of total crude oil extraction as of 2021, this figure seems to be inaccurate. PetroVietnam alone produced 5.5 million metric tons of crude oil in 2021, which was nearly half of total crude oil production for that year. See GOVN Rebuttal Comment, 29. See also PetroVietnam, *Vietnam Oil and Gas Group*, available at www.pvn.vn/sites/en/Pages/detailv4.aspx?NewsID=ff4fb736-7278-4b4e-9271-087a480e8420, accessed May 2, 2024. See also Statista, Volume of crude oil production in Vietnam from 2018 to 2022, available at www.statista.com/statistics/1400415/vietnam-crude-oil-production-volume/#:~:text=In%202022%2C%20Vietnam%20produced%20over,billion%20U.S.%20dollars%20that%20year, accessed May 2, 2024.

⁵⁶¹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 147.

of PetroVietnam to 2025, with orientations to 2030 to pursue digital transformation objectives.⁵⁶² According to the official GOVN news agency website, digital transformation is a “strategic task” of PetroVietnam and “is expected to help the group uphold the leading role in the oil and gas industry, contributing to successfully implementing the national digital transformation {program}, and building a digital society and digital government.”⁵⁶³ PetroVietnam and its subsidiary companies have indeed been undertaking activities to digitize their businesses, and PetroVietnam’s gasoline production in turn was expected to exceed the level specified in the resolution by 14 percent.⁵⁶⁴

In another example, actions of National Petroleum Group, 85 percent of which is owned by the GOVN through the CMSC,⁵⁶⁵ indicate that it carries out government objectives. A 2021 article on National Petroleum Group’s website states that “under the guidance of the Central Enterprises Bloc’s Party Committee, {and} the Commission for the Management of State Capital at Enterprises (CMSC)...the whole Petrolimex system has united and committed to seriously and effectively follow the Prime Minister’s instructions on ‘twin goal’ of: reviving and developing the economy and society, {and} striving for {the} highest growth rate...”⁵⁶⁶ It further states: “{t}o reach socio-economic goals that the Government set for the new year, CMSC chairman Nguyen Hoang Anh requested the whole Petrolimex staff to make a joint{t} effort to fulfill targets registered with CMSC through: improved forecasting to reduce risks; comprehensively assess the implementation of Petrolimex restructuring scheme in line with the Prime Minister’s Decision 828; propose contents appropriate with the 2021-25 development strategy; concurrently reduc{e} the State ownership once approved by the Prime Minister to enhance governance capacity and operational efficiency, effectively organize the logistics system, {and} increase benefits for the State and shareholders.”⁵⁶⁷

2.6.6 Telecommunications

The telecommunications industry in Vietnam is dominated by three SOEs, which provide mobile phone service to the vast majority of subscribers.⁵⁶⁸ These companies are: (1) Viettel, which comprises 54 percent of the market share and is owned by the Ministry of National Defense; (2) Mobifone, which accounts for 26 percent of the market share and is owned by the CMSC; and (3) Vinaphone, which accounts for 18 percent of the market share and is owned by Vietnam Post

⁵⁶² “PetroVietnam Targets Digital Transformation Completion by 2030,” *Vietnam Plus*, July 8, 2022. OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 55. “Digital transformation helps PV GAS improve competitiveness,” *Vietnam Plus*, September 30, 2022.

⁵⁶³ “PetroVietnam Targets Digital Transformation Completion by 2030,” *Vietnam Plus*, July 8, 2022.

⁵⁶⁴ “PetroVietnam Targets Digital Transformation Completion by 2030,” *Vietnam Plus*, July 8, 2022. “Digital transformation helps PV GAS improve competitiveness,” *Vietnam Plus*, September 30, 2022.

⁵⁶⁵ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 55.

⁵⁶⁶ Petrolimex, “Five Key Tasks Set For 2021, Crucial Starting Point Of The 2021-2025 Period,” January 16, 2021.

⁵⁶⁷ Petrolimex, “Five Key Tasks Set For 2021, Crucial Starting Point Of The 2021-2025 Period,” January 16, 2021.

⁵⁶⁸ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 23-24; and Vietnam Credit, “Top Largest Telecommunications Companies in Vietnam,” September 22, 2022.

and Telecommunications, which is owned by the CMSC.⁵⁶⁹ Viettel in particular has been tasked with investing in new technologies to keep costs down for consumers and provide services to remote areas of Vietnam.⁵⁷⁰

Several years ago, the GOVN announced its intention to transition to the Fourth Industrial Revolution, also known as Industry 4.0, which would involve various types of technological upgrades to advance the economy to a more advanced stage of technological production and capabilities.⁵⁷¹ The GOVN has promulgated numerous legal documents calling for government agencies and SOEs to fulfill its objectives concerning the Fourth Industrial Revolution. An important piece of legislation concerning the Fourth Industrial Revolution, *Resolution No. 52-NQ/TW 2019 on a Number of Guidelines and Policies to Actively Participate in the Fourth Industrial Revolution* (*Resolution No. 52*), calls for SOEs to “...make investments in technological research and development...”⁵⁷² To embrace the GOVN’s call for the Fourth Industrial Revolution and fulfill the requirements of *Resolution No. 52*, Viettel has invested heavily in adopting new technologies.⁵⁷³ *Resolution No. 52* also calls for “{e}nsuring that 5G mobile network covers the whole country and that all citizens have access to broadband Internet with low cost.”⁵⁷⁴ To achieve this objective, Viettel led the development of Vietnam’s 5G network.⁵⁷⁵

2.7 Privatization Efforts and Private Sector Development

2.7.1 Privatization Efforts

SOE equitizations and divestments.

As part of its SOE reforms, the GOVN has undertaken efforts to equitize (*i.e.*, sell shares of wholly state-owned enterprises and convert them into JSCs with multiple owners)⁵⁷⁶ and divest (*i.e.*, partially or fully withdraw state capital from enterprises that have previously been equitized)⁵⁷⁷ from SOEs. The GOVN promulgates legislation to codify its SOE equitization and

⁵⁶⁹ Vietnam Credit, “Top Largest Telecommunications Companies in Vietnam,” September 22, 2022; and OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 55.

⁵⁷⁰ Nguyen Manh Hai and Michael O’Donnell, “Reforming State-Owned Enterprises in Vietnam: The Contrasting Cases of Vinashin and Viettel,” *Asian Perspective* 42 (2017), 229-230.

⁵⁷¹ A number of government documents were promulgated during this time. See GOVN, *Resolution No. 52-NQ/TW 2019 on a Number of Guidelines and Policies to Actively Participate in the Fourth Industrial Revolution* (*Resolution No. 52*) (September 27, 2019).

⁵⁷² GOVN, *Resolution No. 52*.

⁵⁷³ VietnamNews, “Viettel Group Embraces Industry 4.0,” December 25, 2018.

⁵⁷⁴ GOVN, *Resolution No. 52*, Part II, subsection 2.

⁵⁷⁵ APEC, *Industry 4.0 in Vietnam* (2023), 10.

⁵⁷⁶ GOVN, *Decree No. 126/2017/NĐ-CP of the Government on Conversion from State-owned Enterprises and Single-member Limited Liability Companies with 100% of Charter Capital Invested by State-owned Enterprises into Joint-stock Companies* (November 16, 2017), Articles 1-3.

⁵⁷⁷ Alexander Ewart, “State-Owned Enterprises in Viet Nam,” in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 5, 38.

divestment plans. Some of the GOVN's equitization and divestment plans have been successful, with the number of wholly state-owned enterprises declining from 1,801 in 2010 to 877 in 2021 and the number of majority SOEs declining from 1,480 to 1,029 during that time period.⁵⁷⁸ The number of non-majority SOEs declined from 1,710 to 999 during that period.⁵⁷⁹

However, many of the recent plans for SOE equitization and divestment have not been fully carried out. Since the coronavirus (COVID-19) pandemic, SOE equitizations and divestments have slowed noticeably.⁵⁸⁰ For this reason, this section will focus on implementation of SOE equitization and divestment plans that occurred before the pandemic began in 2020.

Some of the equitization and divestment plans provide lists of SOEs that are intended to undergo specific levels of equitization and divestment. For example, a decision promulgated in 2016 provided a list of 137 wholly state-owned enterprises that were intended to be equitized before 2020.⁵⁸¹ The GOVN did not come close to achieving its targets published in those decisions,⁵⁸² and in 2019 promulgated a new decision which reduced the number from 137 to 93.⁵⁸³ Of these 93 enterprises, 66 were expected only to sell minority shares, while remaining majority state owned.⁵⁸⁴ In total, shares of only 35 of the original 137 SOEs targeted for equitization had been equitized by the spring of 2020.⁵⁸⁵ Another decision similarly listed 406 SOEs targeted for divestment between 2017 and 2020.⁵⁸⁶ Less than a quarter of these divestments actually came to fruition by late 2019.⁵⁸⁷

Sale of Minority Shares. In addition to the relatively low rates of SOE equitizations, many of the equitization processes that occurred involved the sale of only minority shares.⁵⁸⁸ The GOVN continues to hold an average of 90 percent of shares in enterprises that had been equitized.⁵⁸⁹ One example of minority shares being sold is Vinalines, the national shipping company. In September 2018, it raised less than \$2.33 million in its initial public offering (IPO), which was far below the stated target of \$200 million.⁵⁹⁰ Similarly, Vietnam Rubber Group, which accounts

⁵⁷⁸ GOVN, General Statistics Office, "Business Survey: Number of Enterprises," data accessed via CEIC.

⁵⁷⁹ GOVN, General Statistics Office, "Business Survey: Number of Enterprises," data accessed via CEIC.

⁵⁸⁰ EIU, *Country Commerce Report 2023: Vietnam* (April 2023), 8.

⁵⁸¹ GOVN, *Decision No. 58/2016/QD-TTg dated December 28, 2016 of the Prime Minister on criteria on classification of 100% state-owned enterprises and state-owned enterprises and the list of state-owned enterprises in the 2016 – 2020 period* (December 28, 2016), Appendix IIa(II), IIa(III), IIa(IV).

⁵⁸² OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 101, 182-183. IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation* (June 4, 2019), 63.

⁵⁸³ GOVN, *Decision No. 26/2019/QD-TTg of Prime Minister regarding list of enterprises under equitization by the end of 2020 (Decision No. 26)* (August 15, 2019), Appendix.

⁵⁸⁴ GOVN, *Decision No. 26*, Appendix.

⁵⁸⁵ EIU, *Country Commerce Report 2020: Vietnam*, (April 2020), 8.

⁵⁸⁶ GOVN, *Decision 1232/QD-TTg on Approving the List of State-Owned Enterprises to be divested in the Period 2017-2020*, (August 17, 2017).

⁵⁸⁷ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 182.

⁵⁸⁸ EIU, *Country Commerce Report 2020: Vietnam*, (April 2020), 8.

⁵⁸⁹ EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 8.

⁵⁹⁰ Nikkei, "Vietnam Privatizations Hit Wall as TPP Arrives," January 7, 2019.

for about a third of Vietnam's rubber production and sales, sold only 21 percent of the total shares offered in its IPO in February 2018, raising \$57 million.⁵⁹¹

In some cases, funds raised in IPOs exceeded GOVN targets. This was the case for PetroVietnam Oil Corporation (PVOil), PetroVietnam Power Corporation (PV Power), and Binh Son Refining and Petrochemical One Member Co Ltd (BSR), three subsidiaries of the oil and gas firm PetroVietnam (Vietnam's national oil and gas conglomerate, which is wholly owned by the GOVN⁵⁹²). While they raised a total of almost \$750 million in their 2018 IPOs,⁵⁹³ the shares sold of all three enterprises were close to (and in the case of PVOIL and PVPower, exceeded) their targets.⁵⁹⁴ Despite meeting their targets, the shares purchased at the IPO represented only a minority of charter capital. Moreover, the GOVN still maintained majority ownership over PVOil, PV Power, and BSR, with equity shares of 80.5 percent,⁵⁹⁵ 79.9 percent,⁵⁹⁶ and 92.1 percent⁵⁹⁷ in 2019 (one year after the IPO), respectively.

The insignificant levels of private and foreign purchases of equitized SOEs can be attributed to both supply and demand factors, with the lack of transparency, publicity, and information about the sales having suppressed demand from private and foreign firms.⁵⁹⁸ Even when sufficient information is made public, demand is sometimes still lacking due to weak corporate governance of the enterprises.⁵⁹⁹ According to the Economist Intelligence Unit, "the government could attract investor interest by selling controlling stakes (especially in profitable SOEs), lifting foreign ownership limits and listing on the stock exchanges, a process that demands more transparency and higher levels of corporate governance."⁶⁰⁰ The result of only minority stakes being sold is that the minority shareholders are not provided meaningful governance over the enterprise and there is little transfer of meaningful control from the GOVN to the new shareholders.⁶⁰¹

Even Relatively Large Sales of Shares Do Not Necessarily Lead to a Reduction in Government Control. Even in cases in which relatively large shares of companies were sold, those companies have not witnessed significant changes in control over their management and business

⁵⁹¹ EIU, *Country Commerce Report 2019: Vietnam*, (April 2019), 9.

⁵⁹² Vietnam Oil and Gas Group, "About Us, Subsidiaries, Partly-owned Subsidiaries," accessed December 21, 2020.

⁵⁹³ VietnamNews, "BSR Earns \$244 Million via IPO," January 18, 2018; Reuters, "UPDATE 1-Vietnam raises \$308 mln from PV Power Listing," January 31, 2018; and Reuters, "UPDATE 1-Vietnam Raises \$184 mln by Selling 20 pct of PVOIL in IPO," January 25, 2018.

⁵⁹⁴ Reuters, "UPDATE 1-Vietnam raises \$308 mln from PV Power Listing," January 31, 2018; Reuters, "UPDATE 1-Vietnam Raises \$184 mln by Selling 20 pct of PVOIL in IPO," January 25, 2018; and VietnamNews, "BSR to Open VN's Largest IPO in January," December 16, 2017.

⁵⁹⁵ PetroVietnam, *2019 Annual Report* (2019), 23.

⁵⁹⁶ PVPower, *2019 Annual Report* (2019), 68.

⁵⁹⁷ Vietstock Finance, "BSR Binh Son Refining and Petrochemical Company Limited - BSR Co. Ltd Company Profile," December 21, 2019.

⁵⁹⁸ Forbes, "Vietnam Promises Big Privatization Push," December 31, 2018.

⁵⁹⁹ OECD, *OECD Investment Policy Reviews: Viet Nam 2018*, (2018), 44.

⁶⁰⁰ EIU, *Country Commerce Report 2020: Vietnam*, (April 2020), 9.

⁶⁰¹ OECD, *OECD Investment Policy Reviews: Viet Nam 2018*, (2018), 44.

operations. As noted above, the GOVN has the right to exercise veto power over management decisions in enterprises in which it holds over 35 percent of its shares even when it is not the largest shareholder.⁶⁰² For example, when the government divested from Sabeco, Vietnam's largest beer producer, in 2017, the Ministry of Industry and Trade sold nearly 54 percent of the company to the Vietnam Beverage Co. Ltd. (a subsidiary of the foreign-owned ThaiBev), thereby reducing the GOVN's equity stake from 89.6 percent to 35.6 percent.⁶⁰³ Despite losing its status as majority and largest shareholder, by holding a greater than 33 percent share in the enterprise, the GOVN was still able to retain veto power with its minority stake.⁶⁰⁴

In another example of divestment not resulting in reduced GOVN control, the equitization of Vinamilk, Vietnam's largest dairy producer, in 2017, resulted in the GOVN (through the SCIC) retaining 36 percent of the company and remaining the largest shareholder despite losing the majority ownership.⁶⁰⁵ Even with its reduced ownership share, the government remained the largest shareholder and therefore did not lose control of management decisions of the company.⁶⁰⁶

2.7.2 Private Sector Development

The private domestic sector consists of domestic private companies and household businesses, which are considered part of the informal economy (comprised of unregistered companies that do not pay taxes, although in Vietnam some household business are registered with district government authorities).⁶⁰⁷ The growth of Vietnam's private sector has contributed significantly to Vietnam's economic development. As of 2020, the private domestic sector accounted for approximately 83 percent of employment,⁶⁰⁸ and over 99 percent of total registered businesses.⁶⁰⁹

⁶⁰² The legal basis for this comes from the *Vietnam Law on Enterprises* (2020). Article 148 of this law on “{c}onditions for adoption of resolutions of the General Meeting of Shareholders” states that “{a} resolution on the following contents shall be adopted when it is voted for by shareholders representing 65% or more of total votes of all attending shareholders... (a) a {t}ypes of shares and total number of shares of each type; (b) {c}hange in business sectors, trades or fields; (c) {c}hange in the organizational structure of the company; (d) {i}nvestment projects or sale of assets valued at 35% or more of the total value of assets recorded in the latest financial statements of the company, unless another percentage or value is specified in the company charter; (dd) {r}eorganization or dissolution of the company; and (e) {o}ther issues specified by the company charter.” Article 59 states that “{u}nless otherwise specified by the company charter, a resolution or decision of the Members’ Council shall be approved at a meeting in the following cases: (a) {i}t is voted for by the attending members representing at least 65% of the aggregate contributed capital amount of all the attending members...” See also EIU, *Country Commerce Report 2023: Vietnam* (April 2023), 8.; and Alexander Ewart, “State-Owned Enterprises in Viet Nam,” in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 307-308, 319, 322.

⁶⁰³ Nikkei, “Vietnam Slow to Sell Off State-Owned Companies,” September 8, 2017; and VietStock Finance. “SABECO Major Shareholders,” accessed by July 1, 2024.

⁶⁰⁴ Nikkei, “Vietnam Slow to Sell Off State-Owned Companies,” September 8, 2017.

⁶⁰⁵ Hanoi Times, “Vietnam to Speed up the Process of State-owned Enterprises Equitization,” December 20, 2017.

⁶⁰⁶ Alexander Ewart, “State-Owned Enterprises in Viet Nam,” in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 307-308.

⁶⁰⁷ Le Duy Binh, “Vietnam Private Sector: Productivity and Prosperity,” *Economica*, 2018, 27.

⁶⁰⁸ Vo Xuan Vinh and Chu Duc Manh, “The Paradoxes Of Private Sector Development in Vietnam,” *East Asia Forum*, June 4, 2020.

⁶⁰⁹ GOVN, General Statistics Office, “Business Survey: Number of Enterprises,” data accessed via CEIC.

The increase in registered enterprises over time is the result of both the creation of new firms and the formalization of existing household businesses.⁶¹⁰ Trade and service businesses accounted for 83 percent of domestic private businesses and the industry and construction sector businesses accounted for 17 percent.⁶¹¹

Private Sector Limitations. Many enterprises that make up Vietnam's private domestic sector are not registered with the GOVN and are therefore informal or quasi-formal.⁶¹² The formal private sector is smaller than the informal sector, the private household business sector, and the SOE sector.⁶¹³ In 2020, while the private domestic sector as a whole accounted for about 48 percent of GDP, the formal private sector made up only 10 percent of GDP in 2020, which is considerably less than the SOE sector.⁶¹⁴

The low registration rates of enterprises can largely be attributed to excessive regulations, ineffective enforcement, and the high cost of registering businesses.⁶¹⁵ Other constraints on private sector development include unfair access to resources, poor enforcement of intellectual property laws, and regulations which stymy innovation.⁶¹⁶ According to the IMF, while the government envisions most of the investment in key infrastructure projects to be private, including the Power Development Plan 8, which is aimed at transforming Vietnam's energy sector, achieving this "requires a clear legal and regulatory framework that promotes appropriate incentives (including on pricing mechanisms)."⁶¹⁷

Furthermore, while the 2020 *Law on Investment in the Form of Public-private Partnership* provides a basis for cooperation between the private sector and state in important infrastructure investment projects, compared with *Decree 63/2018/NĐ-CP*, which previously regulated public-private partnership (PPP) projects, it actually reduces the number of PPP investment sectors from eight to five.⁶¹⁸ Some of the projects that were removed are social housing, public lighting systems, agriculture and rural development, headquarters of state agencies, and infrastructure for urban, economic zones, and industrial zones.⁶¹⁹ The IMF recommends "enhancing the legal and

⁶¹⁰ Le Duy Binh, "Vietnam Private Sector: Productivity and Prosperity," *Economica*, 2018, 23.

⁶¹¹ GSO, *Statistical Yearbook of Vietnam 2022*, 392.

⁶¹² Le Duy Binh, "Vietnam Private Sector: Productivity and Prosperity," *Economica*, 2018, 14.

⁶¹³ Vo Xuan Vinh and Chu Duc Manh, "The Paradoxes Of Private Sector Development in Vietnam," *East Asia Forum*, June 4, 2020.

⁶¹⁴ Vo Xuan Vinh and Chu Duc Manh, "The Paradoxes Of Private Sector Development in Vietnam," *East Asia Forum*, June 4, 2020.

⁶¹⁵ Le Duy Binh, "Vietnam Private Sector: Productivity and Prosperity," *Economica*, 2018, 14.

⁶¹⁶ Le Duy Binh, "Vietnam Private Sector: Productivity and Prosperity," *Economica*, 2018, 15.

⁶¹⁷ IMF, *Vietnam: 2023 Article IV Consultation–Press Release; Staff Report; and Statement by the Executive Director for Vietnam*, IMF Country Report No. 23/338 (September 2023), 17.

⁶¹⁸ PwC Legal Vietnam NewsBrief, "New Law on Public Private Partnership," August 10, 2020; and *Allen & Gledhill*, "Guidance on Vietnam's Law on Public Private Partnership in Force from 29 March 2021," May 18, 2021.

⁶¹⁹ PwC Legal Vietnam NewsBrief, "New Law on Public Private Partnership," August 10, 2020; and *Allen & Gledhill*, "Guidance on Vietnam's Law on Public Private Partnership in Force from 29 March 2021," May 18, 2021.

regulatory framework to promote private investment,”⁶²⁰ noting that the implementation of the *Law on Investment in the Form of Public-private Partnership* “has been slow” and “the effectiveness of project selection and appraisal remains to be improved.”⁶²¹

C. The Land System

Vietnam’s land system is illustrative of the GOVN’s ownership and control over an essential resource and important means of production of Vietnam’s economy. For organizational purposes for this review, all topics concerning land, including state ownership and control (Factor Four issues), as well as allocation and pricing (Factor Five issues), have been consolidated into this section.

1. Legal Framework

Land rights in Vietnam are governed primarily by the *Land Law of the Socialist Republic of Vietnam, No. 45/2013/QH13 (Vietnam Land Law (2014))*.⁶²² The version of this law in place at the time of writing was passed in 2013 and took effect in July of 2014.⁶²³ A new version of the *Land Law* was passed in January 2024 but will not take effect until January 2025. Since it is not in effect during the time period covered in this NME review, the *Vietnam Land Law (2014)* will be evaluated here. However, it should be noted that the 2024 *Land Law* does not fundamentally change the land system and that most of the issues of concern with the 2013 version of the *Land Law* remain or have been marginally improved.⁶²⁴ This section will note where the 2024 *Land Law* makes notable changes to the current system.

According to the *Vietnam Land Law (2014)*, “land belongs to the entire people with the State acting as the owner’s representative and uniformly managing land.”⁶²⁵ Private land ownership is therefore prohibited in Vietnam. As the representative landowner, per the *Vietnam Land Law (2014)*, the GOVN is vested with many rights concerning land use and price, including:

1. To decide on master plans, plans on land use.
2. To decide on land use purposes.
3. To prescribe land use quotas and land use terms.
4. To decide on land recovery and land requisition.
5. To decide on land prices.

⁶²⁰ IMF, *Vietnam: 2023 Article IV Consultation–Press Release; Staff Report; and Statement by the Executive Director for Vietnam*, IMF Country Report No. 23/338 (September 2023), 21.

⁶²¹ IMF, *Vietnam: 2023 Article IV Consultation–Press Release; Staff Report; and Statement by the Executive Director for Vietnam*, IMF Country Report No. 23/338 (September 2023), 18.

⁶²² GOVN, *Land Law of the Socialist Republic of Vietnam No. 45/2013/QH13* (adopted by the National Assembly in 1986, amended in 1988, 1993, 1998, 2003, further amended November 29, 2013, promulgated July 1, 2014) (*Vietnam Land Law (2014)*).

⁶²³ GOVN, *Vietnam Land Law (2014)*, Article 221(1).

⁶²⁴ Phuc Hai Tran, “Vietnam’s Land Law evolution,” *East Asia Forum*, March 14, 2024.

⁶²⁵ GOVN, *Vietnam Land Law (2014)*, Article 4.

6. To decide on hand-over of land use rights to land users.
7. To decide on financial policies on land.
8. To prescribe the rights and obligations of land users.⁶²⁶

Although the *Vietnam Land Law (2014)* states that “{t}he State shall decide on land prices,”⁶²⁷ the GOVN only directly sets land prices in the primary land market (*i.e.*, where the government is the sole supplier of land and grants land-use rights to individuals, households, and enterprises).⁶²⁸ There is also a secondary market for land where land users transact land-use rights that they have received from the government. Most prices in the secondary land market are not directly set by the government. However, as will be described below, these prices are influenced by the restrictions on use and transfer of such land.

Given that there is a primary and secondary market for land in Vietnam, this section will first evaluate the legal framework governing GOVN control over the land system in Vietnam (including the scope of land rights, the land-use planning system, and land expropriation by the GOVN) to evaluate the extent to which market actors are permitted to buy and sell land-use rights in the secondary land market. It will then describe the legal framework surrounding the pricing of land in Vietnam’s primary land market to determine whether these prices are based on market principles.

1.1 Scope of Land Rights

Land in Vietnam is categorized by the government as either agricultural or non-agricultural and then further sub-categorized depending on the purpose for which it is used.⁶²⁹ Land is legally allowed to be used only for its intended use purpose,⁶³⁰ and converting land from one use purpose to another can only be done subject to government approval and must conform with various government land-use plans.⁶³¹ Converting agricultural land to non-agricultural land can only be done by the GOVN.⁶³²

The scope of land-use rights varies depending on the use purpose, payment terms, whether the land-use rights are “allocated” or “leased” by the government and whether the land user is foreign or domestic. The government allocates land-use rights only to domestic enterprises,

⁶²⁶ GOVN, *Vietnam Land Law (2014)*, Article 13.

⁶²⁷ GOVN, *Vietnam Land Law (2014)*, Article 18.

⁶²⁸ GOVN, *Vietnam Land Law (2014)*, Articles 5 and 3.

⁶²⁹ GOVN, *Vietnam Land Law (2014)*, Article 10.

⁶³⁰ GOVN, *Vietnam Land Law (2014)*, Article 6.

⁶³¹ GOVN, *Vietnam Land Law (2014)*, Articles 57(1) and 6(1).

⁶³² Although the *Vietnam Land Law (2014)* states that change of agricultural land to non-agricultural land requires permission by state authorities (*see Vietnam Land Law (2014)*, Article 57(1)(d)), it does not explicitly allow landholders to make such conversions. In reality, agricultural land can only be converted for non-agricultural use by the state. *See Hoang Linh Nguyen, Jin Duan and Guo Qin Zhang, “Land Politics under Market Socialism: The State, Land Policies, and Rural–Urban Land Conversion in China and Vietnam,” MDPI Land 7(51) (April 17, 2018): 6.*

households, and individuals.⁶³³ Allocated land can be subject to a one-time payment, called a land-use levy, or no payment at all.⁶³⁴

1.1.1 Agricultural Land

Agricultural land is allocated to households and individuals within the government-prescribed quota limits without collection of a land-use levy.⁶³⁵ Residential land is allocated to households and individuals, but a levy is collected.⁶³⁶ Agricultural land can also be leased to households and individuals in amounts that are in excess of the levy-free quota, and for this land a levy is collected either on an annual basis or once-off at the beginning of the lease period.⁶³⁷

Restrictions on Transfers and Holdings of Agricultural Land-use Rights. Although according to the *Vietnam Land Law (2014)*, land users may transfer their land-use rights,⁶³⁸ this right is subject to numerous restrictions that impede such transfers from taking place.⁶³⁹ This is particularly true for agricultural land, the transfer of which is governed by a complex legal framework. First, agricultural land transfers are strictly regulated and subject to government approval.⁶⁴⁰ The maximum area of land to which any one individual or household can hold land-use rights cannot exceed ten times the area that is allocated to them by the state.⁶⁴¹ There are also restrictions on the maximum amount of agricultural land that can be transferred in any one transaction. For annual crops, a maximum of 15 hectares can be transferred in the Southeast and Mekong regions and ten hectares can be transferred everywhere else.⁶⁴² For perennial crops, 50 hectares can be transferred in flatlands and 150 hectares can be transferred in mountainous regions.⁶⁴³ Restrictions on land-use rights transfers impede farm plot consolidation and thus growth of farms that would allow farmers to realize economies of scale and improve efficiency and productivity.

Second, households and individuals with allocated agricultural land-use rights can only exchange the rights with another landholder without collecting payment and cannot transfer, lease or sublease them.⁶⁴⁴ Further, they can be exchanged only for land-use rights of the same use type they already hold and can be exchanged only with other households or individuals in the same commune, ward, or township.⁶⁴⁵ Converting land from one use type to another is subject to government approval and government land-use plans.⁶⁴⁶

⁶³³ GOVN, Embassy of the Socialist Republic of Vietnam, “Land Regulations,” April 29, 2019.

⁶³⁴ GOVN, Embassy of the Socialist Republic of Vietnam, “Land Regulations,” April 29, 2019.

⁶³⁵ GOVN, *Vietnam Land Law (2014)*, Article 54(1).

⁶³⁶ GOVN, *Vietnam Land Law (2014)*, Article 55(1).

⁶³⁷ GOVN, *Vietnam Land Law (2014)*, Article 56(1).

⁶³⁸ GOVN, *Vietnam Land Law (2014)*, Article 167(1).

⁶³⁹ OECD, *Agricultural Policies in Viet Nam (2015)*, 212.

⁶⁴⁰ OECD, *Agricultural Policies in Viet Nam (2015)*, 212.

⁶⁴¹ GOVN, *Vietnam Land Law (2014)*, Article 130(1).

⁶⁴² OECD, *Agricultural Policies in Viet Nam (2015)*, 212.

⁶⁴³ OECD, *Agricultural Policies in Viet Nam (2015)*, 212.

⁶⁴⁴ GOVN, *Vietnam Land Law (2014)*, Article 190; and OECD, *Agricultural Policies in Viet Nam (2015)*, 212.

⁶⁴⁵ GOVN, *Vietnam Land Law (2014)*, Article 190; and OECD, *Agricultural Policies in Viet Nam (2015)*, 212.

⁶⁴⁶ GOVN, *Vietnam Land Law (2014)*, Articles 58, 176 and 180.

1.1.2 Non-Agricultural Land

As with agricultural land, the government draws a legal distinction between different non-agricultural land-use categories. In total, there are 18 different non-agricultural land sub-categories.⁶⁴⁷ Non-agricultural land is required to be used for the purpose in which it is categorized and approval from “competent state agencies” is required for converting land between categories.⁶⁴⁸ These “competent state agencies” are either provincial- or district-level People’s Committees, depending on the type of land conversion being requested.⁶⁴⁹

The *Vietnam Land Law (2014)* requires land for certain non-agricultural uses to be auctioned off, including land that is to be used for construction of houses or other infrastructure that will be sold or leased, land used for trading, services or non-agricultural production, allocation of urban and rural residential land to households and individuals, allocation or lease of land eligible to land-use levy or land rental reduction.⁶⁵⁰ In land auctions, the land price is determined through a bidding process and the land price is the highest bid.⁶⁵¹ In practice, auctioning of land is relatively rare and when it does occur, significant corruption is found.⁶⁵²

1.1.3 Tenure of Land-Use Rights

The Vietnamese government grants some types of land-use rights for an indefinite period. This includes residential land used by households and individuals, agricultural land used by communities, land for non-agricultural production establishments of households and individuals that are using the land “stably”, land for construction of offices by state agencies, land used for national defense and security purposes, and land used for other types of public welfare and for protected forest land.⁶⁵³ Land for all other uses is subject to definite land-use tenures.

⁶⁴⁷ GOVN, *Vietnam Land Law (2014)*, Article 10(2). The categories are: residential land, including rural residential land and urban residential land; land for construction of offices; land for national defense or security purposes; land for construction of non-business facilities; land for construction of cultural, social, health, education and training, physical training and sports, science and technology, and diplomatic facilities and other non-business facilities; land for non-agricultural production and business; land for trading and service; land of non-agricultural production establishments; land used for mining activities and land for production of building materials and pottery; land used for public purposes, including land used for transport (including airports, airfields, inland waterway ports, maritime ports, rail system, road system and other transport facilities) and irrigation; land with historical-cultural relics or scenic spots; land for community activities or public entertainment and recreation; land for energy facilities; land for post and telecommunications facilities; land for markets; land for waste dumping and treatment, and land for other public facilities; land used by religious establishments; land used for cemeteries, graveyards, funeral service centers and cremation centers; land with rivers, streams, canals, springs and special-use water surface; and other non-agricultural land.

⁶⁴⁸ GOVN, *Vietnam Land Law (2014)*, Articles 11 and 57.

⁶⁴⁹ GOVN, *Vietnam Land Law (2014)*, Article 59.

⁶⁵⁰ GOVN, *Vietnam Land Law (2014)*, Article 118(1).

⁶⁵¹ GOVN, *Vietnam Land Law (2014)*, Articles 108(1) and 108(2).

⁶⁵² Hoang Linh Nguyen, Jin Duan and Guo Qin Zhang, “State Control Versus Hybrid Land Markets: Planning and Urban Development in Transitional Hanoi, Vietnam,” *MDPI Sustainability* 10(2993) (August 23, 2018): 11.

⁶⁵³ GOVN, *Vietnam Land Law (2014)*, Article 125.

The *Vietnam Land Law (2014)* extends the tenure length for all agricultural land from 20 to 50 years.⁶⁵⁴ Land tenure for leased and allocated land for most other uses is also 50 years.⁶⁵⁵ Exceptions are that land used for large investment projects is allocated or leased for a term of 70 years and land used by foreign organizations with diplomatic functions for the construction of offices is leased for a term of 99 years.⁶⁵⁶ In addition, those who purchase a house and obtain the land-use rights for it can use those rights for “a long and stable term.”⁶⁵⁷ The *Vietnam Land Law (2014)* prescribes that at the end of the land tenure period for the land-use rights that are not indefinite the state “shall consider” renewal of the rights.⁶⁵⁸

Limited land tenure reduces land right security. For example, market actors will be less willing to invest in land and the use of land if the rights to it may be revoked. The extension of tenure length brought about by the *Vietnam Land Law (2014)* significantly improves the land tenure system in Vietnam and therefore the land rights security of market actors. However, the land tenures that remain in place continue to serve to reduce the rights of market actors.

1.2 Land Expropriation by the Government

The *Vietnam Land Law (2014)* provides for government expropriation, or acquisition, of land from land users. Compared to the 2003 version of the *Land Law*, which lists twelve cases in which land can be expropriated, the *Vietnam Land Law (2014)* limits the scope of land expropriations to only four cases.⁶⁵⁹ Land can legally still be expropriated for the purposes of (1) national defense or security; (2) socio-economic development for national and public interest; (3) violations of the law; and (4) risks threatening human life.⁶⁶⁰ However, “national and public interest” is broadly defined and ambiguous enough to encompass a wide range of projects.⁶⁶¹ For example, construction of new urban centers, industrial parks, export processing zones, high-tech zones and economic zones legally fall under the umbrella of use for national and public interest.⁶⁶² Moreover, provisions in the law specifically allow such expropriated land to be allocated to private investors for investment projects.⁶⁶³

The changes to the *Vietnam Land Law (2014)* also increased the required level of approval for projects that fall under the scope of “national and public interest.” Such projects and the relevant land expropriations must now be approved by either the National Assembly, Prime Minister, or

⁶⁵⁴ OECD, *Agricultural Policies in Viet Nam (2015)*, 211. GOVN, *Vietnam Land Law (2014)*, Article 126.

⁶⁵⁵ GOVN, *Vietnam Land Law (2014)*, Article 126.

⁶⁵⁶ GOVN, *Vietnam Land Law (2014)*, Article 126.

⁶⁵⁷ GOVN, *Vietnam Land Law (2014)*, Article 126.

⁶⁵⁸ GOVN, *Vietnam Land Law (2014)*, Article 126.

⁶⁵⁹ GOVN, *2003 Land Law*, Article 38; and GOVN, *Vietnam Land Law (2014)*, Articles 61-65.

⁶⁶⁰ GOVN, *Vietnam Land Law (2014)*, Articles 61-65.

⁶⁶¹ Hoang Linh Nguyen, Jin Duan and Guo Qin Zhang, “State Control Versus Hybrid Land Markets: Planning and Urban Development in Transitional Hanoi, Vietnam,” *MDPI Sustainability* 10(2993) (August 23, 2018): 11; and World Bank, *Land Transparency Study: Synthesis Report* (2014), 28.

⁶⁶² GOVN, *Vietnam Land Law (2014)*, Article 62(2)(a).

⁶⁶³ GOVN, *Vietnam Land Law (2014)*, Article 68(2)(a).

provincial People's Councils.⁶⁶⁴ However, even with this change, the OECD considers the expropriation-related improvements to the *Vietnam Land Law (2014)* to be modest, with "...the essential points of controversy...left largely unaddressed."⁶⁶⁵

1.3 Land-Use Planning

The *Vietnam Land Law (2014)* requires land-use plans to be drawn up and implemented at the national, provincial and district levels of government.⁶⁶⁶ National land-use plans are intended to be the master plans for land use in the entire country and are published every five years, as are the provincial land-use plans.⁶⁶⁷ District-level plans are drawn up every year.⁶⁶⁸ Each successive plan is required by law to conform with the plan above it.⁶⁶⁹

Agricultural Land Use and Production Outcomes Dictated by the GOVN. The land planning system determines much of how land is allocated and used, particularly for agricultural land. The *Vietnam Land Law (2014)* dictates that certain amounts of land will be used for annual crops (further sub-categorized into land for rice production and cultivation of other crops), perennial crops, aquatic farming, salt production, and as various types of forest land.⁶⁷⁰ Maximum land allocation amounts are set for each land-use purpose and region.⁶⁷¹ For example, land designated to be used for annual crop production is to be allocated to households and individuals, with each receiving no more than three hectares for land located in the Southeast and Mekong Delta regions and two hectares for land everywhere else.⁶⁷² For perennial crop production, households and individuals located in the delta area receive a maximum of ten hectares and those located in midland and mountainous areas are to receive no more than thirty hectares.⁶⁷³ The *Vietnam Land Law (2014)* provides for some discretion in adjusting the land allocation quotas, which leaves their assignment largely to the discretion of local People's Committees.⁶⁷⁴

Resolution No. 63 INQ-CP of December 23, 2009 on National Food Security (Resolution No. 63) dictates the exact amounts of land to be used for certain agricultural purposes. It states that a total of 3.8 million hectares (about 35 percent of cropland) of land in Vietnam is legally reserved for rice production and that 41-43 million tons of rice is required to be grown on this land.⁶⁷⁵

⁶⁶⁴ GOVN, *Vietnam Land Law (2014)*, Article 62; World Bank, *Land Transparency Study: Synthesis Report (2014)*, 28; and OECD, *Agricultural Policies in Viet Nam*, (2015), 214.

⁶⁶⁵ OECD, *Agricultural Policies in Viet Nam*, (2015), 215.

⁶⁶⁶ GOVN, *Vietnam Land Law*, (2014), Article 36. The *Vietnam Land Law (2014)* recentralized decision-making power regarding land-use plans by delegating land planning powers to one level of government higher than was previously in place. See OECD, *Agricultural Policies in Viet Nam*, (2015), 213.

⁶⁶⁷ GOVN, *Vietnam Land Law*, (2014), Article 37.

⁶⁶⁸ GOVN, *Vietnam Land Law*, (2014), Article 37.

⁶⁶⁹ GOVN, *Vietnam Land Law*, (2014), Articles 39(1)(a) and 40.1(a).

⁶⁷⁰ GOVN, *Vietnam Land Law*, (2014), Article 129; and OECD, *Agricultural Policies in Viet Nam*, (2015), 211.

⁶⁷¹ GOVN, *Vietnam Land Law*, (2014), Article 129; and OECD, *Agricultural Policies in Viet Nam*, (2015), 211.

⁶⁷² GOVN, *Vietnam Land Law (2014)*, Article 129; and OECD, *Agricultural Policies in Viet Nam* (2015), 211.

⁶⁷³ GOVN, *Vietnam Land Law (2014)*, Article 129; and OECD, *Agricultural Policies in Viet Nam* (2015), 211.

⁶⁷⁴ GOVN, *Vietnam Land Law (2014)*, Article 129; and OECD, *Agricultural Policies in Viet Nam* (2015), 211.

⁶⁷⁵ GOVN, *Resolution No. 63*, Article II(2).

Although this is ostensibly to ensure national food security, according to *Resolution No. 63*, the purpose is “to meet the total domestic consumption *and export demand*” {emphasis added}.⁶⁷⁶ Similarly, *Resolution No. 63* requires 1.3 million hectares of land to be reserved to grow 7.5 million tons of corn, 1.2 million hectares of land to be reserved for production of 12 million tons of fruit, and the same amount of land to be reserved for productions of 20 million tons of vegetables.⁶⁷⁷ There are also production quotas for subsidiary food crops, milk, eggs, fish and other aquaculture.⁶⁷⁸

These restrictions prevent farmers from producing more profitable crops on the land.⁶⁷⁹ Restrictions on land use vary across provinces, with farmers in the north generally facing more restrictions than in the south when choosing crops.⁶⁸⁰ However, in the South, more provinces are required to grow rice.⁶⁸¹ For example, in the entire province of Lam Dong, all households are required to grow rice in all seasons.⁶⁸² In total, 1,661 out of a total 2,262 fields in Vietnam grow rice.⁶⁸³

Inconsistency of the Land-use Planning Framework. Although the land planning system determines certain production outcomes in Vietnam, the legal framework that governs the land planning system is complicated, inconsistent, and lacks coordination.⁶⁸⁴ Numerous laws dictate land planning policies in Vietnam and are carried out by multiple government ministries. The *Vietnam Land Law (2014)* is under the purview of the Ministry of Natural Resources and Environment, which is responsible for “the unified state management over land,”⁶⁸⁵ including evaluating and guiding land-use plans.⁶⁸⁶ The Ministry of Construction is responsible for physical and spatial planning, and the housing and real estate markets.⁶⁸⁷

1.4 GOVN Primary Market Land Prices

As described above, in the primary market, the GOVN is the sole supplier of land and grants land-use rights to individuals, households, and enterprises.⁶⁸⁸ The GOVN determines the prices for such land-use rights. This section describes the legislation governing primary market land prices. See the Developments in the Economy section on Government Land Pricing in the

⁶⁷⁶ GOVN, *Resolution No. 63*, Article II(2). Vietnam exports about four million tons of rice each year. See OECD, *Agricultural Policies in Viet Nam* (2015), 117.

⁶⁷⁷ GOVN, *Resolution No. 63*, Article II(2).

⁶⁷⁸ GOVN, *Resolution No. 63*, Article II(2).

⁶⁷⁹ OECD, *Agricultural Policies in Viet Nam*, (2015), 25.

⁶⁸⁰ OECD, *Agricultural Policies in Viet Nam*, (2015), 212.

⁶⁸¹ OECD, *Agricultural Policies in Viet Nam*, (2015), 212.

⁶⁸² OECD, *Agricultural Policies in Viet Nam*, (2015), 212.

⁶⁸³ OECD, *Innovation, Agricultural Production, and Sustainability in Vietnam*, (2022), 40.

⁶⁸⁴ OECD, *Urban Policy Reviews: Vietnam*, (2018), 98.

⁶⁸⁵ GOVN, *Vietnam Land Law (2014)*, Article 23.

⁶⁸⁶ OECD, *Urban Policy Reviews: Vietnam*, (2018), 98.

⁶⁸⁷ OECD, *Urban Policy Reviews: Vietnam*, (2018), 98.

⁶⁸⁸ GOVN, *Vietnam Land Law*, (2014), Articles 5 and 3.

Primary Land Market for information on the extent to which these government-determined prices are meaningful measures of value.

According to the *Vietnam Land Law (2014)*, government valuation of land must abide by certain principles. It must: (a) be based on the lawful land-use purpose at the time of land valuation; (b) be based on the land-use term; (c) conform with either “the popular market price of transferred land with the same land-use purpose,” the winning price in auctions of land-use rights, or the income earned from the use of the land; and (d) conform with prices of adjacent land parcels with the same land-use purpose, profitability and income earned from the land use.⁶⁸⁹ The *Vietnam Land Law (2014)* establishes two broad types of government-set land prices: (1) prices from price tables; and (2) “specific land prices.”⁶⁹⁰ Notably, improvements to the system of land price tables were made in 2022 by the removal of the required price brackets, which were minimum and maximum prices for land determined by the central government which kept land price artificially low.⁶⁹¹ The 2024 *Land Law* further codified this change.⁶⁹² Land price tables and specific land prices are evaluated below.

1.4.1 Government Land-pricing Methods

Government Price Tables. The GOVN is responsible for creating price tables, which are used to value land in the primary land market. Provincial-level People’s Committees develop and submit for approval land price tables to the People’s Council of the same level.⁶⁹³ These tables are currently in place for five years, although the 2024 *Land Law* will require them to be updated every year.⁶⁹⁴

These price tables are used in the primary market for transacting certain types of land-use rights.⁶⁹⁵ For example, each household or individual is by law allocated a “quota” of agricultural land, the rights to which are subject to a small land-use levy which is calculated using government price tables.⁶⁹⁶ They are also used for calculating land-use levies for land converted from non-residential to residential land for land areas within land allocation quotas applied to households and individuals.⁶⁹⁷

⁶⁸⁹ GOVN, *Vietnam Land Law*, (2014), Article 112.

⁶⁹⁰ GOVN, *Vietnam Land Law*, (2014), Articles 113-14.

⁶⁹¹ Lexology, “New Changes in Land Price Bracket in Vietnam,” September 6, 2022; and Vietnam Investment Review, “The Effects to Land and Market Price Through Bracket Removal,” October 6, 2022.

⁶⁹² PwC Legal Vietnam Newsbrief, “Some Notable Changes in the New Land Law,” March 18, 2024.

⁶⁹³ GOVN, *Vietnam Land Law* (2014), Article 114(1).

⁶⁹⁴ GOVN, *Vietnam Land Law* (2014), Article 114(1); and PwC Legal Vietnam Newsbrief, “Some Notable Changes in the New Land Law,” March 18, 2024.

⁶⁹⁵ GOVN, *Vietnam Land Law* (2014), Article 114(2).

⁶⁹⁶ GOVN, *Vietnam Land Law* (2014), Article 114(2).

⁶⁹⁷ GOVN, *Vietnam Land Law* (2014), Article 114(2).

“Specific” Land Prices Set by the Government. The *Vietnam Land Law (2014)* also sets forth instances in which the “{p}rovincial-level People’s Committees shall decide on specific land prices,”⁶⁹⁸ which are prices calculated for individual plots of land. These prices “must be based on the investigation, collection of information about land parcels, market land price and information on land price in the land database.”⁶⁹⁹ These prices are used, for example, to calculate the land-use levy for use of above-quota land and for land for which the government permits the change of use purpose from either agricultural land to non-agricultural land or from non-residential to residential land.⁷⁰⁰ They are also used for calculating the price paid for agricultural land transferred from one user to another and for calculating the land-use price paid for land that is leased.⁷⁰¹ These prices are also used to calculate the compensation amount for land that is recovered or expropriated by the GOVN,⁷⁰² and the starting prices at auctions.⁷⁰³ Some of these instances in which specific prices are used are in the secondary market for land. The *Decree Prescribing Land Prices, No. 44/2014/NĐ-CP (Decree on Land Prices)* provides insight into how the specific land prices are calculated by the GOVN by describing five methods for calculating such prices. The first method is the “direct comparison method,” which involves pricing land based on prices of land plots “with similar purposes, locations, profitability, infrastructure, area, shape, {and} legitimacy that have been sold on the market or at auction.”⁷⁰⁴

The second method is the “subtraction method” which is intended to be used for land with property on the land and is calculated by subtracting the value of the property on the land from the total value of the real estate (including land and property).⁷⁰⁵ The 2024 *Land Law* provides for the removal of this method.⁷⁰⁶ Third, the “income-based method,” calculates the land price based on the average annual net income from the land unit and an average annual interest rate of a 12-month term deposit at a state-owned commercial bank.⁷⁰⁷ This method is to be used when “income and land use cost are already determined.”⁷⁰⁸ Fourth, the “surplus-based method,” is to be used for “land with development potential as a result of changes of zoning or purposes of land when the total estimated revenue and expenses can be determined” and is determined by subtracting the estimated total cost from estimated total revenue of the real estate.⁷⁰⁹

Lastly, the “coefficient method,” calculates land price by multiplying the land price coefficient by the land price in the price tables promulgated by the local People’s Committees.⁷¹⁰ The coefficient is formulated by provincial-level Departments of Finance, in cooperation with

⁶⁹⁸ GOVN, *Vietnam Land Law (2014)*, Article 114(3).

⁶⁹⁹ GOVN, *Vietnam Land Law (2014)*, Article 114(3).

⁷⁰⁰ GOVN, *Vietnam Land Law (2014)*, Article 114(4).

⁷⁰¹ GOVN, *Vietnam Land Law (2014)*, Article 114(4).

⁷⁰² GOVN, *Vietnam Land Law (2014)*, Article 114(4).

⁷⁰³ GOVN, *Decree Prescribing Land Prices, No. 44/2014/NĐ-CP (May 15, 2014) (Decree on Land Prices)*, Article 15(2).

⁷⁰⁴ GOVN, *Decree on Land Prices*, Article 4.

⁷⁰⁵ GOVN, *Decree on Land Prices*, Article 4.

⁷⁰⁶ PwC Legal Vietnam Newsbrief, “Some Notable Changes in the New Land Law,” March 18, 2024.

⁷⁰⁷ GOVN, *Decree on Land Prices*, Article 4.

⁷⁰⁸ GOVN, *Decree on Land Prices*, Article 5.

⁷⁰⁹ GOVN, *Decree on Land Prices*, Articles 4 and 5.

⁷¹⁰ GOVN, *Decree on Land Prices*, Article 4.

provincial-level Departments of Natural Resources and Environment “and other relevant Departments and Boards.”⁷¹¹ The coefficient is intended to reflect “the common market price of land, the local social and economic conditions and the land price list.”⁷¹² The *Decree on Land Prices* requires the coefficient method to be used for some, but not all, cases in which the *Vietnam Land Law (2014)* requires price tables be used.⁷¹³ Although neither the *Vietnam Land Law (2014)* nor the *Decree on Land Prices* make clear which method takes precedent when multiple methods could be used in a given situation, the 2024 *Land Law* provides guidance on application of the methods.⁷¹⁴

2. *Developments in the Economy*

2.1 Land-use Planning

The land-use planning system in Vietnam, described in the Legal Framework, allows the government, at all levels, to maintain control over land use and dictate market outcomes. This is true even though the land-use planning system is not as organized as the laws governing it would suggest. In reality, land-use planning by the GOVN can be incoherent and inconsistent.⁷¹⁵ The laws that govern land-use planning, the plans themselves, and the agencies that implement them all use different terminology, definitions, and classifications regarding land.⁷¹⁶ Further, the plans are often so ambitious that they are unrealistic and unattainable.⁷¹⁷ According to an academic publication in the *Journal of Vietnamese Studies*, “the ambiguous rhetoric used in these legal documents exacerbates an institutional environment in which everyone is in charge but no one is responsible.”⁷¹⁸ The Economist Intelligence Unit confirms that “{z}oning requirements tend to be applied on an ad hoc basis.”⁷¹⁹

⁷¹¹ GOVN, *Decree on Land Prices*, Article 18(4).

⁷¹² GOVN, *Decree on Land Prices*, Article 18(1).

⁷¹³ GOVN, *Decree on Land Prices*, Article 18(2).

⁷¹⁴ Giulia Interesse, “Vietnam’s 2024 Land Law: Significant Amendments and Key Changes,” *Vietnam Briefing*, February 13, 2024.

⁷¹⁵ OECD, *Urban Policy Reviews: Vietnam*, (2018), 98-99.

⁷¹⁶ OECD, *Urban Policy Reviews: Vietnam*, (2018), 98-99. “For instance, the land use plans of MONRE and construction plans of the MOC define urban land differently and have different classifications of land, relying on different criteria. The *Vietnam Land Law (2014)* lists different land use purposes, classifying it between agricultural, non-agricultural and non-used land, while the *Law on Urban Planning* is concerned with ‘urban planning land’ – it distinguishes civil, non-civil and other lands, with uses classified as residential, public, commercial, service and industrial. These classifications and plans serve as a basis for land use transfer, transaction and leasing, and yet their relationship is not specified. This complexity and ambiguity lead to delays in project development, as actors cannot decide which one takes precedence, or how to harmonize both classifications.” See OECD, *Urban Policy Reviews: Vietnam*, (2018), 98-99.

⁷¹⁷ OECD, *Urban Policy Reviews: Vietnam*, (2018), 66 and 69.

⁷¹⁸ Simon Benedikter and Loan T. P. Nguyen, “Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform,” *Journal of Vietnamese Studies* 13(4) (2018): 14.

⁷¹⁹ EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 19.

A result of the aforementioned deficiencies in the land-use planning system is that land-use plans do not always conform with plans above them.⁷²⁰ In addition, land-use plans are not always enforced and sometimes not even formulated, especially at lower levels of government.⁷²¹ The result is that land-use plans often differ from the actual use of land.⁷²² Although it would seem that this lack of implementation would allow the market greater scope to function, this is not necessarily the case. The existence of plans creates significant red tape that prevents those wanting to use the land from receiving the necessary licenses and permissions to do so.⁷²³ In some cases, projects proceed without formal government approval.⁷²⁴ However, these informal developments in some ways exacerbate the problems from land planning that exist because, according to the OECD, they “undercut efforts to make rational sense of the system.”⁷²⁵

Moreover, the land-use planning framework often gives governmental authorities the legal protection to price and allocate land-use rights in pursuit of either private gain or policy objectives, such as local growth and employment objectives, fiscal revenue generation, government planning policies or other political or strategic objectives. This is particularly prevalent at the local level, where local authorities are seen to make decisions outside of the centrally planned land-use framework.⁷²⁶ Due to chronically low wages, it is common for government officials to use their official positions for personal gain.⁷²⁷

Although land zoning is a common land planning policy used by governments in many countries, the extent of land-use planning on land usage and allocation in Vietnam, coupled with the government’s significant control over the land system, results in land planning by the GOVN being a means for the state to, according to one source, “maintain proactive intervention in land supply.”⁷²⁸ Land-use planning in Vietnam is therefore used by the state as an instrument to regulate land-use, allocation and development, rather than a means to represent public interest.⁷²⁹

⁷²⁰ OECD, *Urban Policy Reviews: Vietnam*, (2018), 20.

⁷²¹ OECD, *Agricultural Policies in Viet Nam*, (2015), 213.

⁷²² Simon Benedikter and Loan T. P. Nguyen, “Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform,” *Journal of Vietnamese Studies* 13(4) (2018): 11.

⁷²³ Simon Benedikter and Loan T. P. Nguyen, “Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform,” *Journal of Vietnamese Studies* 13(4) (2018): 11.

⁷²⁴ OECD, *Urban Policy Reviews: Vietnam*, (2018), 99.

⁷²⁵ OECD, *Urban Policy Reviews: Vietnam*, (2018), 99.

⁷²⁶ OECD, *Agricultural Policies in Viet Nam*, (2015), 213.

⁷²⁷ Simon Benedikter and Loan T. P. Nguyen, “Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform,” *Journal of Vietnamese Studies* 13(4) (2018): 29.

⁷²⁸ Hoang Linh Nguyen, Jin Duan and Guo Qin Zhang, “State Control Versus Hybrid Land Markets: Planning and Urban Development in Transitional Hanoi, Vietnam,” *MDPI Sustainability* 10(2993) (August 23, 2018): 6.

⁷²⁹ Hoang Linh Nguyen, Jin Duan and Guo Qin Zhang, “Land Politics under Market Socialism: The State, Land Policies, and Rural–Urban Land Conversion in China and Vietnam,” *MDPI Land* 7(51) (April 17, 2018): 5.

2.2 The Effects of Government Ownership and Control Over the Secondary Land Market in Vietnam

Government ownership of land in Vietnam and the high degree of government control over the use and transfer of land described in the Legal Framework prevents market-based valuation and allocation of land in the secondary land market. Since land is an important input to production, land prices and allocation are important components of this analysis. This section evaluates the effects of government ownership and control over land on the allocation and valuation of land in Vietnam.

In functional land markets, economic development forces certain changes in the use of a country's productive inputs, including land and labor.⁷³⁰ Structural transformation results in populations transitioning from working in agriculture to working in manufacturing and services. The rural population, and in particular the rural population employed in agriculture, consequently declines. Those changes modify how land is used. Farms consolidate, economies of scale are realized, and the farmers that remain become more efficient and productive. Urban areas generally grow, and workers achieve a higher marginal product outside the farm sector. In Vietnam, however, government ownership and control over land, described in the legal framework above, impedes this process. According to the OECD, “{f}armers are denied the opportunity to use lands to their most profitable use...”⁷³¹

The government's complex land classification system and the extensive restrictions imposed on converting land from one use to another and transferring land between users in many cases prevent such transfers from taking place.⁷³² This results in a siloed market structure for agricultural and non-agricultural land use. Each of these submarkets is then further segmented into specific use categories. Since local governments are responsible for converting land from one use type to another, each administrative jurisdiction consists of silos for each specific land use. Within each silo, land-use rights transfers between individuals and firms are limited and the silos remain connected solely through the local government land administration system.⁷³³ Such a siloed market structure necessarily precludes meaningful, market-determined land price formation because landholders generally lack the rights and opportunities needed to maximize the value of their landholdings. Without the ability to convert land from one use of another or transfer land between users, landholders are often not able to receive adequate remuneration for their land-use rights, if they are able to sell them at all. The most significant price distortion is the wedge that is driven between prices of agricultural and non-agricultural land, with prices in both silos being distorted by the relative scarcity or abundance of land in each silo.⁷³⁴

⁷³⁰ Dang Hoa Ho and Malcolm McPherson, “Land Policy for Socioeconomic Development in Vietnam,” Harvard Kennedy School, the Institute of Policy and Strategy for Agriculture and Rural Development (IPSARD) and United Nations Development Programme (UNDP), May 27, 2010, 19.

⁷³¹ OECD, *Agricultural Policies in Viet Nam*, (2015), 212.

⁷³² OECD, *Agricultural Policies in Viet Nam*, (2015), 193 and 212.

⁷³³ OECD, *Agricultural Policies in Viet Nam*, (2015), 212.

⁷³⁴ OECD, *Agricultural Policies in Viet Nam*, (2015), 214-215.

Not being able to change the land-use purpose precludes the market in Vietnam from putting land to best use. For example, farmers are not able to accumulate land to produce on a larger, more productive, and efficient scale. Thus, agricultural land use in Vietnam remains small-scale and inefficient, with a median farm plot size of 0.0625 hectares.⁷³⁵

Farming is also highly fragmented, with average farms consisting of 4.4 noncontiguous plots.⁷³⁶ Very few farms have grown to the level considered to be “large-scale” farming, *i.e.*, 2 hectares.⁷³⁷ Paddy land (*i.e.*, land used for rice production) is particularly fragmented, with around 9.3 million households engaged in rice production with an average plot size of just 0.44 hectares.⁷³⁸ This is only a fraction of the average in the United States, which is 444 acres (about 180 hectares).⁷³⁹ Although the United States has one of the most consolidated agriculture industries, the order-of-magnitude difference illustrates the degree of farm plot fragmentation in Vietnam. Small-scale, fragmented farming, in addition to insecure land-use rights, results in farmers not investing in machinery and equipment.⁷⁴⁰ Farming in Vietnam in general is thus highly labor-intensive and inefficient.⁷⁴¹

Land used for administratively planned industrial zones continues to expand even though the occupancy rates of these zones are less than half.⁷⁴² At the same time, much land actually used for industrial production is fragmented and located outside of industrial zones.⁷⁴³ Seventy percent of the land occupied by industry in Ho Chi Minh City is in areas outside formally approved industrial zones.⁷⁴⁴ Informal housing in Vietnam’s largest cities is common and according to one source is seen by the government as necessary for migration to cities, industrialization and economic growth.⁷⁴⁵ However, it also exacerbates the dysfunction of land market formation: individuals living in informal housing have no property rights, which may be to the benefit of a government that is reluctant to relinquish its own rights over land. The widespread use and acceptance by the government of informal housing and development therefore does not allow a system of clear property rights to form.⁷⁴⁶

⁷³⁵ UNU-WIDER, *Land Issues in Vietnam 2006-2014*, WIDER Working Paper, 2015/088 (September 2015), 6. The source reports 625 square meters, which is equal to 0.0625 hectares.

⁷³⁶ OECD, *Agricultural Policies in Viet Nam*, (2015), 76.

⁷³⁷ OECD, *Agricultural Policies in Viet Nam*, (2015), 76-77.

⁷³⁸ OECD, *Agricultural Policies in Viet Nam*, (2015), 75.

⁷³⁹ U.S. Department of Agriculture Economic Research Service, *Farming and Farm Income* (March 6, 2019).

⁷⁴⁰ UNU-WIDER, *Land Issues in Vietnam 2006-2014*, WIDER Working Paper 2015/088 (September 2015), 5.

⁷⁴¹ OECD, *Agricultural Policies in Viet Nam*, (2015), 23.

⁷⁴² World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity and Democracy*, (2016), 34-35.

⁷⁴³ World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity and Democracy*, (2016), 35.

⁷⁴⁴ World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity and Democracy*, (2016), 35.

⁷⁴⁵ Hoang Linh Nguyen, Jin Duan and Guo Qin Zhang, “State Control Versus Hybrid Land Markets: Planning and Urban Development in Transitional Hanoi, Vietnam,” *MDPI Sustainability* 10(2993) (August 23, 2018): 9.

⁷⁴⁶ Hoang Linh Nguyen, Jin Duan and Guo Qin Zhang, “State Control Versus Hybrid Land Markets: Planning and Urban Development in Transitional Hanoi, Vietnam,” *MDPI Sustainability* 10(2993) (August 23, 2018): 9.

The manifestations described above are not simply due to an underdeveloped market where individual actors have sufficient rights such that, given time, the problems with the land system would naturally sort themselves out. Instead, land market development is severely limited due to the constraints on individuals' land-use rights and the government's pervasive and intrusive role in the market. For these reasons, the World Bank in its *Vietnam: 2030* report states that "The markets for trading land-use rights are, in effect, missing."⁷⁴⁷ The inability of market actors to convert the legal use of land results in industrial land that is priced artificially low and urban-resident land that is priced artificially high.⁷⁴⁸

2.3 Government Land Pricing in the Primary Market

The prices set by the GOVN in the primary land market are used in many land transactions in Vietnam. It is found that government-set prices in the primary land market are generally far below prices in the secondary market for land.⁷⁴⁹ The GOVN itself stated in a 2022 resolution that "[t]he methods of valuation and auction of land use rights are still inadequate and not suitable to the real context" and that "[r]egistered land transfer prices are much lower than the market prices."⁷⁵⁰ This is true for both prices in price tables and specific prices.

Land price tables have traditionally been anchored by "price brackets" (also known as "price frames"), which were minimum and maximum prices for land determined by the central government.⁷⁵¹ These prices were found to be 30 to 60 percent lower than the market price, depending on the locality.⁷⁵² Another study evaluating a specific region in Vietnam found that prices in government price tables were six to eight times lower than prices of similar land on the secondary market.⁷⁵³ Other studies have found prices in price tables to be even further below the secondary market value for land.⁷⁵⁴ Improvements to the system of land price tables were made

⁷⁴⁷ World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity and Democracy*, (2016), 25.

⁷⁴⁸ World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity and Democracy*, (2016), 221.

⁷⁴⁹ Vietnam Investment Review, "The Effects to Land and Market Price Through Bracket Removal," October 6, 2022; Nguyen Tran Tuan, "Land Tenure and Land Acquisition Enforcement in Vietnam," *SAGE Open* (January-March 2023): 9; and VietnamPlus, "Law Revised to Apply Market-Based Approach In Valuing Land Price," October 17, 2022.

⁷⁵⁰ GOVN, *Resolution No. 18-NQ/TW of the fifth plenum of the 13th CPV Central Committee on "continuing to innovate and complete institutions and policies to strengthen the efficiency and effectiveness in management and use of land, serving as the driving force in developing our country into a high-income economy,"* June 16, 2022, Part I.

⁷⁵¹ Lexology, "New Changes in Land Price Bracket in Vietnam," September 6, 2022; and Vietnam Investment

Review, "The Effects to Land and Market Price Through Bracket Removal," October 6, 2022.

⁷⁵² Quang Cuong Doan, "Determining the Optimal Land Valuation Model: A Case Study of Hanoi, Vietnam," *Land Use Policy* 127, (April 2023), 1; and Vietnam Investment Review. "The Effects to Land and Market Price Through Bracket Removal," October 6, 2022.

⁷⁵³ Nguyen Tran Tuan, "Land Tenure and Land Acquisition Enforcement in Vietnam," *SAGE Open* (January-March 2023): 9.

⁷⁵⁴ Vietnam Investment Review, "Ensuring Land Prices On Market Principles," August 25, 2022.

in 2022 by the removal of the required price brackets.⁷⁵⁵ The 2024 *Land Law* will make a further change by requiring the price tables to be updated every year.⁷⁵⁶ However, it remains to be seen whether land prices in price tables will keep up with prices of land in the secondary land market. Specific land prices determined by the government have similarly been found to be below the value of land in the secondary market.⁷⁵⁷ Although these prices could technically range and be determined based on any of the methods described in the Legal Framework, in reality this pricing process is inefficient and does not result in meaningful measures of value.⁷⁵⁸ Moreover, even if specific land prices were in some cases based on land prices in the secondary market, as was described above, Commerce finds secondary land prices to also not be based on market principles due to the extent of government control over the land system that prevents market actors from being able to transact and price land based on market principles.

2.4 Land Expropriation and Compensation by the Government

In Vietnam, local governments serve dual roles as owners of agricultural land and representatives of the state. As such, they often have the means and motive to expropriate land from farmers, convert it to non-agricultural land, and sell the land-use rights to developers to either generate fiscal revenue or foster economic growth.⁷⁵⁹ Due to the widespread use of land expropriations and the low compensation rates land users often receive for expropriated land, it is an important component of land valuation in Vietnam.

Government Land Expropriation. The 2013 changes to the *Land Law* described in the Legal Framework seem to have had a positive impact on expropriations. In 2014, the year that the amended *Vietnam Land Law (2014)* came into effect, surveys showed a drop in the respondents reporting expropriations from roughly nine percent to around six percent.⁷⁶⁰ The figure increased the following year to 7.43 percent, and in 2016 and 2017, the figures were 6.82 and 6.65,

⁷⁵⁵ Lexology, “New Changes in Land Price Bracket in Vietnam,” September 6, 2022.

⁷⁵⁶ GOVN, *Vietnam Land Law (2014)*, Article 114(1); and PwC Legal Vietnam Newsbrief, “Some Notable Changes in the New Land Law,” March 18, 2024.

⁷⁵⁷ Vietnam Investment Review, “Ensuring Land Prices on Market Principles,” available at <https://vir.com.vn/stabilisation-fund-not-the-true-answer-for-reducing-costs-in-the-petrol-market-96546.html>, available at August 25, 2022.

⁷⁵⁸ Vietnam Investment Review, “Ensuring Land Prices on Market Principles,” available at <https://vir.com.vn/stabilisation-fund-not-the-true-answer-for-reducing-costs-in-the-petrol-market-96546.html>, available at August 25, 2022.

⁷⁵⁹ Hoang Linh Nguyen, Jin Duan and Guo Qin Zhang, “State Control Versus Hybrid Land Markets: Planning and Urban Development in Transitional Hanoi, Vietnam,” *MDPI Sustainability* 10(2993) (August 23, 2018): 10-11.

⁷⁶⁰ CECODES, VFF-CRT, RTA and UNDP, *The 2017 Viet Nam Governance and Public Administration Performance Index (PAPI 2017): Measuring Citizens’ Experiences*, (2018), 12.

respectively.⁷⁶¹ While it is unclear whether land expropriations have declined in recent years, they continue to be a common way for land to be converted and developed in Vietnam.⁷⁶²

Compensation for Expropriated Land. The *Vietnam Land Law (2014)* requires that compensation for expropriated land be land with the same use purpose as the expropriated land.⁷⁶³ However, if there is no land available for compensation, land users shall receive monetary compensation in the amount of the value of the land.⁷⁶⁴ The government is required to compensate the land users with specific land prices (described above), which are calculated by provincial-level People's Committees.⁷⁶⁵ As described, there are several methods for calculating specific land prices. These administratively calculated prices are far below what the landholder could receive if able to transact directly with the developer since "market price" refers to the relatively low agricultural land value, and not the higher construction land value the local government realizes once it converts the land and sells the land-use rights to developers for industrial or commercial use.⁷⁶⁶ Studies have found that the prices the government pays former land users for expropriated land are 30-70 percent lower than prices in secondary markets.⁷⁶⁷ A more recent study evaluating a specific region in Vietnam found that the government prices were six to eight times lower than prices of similar land on the secondary market, indicating that the problem has not improved in recent years.⁷⁶⁸ In addition, compensation procedures are slow, unpredictable and lack transparency.⁷⁶⁹ The OECD considers farmers not receiving market value for expropriated land among the most significant problems that remain in Vietnam's land markets.⁷⁷⁰

D. Assessment of the Factor

According to GOVN statistics, the size of the state sector has declined from 40 percent in 2002 to 20.6 to 30.2 percent today,⁷⁷¹ although the figure would be higher if it accounted for minority or indirect government ownership. SOEs exist in most areas of the economy and are predominant

⁷⁶¹ CECODES, VFF-CRT, RTA and UNDP, *The 2017 Viet Nam Governance and Public Administration Performance Index (PAPI 2017): Measuring Citizens' Experiences*, (2018), 12.

⁷⁶² Nguyen Tran Tuan, "Land Tenure and Land Acquisition Enforcement in Vietnam," *SAGE Open* (January-March 2023): 12-13.

⁷⁶³ GOVN, *Vietnam Land Law (2014)*, Article 74(2).

⁷⁶⁴ GOVN, *Vietnam Land Law (2014)*, Article 74(2).

⁷⁶⁵ GOVN, *Vietnam Land Law (2014)*, Articles 114(3) and 114(4)(e).

⁷⁶⁶ OECD, *Agricultural Policies in Viet Nam*, (2015), 214.

⁷⁶⁷ Andrew Wells-Dang, "Promoting Land Rights in Vietnam: A Multi-Sector Advocacy Coalition Approach," *OXFAM*, 2013, 15; OECD, *Agricultural Policies in Viet Nam*, (2015), 214; Hoang Linh Nguyen, Jin Duan and Guo Qin Zhang, "State Control Versus Hybrid Land Markets: Planning and Urban Development in Transitional Hanoi, Vietnam," *MDPI Sustainability* 10(2993) (August 23, 2018): 11; and Hoang Linh Nguyen, Jin Duan and Guo Qin Zhang, "Land Politics Under Market Socialism: The State, Land Policies, and Rural-Urban Land Conversion in China and Vietnam," *MDPI Land* 7(51) (April 17, 2018): 7.

⁷⁶⁸ Nguyen Tran Tuan, "Land Tenure and Land Acquisition Enforcement in Vietnam," *SAGE Open* (January-March 2023): 9.

⁷⁶⁹ OECD, *Agricultural Policies in Viet Nam*, (2015), 215.

⁷⁷⁰ OECD, *Agricultural Policies in Viet Nam*, (2015), 25.

⁷⁷¹ The wide ten percentage point range in official statistics is attributable to certain definitional, measurement, and transparency issues in data collection.

in certain areas of the economy where there is little justification for it, including manufacturing. Vietnamese law requires SOEs to play the leading role in the Vietnamese economy. To ensure this happens, SOEs are afforded government benefits compared to the private sector that result in a lack of competition, especially in industries where SOEs are predominant. Corporate governance over SOEs in Vietnam is poor and SOEs do not operate at arm's length from the GOVN. Instead, the GOVN uses SOEs to carry out government objectives and exercises direct control over their operations to do so. The GOVN has created agencies to exercise increased control over SOEs, including those that it holds less than a majority of shares in. The GOVN often uses state economic groups, which operate in specific fields, to carry out specific government objectives.

Although the private sector is an important component of the Vietnamese economy, comprising almost half of GDP, due in part to the private sector's limited access to resources, it has not grown as a share of GDP since the time of *Commerce's Vietnam NME Determination* (2002). The decline in the size of the SOE sector as a share of GDP is instead accounted for by the growth of the foreign investment sector.

Since *Commerce's Vietnam NME Determination* (2002), the GOVN has marginally improved policies governing government pricing and allocation of land-use rights. However, the government continues to own all land in Vietnam and exercise significant control over its pricing and allocation. Individual land-use rights remain limited in scope and land users are often not able to sell their land-use rights to others or convert the land to a different use purpose. This results in land-use silos, where land is either over-allocated or under-allocated in each silo compared to a market-determined outcome. Only the government can convert land from one use purpose to another. This often results in government expropriation of land from land users with low rates of compensation to the former land users. In addition to the lack of individual property rights over land, the GOVN is responsible for creating land-use plans which allow the government, at all levels, to maintain control over land use and dictate market outcomes.

The restrictions on individuals' land-use rights in turn allow the government to determine what land is used for and prevents land from being utilized based on market outcomes determined by individual users, thus distorting land prices and precluding meaningful, market-based land valuation in the secondary market for land in Vietnam. Due to the government's intrusive and pervasive role in land administration, many land transactions take place in the primary land market where the government allocates land-use rights to land users. The land prices in the primary market are directly set by the government and are significantly below prices in the secondary land market. However, secondary land market prices are also not found to be market based due to the limited scope of land-use rights and the excessive control over land use and transfer by the GOVN.

FACTOR FIVE: THE EXTENT OF GOVERNMENT CONTROL OVER THE ALLOCATION OF RESOURCES AND OVER THE PRICE AND OUTPUT DECISIONS OF ENTERPRISES

Vietnam's "Doi Moi" economic reforms have helped liberalize the economy from excessive reliance on the government to allocate resources and make price and output determinations for enterprises. With respect to allocation of capital, the most economically significant of these resources, the GOVN has helped Vietnam lessen its pervasive dependence on state-sector lending since *Commerce's Vietnam NME Determination* (2002). The GOVN has also reduced the number of price controls over commodities since 2002. Despite these important market-oriented reforms, Commerce finds that considerable resource allocation is still being conducted by the government, and that extensive price controls have lingered since 2002. Moreover, the GOVN still heavily relies on state planning as a means through which it can direct business decisions to achieve output and other economic outcomes. As Vietnamese law still requires SOEs to play the leading role in its economy, and benefits such as preferential lending practices are still disproportionately bestowed upon state sector firms relative to their private sector counterparts, deeper structural reforms are needed before resource, price, and output determinations become principally driven by free-forming market conditions.

This analysis is divided into three sections. After the introductory section in Part A, Part B describes the banking sector in Vietnam, including issues related to government ownership and control, and resource allocation. Part C focuses on state-directed planning in Vietnam. Finally, Part D assesses the government-regulated prices that remain in Vietnam that affect final prices of goods and assesses whether the prices are consistent with market principles.

A. Introduction

Excessive government control over the allocation of resources and over the price and output decisions of enterprises distorts the free functioning of supply and demand factors that form the basis of a market economy. If resources are significantly misallocated due to official direction, or if the government significantly influences or constrains the price and output decisions of individual market actors, then prices and costs will not reflect freely formed supply and demand conditions, and non-market conditions in that economy will prevail.

Commerce finds that state ownership in the banking sector appears to have declined since *Commerce's Vietnam NME Determination* (2002), although the extent of the decline is unknown. At least 50 percent of Vietnam's banking sector is accounted for by majority state-owned banks, whereas in 2002 the banking sector was 70-80 percent state-owned.⁷⁷² Through state ownership, the GOVN continues to exercise significant control over the banking sector. State-owned banks lend disproportionately to SOEs despite SOEs often being less efficient than their private counterparts, which results in a misallocation of resources. In addition, the GOVN continues to set maximum lending rates that banks are required to follow for certain types of loans that are

⁷⁷² *Commerce's Vietnam NME Determination* (2002), 39.

made, which may account for most loans in Vietnam. Such cap-setting of interest rates precludes the option for certain rates to effectively incorporate market-determined risk premia.

The GOVN uses state-directed planning to communicate its objectives for the economy in terms of business outcomes and resource allocations. While the goals articulated in state plans are often broad and not always fully implemented, they provide a basis for the GOVN to allocate resources at its discretion and carry out policy objectives. Government plans often dictate outcomes for Vietnamese SOEs, which have corresponding plans which conform with the GOVN's state plans. Some types of plans, including land-use plans which are described in detail under Factor Four, more pervasively influence market outcomes, including those of private enterprises.

Since *Commerce's Vietnam NME Determination (2002)*, the GOVN has removed price controls on certain commodities that are not normally subject to price regulation in market economy countries, including steel, cement, and iron. Regulated prices remain on 75 goods and services, many of which are commonly regulated in market economy countries. While many countries employ price controls, they are more pervasive in Vietnam than in other Asian countries. In addition, the GOVN's administered prices are found to suppress prices in Vietnam, although certain administered prices do not seem to be inconsistent with those of comparable countries. Land prices, which are described under Factor Four, are found to be significantly distorted due to government ownership and control in the land system, in stark contrast to comparable market economies.

The three issues focused on in *Commerce's Vietnam NME Determination (2002)* concerning this factor are: (i) the extent of price liberalization; (ii) the status of commercial banking reform; and (iii) the degree to which individuals and businesses can engage in entrepreneurial activities.⁷⁷³ Concerning price liberalization, *Commerce's Vietnam NME Determination (2002)* found that although prices had been largely liberalized, the GOVN maintained discretionary control over prices in sectors that extended beyond those typically viewed as natural monopolies.⁷⁷⁴ It further found that the banking sector had been slow to reform and that 70-80 percent of it remained state-owned.⁷⁷⁵ Finally, it determined that, although the private sector had experienced significant growth, the GOVN's control over interest rates and lending policies precluded private sector access to the necessary credit for continued growth in accordance with the principles of a market economy.⁷⁷⁶

⁷⁷³ *Commerce's Vietnam NME Determination (2002)*, 30.

⁷⁷⁴ *Commerce's Vietnam NME Determination (2002)*, 39.

⁷⁷⁵ *Commerce's Vietnam NME Determination (2002)*, 39.

⁷⁷⁶ *Commerce's Vietnam NME Determination (2002)*, 39.

B. Banking Sector

Financial capital is arguably the most critical resource in an economy and an important input into the production of essentially all goods. Whether it is allocated based on market principles or government directive is therefore important to this analysis. Government control over the allocation of financial capital can have wide-ranging, economy-wide effects, and can impact final prices of goods produced in Vietnam. Government pricing of loans is also related to this factor and is described in this section. State ownership and control over the financial sector are also important to this analysis. Although they are most directly related to Factor Four, they are described under this factor.

1. Legal Framework

The primary law governing the banking sector in Vietnam is the *Law No. 47/2010/QH12 on Credit Institutions (Law on Credit Institutions (2010))*, which was last updated in 2010.⁷⁷⁷ This law provides for the establishment, organization, and operation of credit institutions in Vietnam, including domestic credit institutions and foreign bank branches.⁷⁷⁸ It also grants the SBV the right and responsibility to grant and revoke banking licenses.⁷⁷⁹

1.1 Legislation Governing GOVN Ownership and Control Over the Banking Sector

As described in Factor Four, certain economic activities are legally subject to specific levels of state ownership in Vietnam. Banking is one such activity, with SOEs in this sector being subject to at least 65 percent state ownership.⁷⁸⁰ In addition, although joint-stock banks (JSBs) and foreign bank branches are permitted to operate in Vietnam, foreign ownership caps on banks limit foreign ownership to: (i) five percent for foreign individuals; (ii) fifteen percent for foreign institutions; and (iii) 30 percent for overall foreign ownership.⁷⁸¹

In addition to requiring a specific level of government ownership in Vietnam's banking sector, certain legislation provides insight into whether the GOVN exercises control over individual banks. The *Law on Credit Institutions* states that “{c}redit institutions and foreign bank branches

⁷⁷⁷ GOVN, *Law on Credit Institutions (2010)*.

⁷⁷⁸ GOVN, *Law on Credit Institutions (2010)*, Article 1.

⁷⁷⁹ GOVN, *Law on Credit Institutions (2010)*, Article 18.

⁷⁸⁰ GOVN, *Decision No. 22/2021/QD-TTg on Criteria for Classification of Wholly State-owned Enterprises and Partially State-owned Enterprises Subject to Ownership Transformation, Reorganization or State Capital Withdrawal in the 2021-2025 Period* (June 2, 2021), Appendix: Sector- or Field-Based Classification Criteria for Wholly State-owned Enterprises and Partially State-owned Enterprises Subject to Ownership Transformation, Reorganization or State Capital Withdrawal, Section II; and Lan Phuong Nguyen and Yee Chung Seck, “Vietnam: New decision by the Prime Minister on state ownership thresholds in certain sectors for 2021 to 2025,” Baker McKenzie, available at https://insightplus.bakermckenzie.com/bm/mergers-acquisitions_5/vietnam-new-decision-by-the-prime-minister-on-state-ownership-thresholds-in-certain-sectors-for-2021-to-2025, August 10, 2021.

⁷⁸¹ EIU, “Viewpoint – Vietnam Financial Services: Banks,” available at <https://viewpoint.eiu.com/analysis/article/893624272>, October 16, 2023.

have autonomy in their business activities and take accountability for their business results. No organizations or individuals may illegally intervene in business activities of credit institutions and foreign bank branches.”⁷⁸² The same law also states that “{c}redit institutions and foreign bank branches may refuse to extend credit or provide other services when finding that they do not fully meet the conditions to do so or such credit extension or service provision is inefficient or incompliant with law.”⁷⁸³ Similarly, *Circular No. 39/2016/TT-NHNN Prescribing the Provision of Loans by Credit Institutions and Foreign Bank Branches to Clients* (*Circular No. 39*) states that “{c}redit institutions have autonomy in the provision of loans and take accountability for their lending decisions.”⁷⁸⁴

However, the *Law on Credit Institutions* also grants the SBV the right and responsibility to approve members of boards of directors and other equivalent posts in all credit institutions, regardless of whether the GOVN is a shareholder. It states: “{t}he list of nominees for the posts of members of the Board of Directors or Members’ Council and Control Board and Director General (Director) of a credit institution shall be approved in writing by the State Bank before these nominees are elected and appointed.”⁷⁸⁵

The GOVN envisions state-owned banks continuing to play the leading role in the banking sector with its 2018 *Decision Approving the Strategy for Development of Vietnam’s Banking Sector Through 2025, with Orientations Toward 2030*. This decision states that “state-owned commercial banks will play the key, leading role in terms of scale, market share and ability to regulate the market...”⁷⁸⁶ The same decision also states that “state-owned commercial banks...will increase of their charter capital {sic} to ensure capital adequacy ratios according to Basel II standards, ensuring the dominant role of the State in state-owned commercial banks...”⁷⁸⁷ Finally, the same decision requires banks to allocate credit based on the GOVN’s socio-economic development goals. It states that “domestic credit institutions play the leading role in mobilizing and allocating credit capital...for the national socio-economic development.”⁷⁸⁸

1.2 Legislation Requiring Banks to Follow Interest Rate Directives

The GOVN sets lending rate caps on certain types of loans in Vietnam. *Circular No. 39* requires credit institutions to set loan rates for certain types of loans at or below the maximum rate set by

⁷⁸² GOVN, *Law on Credit Institutions* (2010), Article 7(1).

⁷⁸³ GOVN, *Law on Credit Institutions* (2010), Article 7(2).

⁷⁸⁴ GOVN, *Circular No. 39*, Article 3(1).

⁷⁸⁵ GOVN, *Law on Credit Institutions* (2010), Article 51.

⁷⁸⁶ GOVN, *Decision Approving the Strategy for Development of Vietnam’s Banking Sector Through 2025, with Orientations Toward 2030* (August 8, 2018), Article 1(1)7(a).

⁷⁸⁷ GOVN, *Decision Approving the Strategy for Development of Vietnam’s Banking Sector Through 2025, with Orientations Toward 2030* (August 8, 2018), Article 1(1)7(a).

⁷⁸⁸ GOVN, *Decision Approving the Strategy for development of Vietnam’s banking sector through 2025, with orientations toward 2030* (August 8, 2018), Article 1(I)1(c).

the SBV in any subsequent legislation.⁷⁸⁹ It states that “{a} credit institution and clients may agree on the loan interest rates according to the market’s fund supply and demand and the clients’ loan demand and credibility, except for the cases in which the maximum loan interest rate is set by the State Bank of Vietnam....”⁷⁹⁰ The cases in which the maximum loan rates apply include: (i) agriculture and rural development; (ii) export business plans; (iii) business activities of small- and medium-sized enterprises (SMEs); (iv) “supporting industries;” and (v) business operations of high-tech enterprises.⁷⁹¹

This provision may apply to a large share of the economy since SMEs alone account for 96 percent of all firms in Vietnam.⁷⁹² That does not necessarily imply that 96 percent of loans are allocated to SMEs since, as is described in the *Developments in the Economy* section, much lending is allocated to SOEs, which are generally larger firms. However, some of the other categories that the maximum lending rates apply to, including supporting industries and business operations of high-tech enterprises, are vague enough that they may apply to a large portion of the economy.

Since *Circular No. 39* came into effect, subsequent legal decisions setting maximum rates for the above type of loans have been passed which financial institutions must lend in accordance with. The decisions, effective dates, and relevant loan interest rates are listed in Table 5.1 below.

Decision No. 1125 is currently in effect and sets the maximum loan interest rate at 4 percent. Lending rate ceilings are somewhat prevalent in developing economies. A World Bank report found that 60 out of the total 100 emerging markets and developing economies studied had imposed ceilings on lending rates.⁷⁹³ While they are not uncommon in market economies, lending rate ceilings can still be an important indicator of non-market conditions since the cost of obtaining credit is a direct input to production. Moreover, lending rate ceilings also distort financial markets by impacting the allocation of financial resources in the economy.⁷⁹⁴ Ultimately, such cap-setting of interest rates precludes the option for certain rates to effectively incorporate market-determined risk premia.

⁷⁸⁹ GOVN, *Circular No. 39*, Article 13(2).

⁷⁹⁰ GOVN, *Circular No. 39*, Article 13(1).

⁷⁹¹ GOVN, *Circular No. 39*, Article 13(2).

⁷⁹² OECD, *SME and Entrepreneurship Policy in Viet Nam*, (Paris: OECD Publishing, 2021), 18.

⁷⁹³ Justin-Damien Guénette, “Price Controls: Good Intentions, Bad Outcomes,” World Bank Policy Research Working Paper 9212, (April 2020), 7 and 10.

⁷⁹⁴ Justin-Damien Guénette, “Price Controls: Good Intentions, Bad Outcomes,” World Bank Policy Research Working Paper 9212, (April 2020), 10.

Table 5.1: Maximum Loan Interest Rates Set by GOVN Decisions

Decision Number	Date	Maximum Loan Interest Rate
Decision No. 1425 ⁷⁹⁵	May 2017	6.5%
Decision No. 2416 ⁷⁹⁶	November 2019	6.0%
Decision No. 920 ⁷⁹⁷	May 2020	5.0%
Decision No. 1730 ⁷⁹⁸	September 2020	4.5%
Decision No. 1813 ⁷⁹⁹	October 2022	5.5%
Decision No. 314 ⁸⁰⁰	March 2023	5.0%
Decision No. 576 ⁸⁰¹	March 2023	4.5%
Decision No. 1125 ⁸⁰²	June 2023	4.0%

⁷⁹⁵ GOVN, *Decision No.1425/2017/QD-NHNN on the Maximum VND Short-term Loan Interest Rate of Credit Institutions and Foreign Bank Branches for Borrowers to Meet Capital Needs in Service of the Field, Economic Sectors as Prescribed in Circular 39/2016/TTNHN Issued by the Governor of the State Bank* (May 7, 2017), Article 1(1).

⁷⁹⁶ GOVN, *Decision No. 2416/QD-NHNN on maximum interest of call rate applicable to VND deposits at credit institutions, foreign bank branches for borrowers to meet the capital demand in service of a number of economic sectors and industries as prescribed in the Circular No. 39/2016/TT-NHNN* (November 18, 2019), Article 1(1).

⁷⁹⁷ GOVN, *Decision No. 920/QD-NHNN of the State Bank of Vietnam on maximum short-term loan interest rate in Vietnam dong of credit institutions, foreign bank branches for borrowers to meet the capital demand in service of a number of economic sectors and industries as prescribed in the Circular No. 39/2016/TT-NHNN dated December 12, 2016* (May 12, 2020), Article 1(1).

⁷⁹⁸ GOVN, *Decision No. 1730/QD-NHNN of the State Bank of Vietnam on the maximum short-term loan interest rate in Vietnam dong of credit institutions and foreign bank branches for borrowers to meet the capital demand in service of a number of economic sectors and industries as prescribed in the Circular No. 39/2016/TT-NHNN dated December 12, 2016* (September 30, 2020), Article 1(1).

⁷⁹⁹ GOVN, *Decision No. 1813/QD-NHNN on the maximum short-term loan interest rate in Vietnamese dong of credit institutions and foreign bank branches for borrowers to meet the capital demand in service of a number of economic sectors and industries as prescribed in Circular No. 39/2016/TT-NHNN dated December 30, 2016* (October 24, 2022), Article 1(1).

⁸⁰⁰ GOVN, *Decision No. 314/QD-NHNN on the maximum short-term loan interest rate in Vietnamese dong of credit institutions and foreign bank branches for borrowers to meet the capital demand in service of a number of economic sectors and industries as prescribed in Circular No. 39/2016/TT-NHNN dated December 30, 2016* (March 14, 2023), Article 1(1).

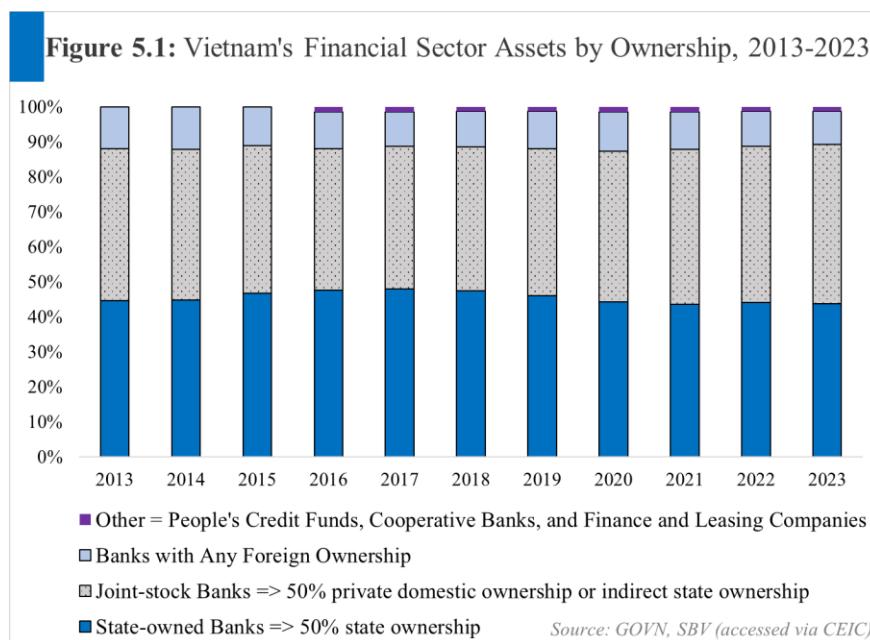
⁸⁰¹ GOVN, *Decision No. 576/QD-NHNN on the maximum short-term loan interest rate in Vietnamese dong of credit institutions and foreign bank branches for borrowers to meet the capital demand in service of a number of economic sectors and industries as prescribed in Circular No. 39/2016/TT-NHNN dated December 30, 2016* (March 31, 2023), Article 1(1).

⁸⁰² GOVN, *Decision No. 1125/QD-NHNN on the maximum short-term loan interest rate in Vietnamese dong of credit institutions and foreign bank branches for borrowers to meet the capital demand in service of a number of economic sectors and industries as prescribed in Circular No. 39/2016/TT-NHNN dated December 30, 2016* (June 16, 2023), Article 1(1).

2. Developments in the Economy

2.1 State Ownership in the Banking Sector

Vietnam's financial sector is bank-dominated, with banks accounting for over 98 percent of all financial sector assets as of 2020.⁸⁰³ As with the GOVN's data concerning state sector activity, the GOVN only considers banks that have direct, majority government ownership to be state owned in its measurement of financial sector assets by ownership.⁸⁰⁴ As described below, this results in banks that are majority owned by GOVN ministries or SOEs, and banks with minority levels of GOVN ownership (but still varying degrees of GOVN control), being considered JSBs. Figure 5.1 below illustrates the composition of Vietnam's banking sector assets by ownership, as reported by the GOVN.⁸⁰⁵



As is further explained below, Commerce found that roughly 50 percent of Vietnam's banking sector is accounted for by banks with controlling levels of state ownership (*i.e.*, at least 35 percent direct or indirect state ownership or where the government or a government entity is the largest shareholder). While this 50 percent estimate of government ownership is lower than the

⁸⁰³ Whole system total assets = 13,175,947 billion VND; Finance and leasing companies' total assets (the only non-bank category) = 215,505 billion VND; {1-(215,505/13,175,947)}*100 = 98.4%. See GOVN, SBV, "Key Statistical Ratios," available at www.sbv.gov.vn/webcenter/portal/en/home/sbv/statistic/ooci/ksr, October 30, 2020.

⁸⁰⁴ See Factor Four for details on data limitations concerning the SOE sector.

⁸⁰⁵ GOVN, SBV, "Vietnam Bank for Social Policies: Total Assets," "Finance and Leasing Companies: Total Assets," "State-owned Banks: Total Assets," "Joint Stock Commercial Banks: Total Assets," "Joint Venture, Foreign Banks and Branches: Total Assets," "People's Credit Funds: Total Assets," "Cooperative Bank: Total Assets," "Credit Institutions: Total Assets," data accessed via CEIC.

70-80 percent estimate found in *Commerce's Vietnam NME Determination (2002)*,⁸⁰⁶ the true extent of state ownership is unknown since ownership information on many JSBs is not publicly available.

State Ownership by Bank Type. Four large banks, referred to as the “big four,” compose the largest banks in Vietnam by assets.⁸⁰⁷ They include the Vietnam Bank for Agriculture and Rural Development (Agribank), Vietnam Joint Stock Commercial Bank of Industry and Trade (VietinBank), Joint Stock Commercial Bank for Foreign Trade of Vietnam (Vietcombank), and the Bank for Investment and Development of Vietnam (BIDV). Agribank is wholly state owned, and the other three are majority state owned.⁸⁰⁸

In addition to Agribank, three smaller commercial banks (*i.e.*, Global Petro Sole Member Limited Commercial Bank, Ocean Commercial One Member Limited Liability Bank, and Construction Commercial One Member Limited Liability Bank) are wholly owned by the state. The GOVN also wholly owns a policy bank called the Vietnam Bank for Social Policies, which, according to the *Law on Credit Institutions (2010)*, was established to “implement the State’s socio-economic policies.”⁸⁰⁹ Collectively, these eight banks accounted for 43 percent of assets in the financial sector as of 2023.⁸¹⁰ Credit from these banks accounted for roughly 48 percent of total outstanding credit in Vietnam as of 2018.⁸¹¹

For purposes of reporting financial sector assets by ownership, there are 28 banks in Vietnam that are considered JSBs.⁸¹² These banks are made up of multiple domestic parties and can have indirect or minority levels of state ownership. As of 2023, these banks accounted for 45 percent of total banking sector assets.⁸¹³ Ownership data is not always publicly available for banks in

⁸⁰⁶ *Commerce's Vietnam NME Determination (2002)*, 39.

⁸⁰⁷ GOVN, SBV, “Key Statistical Ratios,” available at www.sbv.gov.vn/webcenter/portal/en/home/sbv/statistic/ooci/ksr, October 30, 2020, available at www.sbv.gov.vn/webcenter/portal/en/home/sbv/statistic/ooci/.

⁸⁰⁸ GOVN, SBV, “System of Credit Institutions: State Owned Commercial Banks,” December 31, 2023. Note that all banks that are not wholly state owned are classified as JSBs by the SBV. See Appendix for shares of state-ownership in joint-stock banks.

⁸⁰⁹ GOVN, *Law on Credit Institutions (2010)*, Article 17.1.

⁸¹⁰ GOVN, SBV, “Vietnam Bank for Social Policies: Total Assets,” “Finance and Leasing Companies: Total Assets,” “State-owned Banks: Total Assets,” “Joint Stock Commercial Banks: Total Assets,” “Joint Venture, Foreign Banks and Branches: Total Assets,” “People’s Credit Funds: Total Assets,” “Cooperative Bank: Total Assets,” “Credit Institutions: Total Assets,” data accessed via CEIC.

⁸¹¹ IMF, *2019 Article IV Consultation – Press Release; Staff Report; and Statement by the Executive Director for Vietnam*, IMF Country Report No. 19/235, (July 2019), 32, Table 5. Credit to the economy in 2018 = 7,379 trillion VND; Credit to the economy by state-owned banks in 2018 = 3,523 trillion VND; $3,523 / 7,379 = 47.74\%$ credit to the economy by state-owned banks in 2018.

⁸¹² GOVN, SBV, “System of Credit Institutions: Joint-Stock Commercial Banks,” available at www.sbv.gov.vn/webcenter/portal/en/home/fm/socins//bks/cbks/jscb, December 31, 2023. Note that all banks that are not wholly state owned are classified as JSBs by the SBV but are classified as state-owned banks for purposes of reporting state ownership of banking sector assets.

⁸¹³ GOVN, SBV, “Key Statistical Ratios,” available at www.sbv.gov.vn/webCenter/portal/en/home/sbv/statistic/ooci/ksr, December 31, 2023.

Vietnam, so the state ownership shares in many of the JSBs are unknown to Commerce. However, Commerce found evidence that the GOVN either directly or indirectly holds controlling levels of ownership shares in five JSBs.⁸¹⁴

The JSBs that Commerce has confirmed have controlling levels of state ownership (*i.e.*, at least 35 percent direct or indirect state ownership or where the government or a government entity is the largest shareholder) are: (i) Bao Viet Joint Stock Commercial Bank (BaoViet Bank), 78 percent of which is owned by Vietnam's Ministry of Finance; (ii) Public Vietnam Bank (PvcomBank), 52 percent of which is owned by SOE Vietnam Oil and Gas Group; (iii) Military Commercial Joint Stock Bank (MB), 32 percent of which is owned by the SCIC (making it the largest shareholder); (iv) LienViet Commercial Joint Stock Bank, 10.2 percent of which is owned by SOE Vietnam Post Corporation (making it the largest shareholder); and (v) Maritime Commercial Joint Stock Bank (MSB), 40 percent of which is owned by the GOVN.⁸¹⁵

These JSBs make up 15.4 percent of total charter capital accounted for by JSBs, and 6.9 percent of total capital in Vietnam's banking sector.⁸¹⁶ Taken together with the 43 percent accounted for by banks considered by the GOVN to be state-owned commercial banks, Commerce can therefore confirm that roughly 50 percent of Vietnam's banking sector is accounted for by state-owned banks, although higher levels of state ownership may exist.

Cooperative banks and People's Credit Funds also exist, which are credit institutions established "to conduct some banking operations...for the main purpose of mutual assistance in production and business development and life."⁸¹⁷ While the government seems to have significant influence over these credit institutions, it is unclear whether they can be considered state owned. Lastly, non-bank financial institutions, including finance and leasing companies, also extend a small amount of credit within the Vietnamese financial system. These may or may not be state owned.

2.2 Policy Lending of State-owned Banks to SOEs and the Resulting Credit Misallocation in Vietnam

As described above, state-owned banks account for at least half of Vietnam's total banking sector assets. The OECD reported that, in practice, Vietnam's largest banks, which are wholly or majority state owned, closely follow government directives.⁸¹⁸ According to the OECD, "...the country's largest banks are...state-owned and in terms of corporate governance are almost

⁸¹⁴ See Appendix A for ownership details of individual JSBs in Vietnam. As with other types of SOEs, Commerce considers a shareholder to have a controlling level ownership when it either (i) holds 35 percent or greater of shares or (ii) is the largest shareholder. See Factor Four for further details on this threshold.

⁸¹⁵ See Appendix A for details and citations.

⁸¹⁶ See Appendix A for details and citations. Calculations performed by Commerce: $3,150 + 9,000 + 52,140 + 17,291 + 20,000 = 101,581$. $101,581 / 660,795 = 15.37\%$. $15.37\% * 44.74\% = 6.88\%$.

⁸¹⁷ GOVN, *Law on Credit Institutions* (2010), Articles 4(6) and 4(7).

⁸¹⁸ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181.

treated as affiliates of the central bank.”⁸¹⁹ This has implications for credit allocations. Government control over banks’ lending activities and financial resource allocations are described below.

Banks Lend Disproportionally to SOEs. Sources overwhelmingly find that SOEs are allocated a large share of Vietnamese credit and on favorable terms compared to private enterprises. According to the OECD, “...SOEs appropriate the lion’s share of credit in the economy.”⁸²⁰ The IMF found that “SOEs obtain bank credit at lower cost on average even after controlling for firm characteristics such as profitability and size,” and also that “commercial banks keep lending to underperforming SOEs at artificially low lending rates.”⁸²¹ According to the OECD, “Vietnamese SOEs are apparently able to borrow from commercial banks on easy terms, either because the lenders are themselves state-owned or because a state guarantee for the debtor is perceived.”⁸²² Although its analysis is somewhat dated, the World Bank similarly found that “even the most profitable private firms do not even try to get bank loans if they do not have connections because they will not likely be able to.”⁸²³ As underlying conditions have not changed, private firms are likely continuing this practice.

As can be seen in Figure 5.2 below, the GOVN’s data (published by the IMF) shows that as of 2022 only 3.5 percent of total credit in Vietnam was allocated to SOEs.⁸²⁴ Although the data source does not clarify the definition of “SOE” used for these statistics, this data seems to only consider SOEs that are wholly owned by the GOVN to be SOEs. This is because, until 2020, Vietnamese law only considered SOEs to be companies that were wholly owned by the GOVN.⁸²⁵ This would presumably result in an increase in the share of credit allocated to enterprises classified as SOEs in 2020, when many enterprises would have been reclassified as SOEs. However, that is not what is seen in Figure 5.2 below, suggesting that only wholly state-owned enterprises are included in this statistic, both before and after 2020.

⁸¹⁹ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181.

⁸²⁰ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 179.

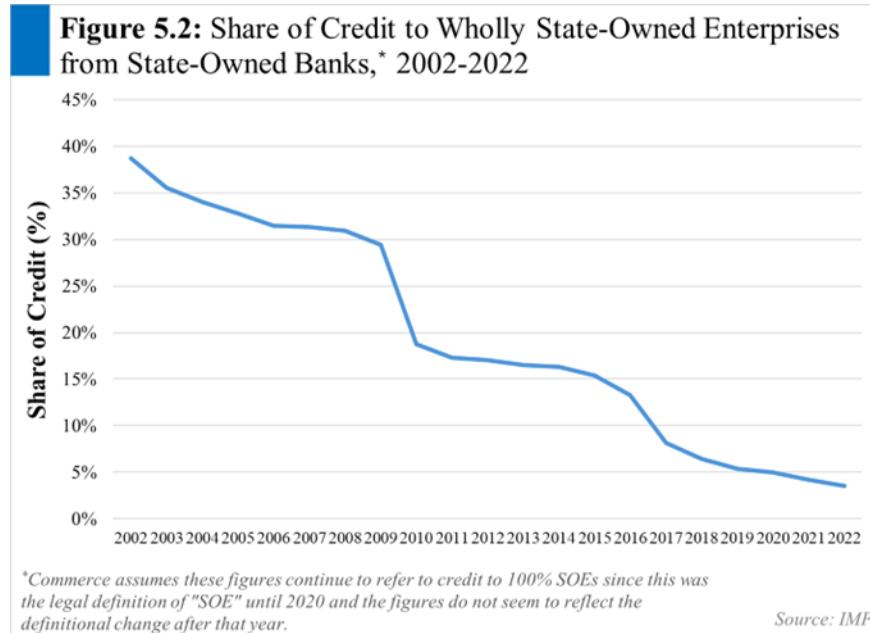
⁸²¹ Mitsuru Katagiri, “Credit Misallocation and Economic Growth in Vietnam,” IMF Working Paper WP/19/189 , (June 2019), 5.

⁸²² OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 181.

⁸²³ World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity, and Democracy*, (2016), 21.

⁸²⁴ IMF, *Vietnam: Staff Report for the 2003 Article IV Consultation*, (August 28, 2003), 34; IMF, *Vietnam: Staff Report for the 2004 Article IV Consultation*, (November 5, 2004), 30; IMF, *Vietnam: Staff Report for the 2006 Article IV Consultation*, (September 26, 2006), 25; IMF, *Vietnam: Staff Report for the 2008 Article IV Consultation*, (February 27, 2009), 26; IMF, *Vietnam: Staff Report for the 2010 Article IV Consultation*, (July 7, 2010), 29; IMF, *Vietnam: Staff Report for the 2017 Article IV Consultation*, (May 23, 2017), 30; IMF, *Vietnam: Staff Report for the 2020 Article IV Consultation*, (January 13, 2021), 36; IMF, *Vietnam: Staff Report for the 2022 Article IV Consultation*, (May 16, 2022), 36; and IMF, *Vietnam: Staff Report for the 2023 Article IV Consultation*, (July 25, 2023), 33.

⁸²⁵ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 22. See Factor Four for further details on this change, which was made in the *Enterprise Law*.



While it is a positive development that lending to enterprises that are wholly owned by the government has declined, it also likely reflects the fact that the number of wholly state-owned enterprises has also fallen significantly. As described in Factor Four, due to the GOVN's equitization efforts, as of 2021, Vietnam still had 877 enterprises wholly owned by the GOVN and over 2,000 enterprises with majority or minority levels of government ownership.⁸²⁶ Although it remains unclear how many wholly state-owned enterprises existed in Vietnam in 2002, the earliest available data shows that there were over 1,800 wholly SOEs in Vietnam in 2010.⁸²⁷

The 2017 Selected Issues report of the IMF's Article IV consultations with the GOVN took a deep dive into credit misallocation issues in Vietnam and found that lending "remains heavily tilted towards the SOE sector."⁸²⁸ At that time, the available data showed that lending to SOEs constituted 13.3 percent of total lending in Vietnam.⁸²⁹ The fact that the IMF emphasized that lending in Vietnam remained lending "heavily tilted towards the SOE sector" at that time may suggest that lending to SOEs is indeed higher than the official statistics reveal.

⁸²⁶ GOVN, General Statistics Office, "Business Survey: Number of Enterprises," data accessed via CEIC. As noted in Factor Four, more recent data from other sources indicate that the number of wholly state-owned enterprises has fallen to 820 by the end of 2023. See EIU, "Political/Commercial Background: State Role in the Economy," April 1, 2024, 2.

⁸²⁷ GOVN, General Statistics Office, "Business Survey: Number of Enterprises," data accessed via CEIC.

⁸²⁸ IMF, *Vietnam: Selected Issues*, IMF Country Report No. 17/191, (July 2017), 13.

⁸²⁹ IMF, *Vietnam: Staff Report for the 2017 Article IV Consultation*, (May 23, 2017), 30.

Much of the Lending to SOEs is to Accomplish GOVN Policy Objectives. Although the total share of lending to SOEs is unknown, much of the lending to SOEs is from state-owned banks for the purpose of carrying out the GOVN's policy objectives. The Asian Development Bank Institute finds that "...state-owned banks have had a mission to act as vehicles for lending to projects that meet the social and political objectives, at the same time most of them have suffered huge losses in operation."⁸³⁰ Certain state-owned banks, including BIDV, are responsible for investing in development projects to accomplish the GOVN's policy goals.⁸³¹ This is true even though BIDV is not wholly owned by the GOVN. Over half of BIDV's loan portfolio consists of loans to SOEs.⁸³² All of this suggests that much of the financial capital in Vietnam is being allocated based on non-market principles that are government influenced.

SOEs Do Not Use the Credit as Efficiently as Private Enterprises, Suggesting the Credit is Misallocated. Although SOEs receive a disproportionately large share of credit, they do not use it as efficiently as their private sector counterparts.⁸³³ According to the Asian Development Bank, "there is evidence that SOEs tended to absorb a very large share of aggregate investment, yet their contribution to real GDP and aggregate employment has been disappointing and low relative to private enterprise and FDI."⁸³⁴ The OECD similarly found that "{i}nvestment in many SOEs remain inefficient compared to other sectors of the economy" and that "the SOE sector continues to receive significant financing which could be put to more productive use elsewhere."⁸³⁵

According to a report published jointly by the World Bank and GOVN, there "is little doubt that most {SOEs} are inefficient producers. So widespread inefficiencies in state investment perpetuate the weak productivity trends across the economy."⁸³⁶ The same report also states: "driven by multiple objectives (profit not high among them), and distorted incentives, SOEs have stayed unproductive."⁸³⁷

⁸³⁰ Le Ngoc Dang, Dinh Dung Nguyen, and Farhad Taghizadeh-Hesary, "State-Owned Enterprise Reform in Vietnam: Progress and Challenges," Asian Development Bank Institute, Working Paper No. 1071, (January 2020), 17.

⁸³¹ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 56.

⁸³² OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 57.

⁸³³ Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 285.

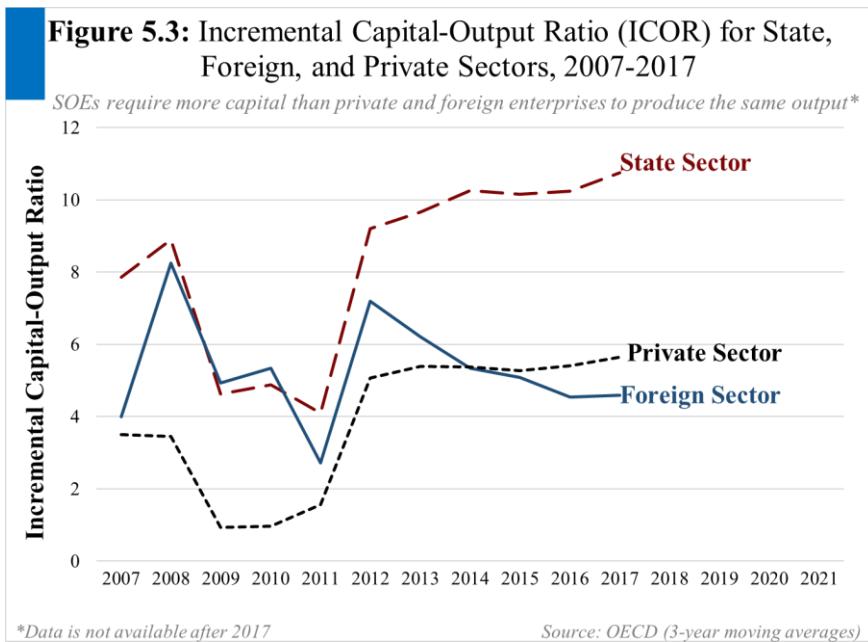
⁸³⁴ Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 285.

⁸³⁵ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 35.

⁸³⁶ World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity, and Democracy* (2016), xxvi.

⁸³⁷ World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity, and Democracy* (2016), 19.

Productivity and efficiency are often measured by the incremental capital-output ratio (ICOR),⁸³⁸ which measures the relationship between the level of investment made in an economy and the resulting increase in output. A higher ICOR identifies situations in which relatively high amounts of capital are needed to produce a unit of output, which is another way of describing the lower productivity of capital. As can be seen in Figure 5.3 below, the ICOR of the state sector as of 2017 was almost 11, compared to 4 and 6 in the private and foreign-owned sectors, respectively.⁸³⁹ As such, Vietnamese SOEs have required roughly double the amount of capital as the private and foreign-owned sectors to produce the same output. In addition, efficiency of the state sector has worsened since 2011.⁸⁴⁰ Although the data is considerably lagged, with the latest data point representing 2017 statistics, there is no reason to believe that these trends have reversed course in subsequent years, especially given that qualitative analyses (mentioned above) continue to note the inefficiency of SOEs.⁸⁴¹



⁸³⁸ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 198.

⁸³⁹ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 81.

⁸⁴⁰ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 81.

⁸⁴¹ The GOVN argued in its rebuttal comment that SOE efficiency, measured as profit before tax, increased significantly by 40.6 percent from 2014-2021. See GOVN Rebuttal Comments (2024), 44. However, the GOVN does not compare the profit before tax of SOEs with profit before tax of private enterprises. Moreover, profitability is not a measure of efficiency so the improvement in profitability of SOEs does not indicate an improvement in efficiency.

Significant Credit Misallocation in Vietnam Results in High Levels of Impaired and Non-Performing Loans. One result of credit being overallocated to SOEs compared to private sector enterprises is that there have been high levels of unpaid and non-performing loans (NPLs) in Vietnam's economy, most of which are accounted for by the SOE sector.⁸⁴² Due to the high levels of NPLs, when loans to SOEs go unpaid, the GOVN in some cases requires the banks to either restructure, eliminate, or transfer them to other SOEs.⁸⁴³

In response to the mounting NPLs in the Vietnamese financial system, the GOVN created the Vietnam Asset Management Company (VAMC).⁸⁴⁴ Many of the NPLs in Vietnam were restructured and sold to the VAMC beginning in 2013 in exchange for "special bonds" and therefore omitted from official accounts of NPLs.⁸⁴⁵ As can be seen from Figure 5.4 below, official accounts of NPLs as a share of total outstanding loans have drastically fallen since that time.

According to the IMF, NPLs as a share of total outstanding loans, including those sold to the VAMC, are much higher than official statistics would suggest, and stand at approximately 4.6 percent as of 2019.⁸⁴⁶ The IMF similarly reported that the impaired loan ratio, which includes on-balance-sheet NPLs, restructured loans, and other impaired loans, would have been around 6.3 percent at the end of 2021 if loan classification had not been delayed until June 2022.⁸⁴⁷ According to the IMF, the loan reclassification issue described above "...could exacerbate credit misallocation..."⁸⁴⁸

⁸⁴² Le Ngoc Dang, Dinh Dung Nguyen, and Farhad Taghizadeh-Hesary, "State-Owned Enterprise Reform in Vietnam: Progress and Challenges," Asian Development Bank Institute Working Paper No. 1071, (January 2020), 2.

⁸⁴³ OECD, *OECD Peer Reviews of Competition Law and Policy: Vietnam*, (2018), 24 -25; Le Ngoc Dang, Dinh Dung Nguyen, and Farhad Taghizadeh-Hesary, "State-Owned Enterprise Reform in Viet Nam: Progress and Challenges," Asian Development Bank Institute, Working Paper No. 1071, (January 2020), 1; and IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation*, (June 4, 2019), 32.

⁸⁴⁴ GOVN, *Decree No. 53/2013/NĐ-CP on the establishment, organization and operation of Vietnam Asset Management Company*, (May 18, 2013); and Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 297.

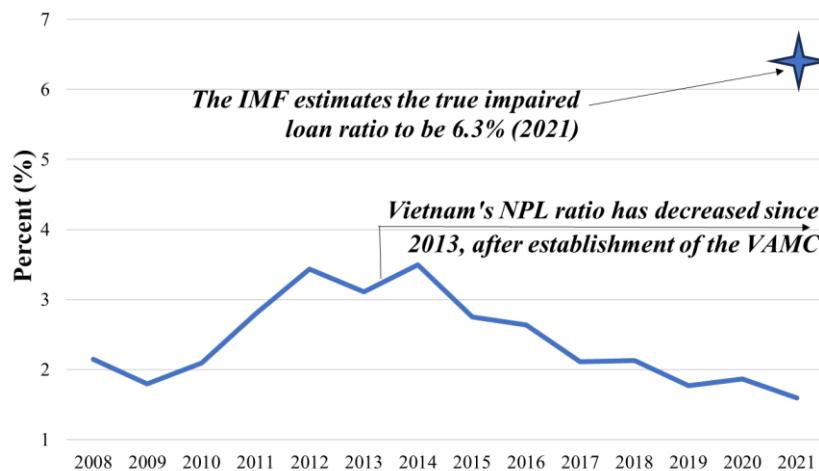
⁸⁴⁵ Alexander Ewart, "State-Owned Enterprises in Viet Nam," in *Reforms, Opportunities, and Challenges for State-Owned Enterprises*, edited by Edimon Ginting and Kaukab Naqvi, (Asian Development Bank, July 2020), 297.

⁸⁴⁶ IMF, *2020 Article IV Consultation – Press Release: Staff Report: and Statement by the Executive Director for Vietnam*, IMF Country Report No. 21/42, (March 2021), 37. This figure includes loans sold to the VAMC.

⁸⁴⁷ IMF, *2022 Article IV Consultation – Press Release: Staff Report: and Statement by the Executive Director for Vietnam*, IMF Country Report No. 22/209, (July 2022), 8 and 29.

⁸⁴⁸ IMF, *2022 Article IV Consultation – Press Release: Staff Report: and Statement by the Executive Director for Vietnam*, IMF Country Report No. 22/209, (July 2022), 17.

Figure 5.4: Vietnam's Non-Performing Loan (NPL) Ratio,* 2008-2021
Vietnam's declining NPLs resulted from the restructuring and sale of NPLs to the VAMC.



*NPL Ratio = Value of NPLs as Share of Value of Total Outstanding Loans

Source: The World Bank

2.3 Additional Indicators of Control Over State-owned Banks in Vietnam

As described above, the GOVN holds majority or controlling levels of ownership over certain banks in Vietnam. In addition to the fact that these banks follow government directives to lend heavily to certain areas of the economy, including to SOEs, the below indicators further show that the GOVN exercises meaningful control over these banks.

Annual Reports Indicate that State-owned Banks Are Controlled by the GOVN. In many cases, the state-owned banks' annual reports make clear that they follow directives of the CPV/GOVN. For example, BIDV's *Annual Report: 2022* makes many mentions of this, stating that BIDV "...is one of the pioneers in effectively implementing policies of the Party and State," and "...is determined to implement drastically and effectively policies of the Party and State, successfully fulfilling the tasks entrusted by the Party, State and the banking industry."⁸⁴⁹ It further states that "...staff planning and appointment work was conducted professionally in compliance with the provisions of the Party and the State," and that it "fulfill{s} the task of being an effective tool of the Party, State and Government in implementing the country's socio-economic development tasks."⁸⁵⁰ It further makes clear that it "uphold{s} the key role...in effectively implementing policies and directions of the Party, government, and the state bank."⁸⁵¹

Similarly, VietinBank's *Annual Report: 2021* states that VietinBank "promot{es} its role as a key state-owned commercial bank, a driving force in effective implementation of policies and regulations of the Party and the State."⁸⁵² It also states that "VietinBank's endeavors over the

⁸⁴⁹ BIDV, *Annual Report: 2022*, (2022), 22.

⁸⁵⁰ BIDV, *Annual Report: 2022*, (2022), 204.

⁸⁵¹ BIDV, *Annual Report: 2022*, (2022), 100.

⁸⁵² VietinBank, *Annual Report: 2021*, (2021), 85.

years have brought about certain successes in contributing to the fruitful implementation of the great Policy of the Party, the Government and Banking sector.”⁸⁵³ Vietcombank’s *Annual Report: 2021* states that it “{a}dher{es} closely to the direction of the Party, the Government and the State Bank...”⁸⁵⁴

CPV Officials are Appointed in High-level Positions at State-owned Banks. As with SOEs, CPV officials are often jointly appointed in high-ranking Party Committee positions and Board of Director positions at state-owned banks to ensure the banks carry out CPV/GOVN policies and directives. For example, the Chairman of the Board of Directors of VietinBank is also the Secretary of the Communist Part Committee of VietinBank.⁸⁵⁵ He is also a member of the Party Executive Committee of State Enterprises.⁸⁵⁶ In addition, almost all of the other members of the Board of Directors, Supervisory Board, and Board of Management of VietinBank are also members of committees associated with the CPV.⁸⁵⁷ Similarly, Vietcombank’s *Annual Report: 2021* boasts that a senior leader of the bank was elected to the Party Central Committee,⁸⁵⁸ which is the highest governing body of the CPV.

2.4 Other Issues Concerning State Ownership and Control Over Vietnam’s Banking Sector

SEGs’ and SOEs’ Ownership of Banks Distort Resource Allocations. SEGs and other SOEs have been used by the GOVN to purchase banks and direct credit. From 2005-2008, SEGs invested heavily in the financial sector and acquired banks even though only one SEG operates in the financial sector.⁸⁵⁹ Reform documents promulgated by the GOVN beginning in 2011 stated that SEGs would divest from non-core business operations, but SEGs’ investment in banks continued to grow in 2011-2012, and by the end of 2013, each SEG owned at least one bank.⁸⁶⁰

Since ownership data is not available for many JSBs, whether all SEGs still own banks is unknown. However, information on some examples of SEG and SOE ownership of banks is publicly available. For example, Vietnam’s wholly government-owned oil and gas conglomerate, SEG Vietnam Oil and Gas Group (PetroVietnam), owns 52 percent of Vietnam Public Joint Stock Commercial Bank (PVCombank).⁸⁶¹ Similarly, Vietnam’s largest insurance company,

⁸⁵³ VietinBank, *Annual Report: 2021*, (2021), 151.

⁸⁵⁴ Vietcombank, *Annual Report: 2021 - Cultivating Values, Conquering Success*, (2021), 126.

⁸⁵⁵ VietinBank, *Annual Report: 2021*, (2021), 5.

⁸⁵⁶ VietinBank, *Annual Report: 2021*, (2021), 28.

⁸⁵⁷ VietinBank, *Annual Report: 2021*, (2021), 26-41.

⁸⁵⁸ Vietcombank, *Annual Report: 2021 - Cultivating Values, Conquering Success*, (2021), 20.

⁸⁵⁹ Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 102.

⁸⁶⁰ Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 102.

⁸⁶¹ Vietnam Oil and Gas Group, “PetroVietnam at a Glance,” available at <https://pvn.vn/sites/en/Pages/gioithieu.aspx?NewsID=86fc814c-a3c9-4a49-9e1e-c9e42f1fa052>, July 1, 2024;

SEG Bao Viet Holdings (which is majority owned by the Ministry of Finance⁸⁶²), holds majority shares of Bao Viet Joint Stock Commercial Bank.⁸⁶³ In another example, SOE Vietnam Post Corporation is the largest shareholder of LienViet Commercial Joint Stock Bank, with only a 10.2 percent ownership stake.⁸⁶⁴ In some cases, the SCIC holds majority ownership in JSBs, as is the case with Military Commercial Joint Stock Bank.⁸⁶⁵

SEG ownership of banks allows the GOVN to circumvent requirements of Vietnam's accession to the World Trade Organization (WTO) prohibiting (i) credit to be extended directly from the state to SEGs and (ii) the government from directing commercial banks to lend to them.⁸⁶⁶ Instead, SEG ownership over banks allows SEGs to allocate financing from the banks directly to themselves.⁸⁶⁷ In addition, banks lend to SEGs in excess of what is permitted by law (*i.e.*, 15 and 25 percent of charter capital to any single borrower and group of related borrowers, respectively).⁸⁶⁸ This excessive borrowing by SEGs distorts resource allocations.

Unofficial Interest Rate Directives. In addition to the official loan rate directives described in the above Legal Framework section that banks are required to follow, the SBV, at times, uses unofficial directives to influence interest rates. For example, in December 2022, the SBV released a statement directing banks to reduce their costs, including operating costs and “unnecessary expenses,” with the aim of further reducing lending rates below the government-set rate described above.⁸⁶⁹ This was intended to support economic recovery and development.⁸⁷⁰ The governor of the SBV noted that the SBV “will monitor banks...and take measures to deal

Vietstock Finance, “Vietnam Public Joint Stock Commercial Bank,” available at <https://finance.vietstock.vn/PVcomBank-vietnam-public-joint-stock-commercial-bank.htm?languageid=2;>; and GOVN, SBV, “System of Credit Institutions: Joint-Stock Commercial Banks,” available at www.sbv.gov.vn/webcenter/portal/m_en/home/fm/socins, December 31, 2023. The value of charter capital is converted from VND into USD using the 2019 average exchange rate (23,050.242/USD) published by the World Bank. See World Bank, “Official exchange rate (LCU per US\$, period average) – Vietnam,” available at <https://data.worldbank.org/indicator/PA.NUS.FCRF?locations=VN&page=6>, accessed July 1, 2024.

⁸⁶² Vietstock Finance, “Bao Viet Holdings,” available at <https://finance.vietstock.vn/BVH/ho-so-doanh-nghiep.htm?languageid=2>, accessed July 16, 2024.

⁸⁶³ Vietstock Finance, “Bao Viet Joint Stock Commercial Bank,” available at <https://finance.vietstock.vn/BaoVietBank/profile.htm>, accessed July 16, 2024.

⁸⁶⁴ Vietstock Finance, “LienViet Post Joint Stock Commercial Bank,” available at <https://finance.vietstock.vn/lpb/profile.htm?languageid=2>, accessed by July 1, 2024.

⁸⁶⁵ See table in Appendix III.

⁸⁶⁶ Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 102.

⁸⁶⁷ Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 102.

⁸⁶⁸ Tu-Anh Vu-Thanh, “Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam” *World Trade Review* 16(1) (2017): 102.

⁸⁶⁹ Vietnam News, “Banks Required to Cut Rates to Support Economic Recovery,” available at <https://vietnamnews.vn/economy/1441744/banks-required-to-cut-rates-to-support-economic-recovery.html>, December 27, 2022.

⁸⁷⁰ Vietnam News, “Banks Required to Cut Rates to Support Economic Recovery,” available at <https://vietnamnews.vn/economy/1441744/banks-required-to-cut-rates-to-support-economic-recovery.html>, December 27, 2022.

with the violation cases.”⁸⁷¹ {sic} This seems to indicate that the SBV can compel banks to follow even unofficial directives, suggesting that the GOVN has a significant degree of control over the lending practices of domestic banks.

Credit Growth Targets and Ceilings. The GOVN imposes both credit growth targets and ceilings on individual banks.⁸⁷² Credit growth targets imposed by the SBV are intended to drive broader GDP growth.⁸⁷³ Individual banks are assigned specific credit growth targets, which are adjusted annually, and the overall banking system is also assigned a credit growth target.⁸⁷⁴ In 2019, the SBV reduced the credit growth target for the overall banking system from 17 percent to 14 percent.⁸⁷⁵ Banks modified their credit policies in January 2019 to comply with this directive.⁸⁷⁶ Bank-specific credit growth ceilings are also imposed by the GOVN.⁸⁷⁷ According to the OECD, the ceiling for each bank depends on the bank’s “qualifications.”⁸⁷⁸ The OECD also found that these “...bank-by-bank regulations...{give} less autonomy to banks and {are} less conducive to facilitating efficient credit allocation.”⁸⁷⁹

Company-Specific GOVN Lending Directives. Large state-owned banks provide loans according to specific government directives. For example, Agribank, Vietnam’s largest state-owned bank (wholly owned by the GOVN), explicitly states on its website that it follows GOVN directives, “especially credit policies for agricultural and rural development.”⁸⁸⁰ It further states that it “is effectively implementing seven policy credit programs (lending under credit policies for agricultural and rural development; lending to households and individuals through loan/affiliate groups; lending under the support policy to assist in reducing agricultural losses; lending for cattle and poultry farming; lending for coffee replanting; lending under fisheries development

⁸⁷¹ Vietnam News, “Banks Required to Cut Rates to Support Economic Recovery,” available at <https://vietnamnews.vn/economy/1441744/banks-required-to-cut-rates-to-support-economic-recovery.html>, December 27, 2022.

⁸⁷² OECD, *OECD Economic Surveys: Viet Nam 2023*, (April 2023), 33 and 39; and IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation*, (June 4, 2019), 13.

⁸⁷³ IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation*, (June 4, 2019), 13.

⁸⁷⁴ Hai Yen, “Vietnam C. Bank Tightens Credit Growth of Consumer Finance Companies.” *Hanoi Times*, available at <https://hanoitimes.vn/vietnam-cbank-tightens-credit-growth-of-consumer-finance-companies-898.html>, May 11, 2019.

⁸⁷⁵ GOVN, SBV, “SBV Continues to Focus on Regulating Monetary Activities to Control Inflation,” available at https://sbv.gov.vn/webcenter/portal/m_en/links/cm409?dDocName=SBV342233, June 14, 2018; Hai Yen, “Vietnam C. Bank Tightens Credit Growth of Consumer Finance Companies.” *Hanoi Times*, available at <https://hanoitimes.vn/vietnam-cbank-tightens-credit-growth-of-consumer-finance-companies-898.html>, May 11, 2019; and IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation*, (June 4, 2019), 12.

⁸⁷⁶ Nhan Dan, “Four Vietnamese Banks Cut Rates to Boost Economy,” available at <https://en.nhandan.vn/four-vietnamese-banks-cut-rates-to-boost-economy-post69504.html>, January 9, 2019; and Quynh Trang, “2019 Credit Growth Lowest in 5 Years,” *VnExpress International*, available at <https://e.vnexpress.net/news/business/economy/2019-credit-growth-lowest-in-5-years-4036474.html>, January 2, 2020.

⁸⁷⁷ OECD, *OECD Economic Surveys: Viet Nam 2023*, (April 2023), 39.

⁸⁷⁸ OECD, *OECD Economic Surveys: Viet Nam 2023*, (April 2023), 39.

⁸⁷⁹ OECD, *OECD Economic Surveys: Viet Nam 2023*, (April 2023), 69.

⁸⁸⁰ Agribank, “Agribank - The Leading Commercial Bank in Vietnam,” available at www.agribank.com.vn/en/ve-agribank/gioi-thieu-agribank, accessed July 16, 2024.

policies; preferential credit for “clean agriculture”) and two National Target Programs (New Rural Construction, Sustainable Poverty Reduction).”⁸⁸¹

Two of the other “big four” banks, Vietcombank and Vietinbank (which were 74.8 and 64.5 percent state owned, respectively, as of 2019⁸⁸²), provide similar statements of following GOVN directives in their annual reports. For example, in its *Annual Report: 2019*, Vietcombank noted that it “created development strategies in line with the Government’s guidelines and policies as well as directions provided by the State Bank of Vietnam.”⁸⁸³ Vietinbank’s *Annual Report: 2019* also stated that throughout the year it “effectively implemented policies and guidelines by the Party and Government.”⁸⁸⁴

C. State-directed Planning

State-directed planning is a key component of centrally planned economies and has therefore been an important aspect of Vietnam’s economy under the rule of the CPV. Even as the GOVN/CPV has gradually allowed market forces and private actors to play a role in the economy, it has continued to promulgate and carry out plans. The GOVN’s state plans are a means through which the GOVN communicates its plans for the economy in terms of business outcomes and resource allocations. This section provides an overview of state-directed planning in Vietnam, which is used by the GOVN/CPV to communicate its objectives for the economy.

1. Legal Framework

Vietnam’s *Planning Law, No. 21/2017/QH14 (Planning Law (2017))* establishes the legal basis for top-down government planning in Vietnam.⁸⁸⁵ National-level master plans are the highest-level plans and include: (i) the national overall master plan, which serves as “the basis for the formulation” of all other master plans; (ii) the national marine space master plan; (iii) the national land use master plan, and (iv) national sectoral master plans.⁸⁸⁶ Sectoral-level plans are to be created for infrastructure, the use of national resources, environmental protection and biodiversity conservation.⁸⁸⁷

Master plans are created at five levels of governance: (i) national-level master plans; (ii) regional master plans; (iii) provincial master plans; (iv) master plans of special administrative-economic units; and (v) master plans of urban and rural areas.⁸⁸⁸ Government plans are required to conform

⁸⁸¹ Agribank, “Agribank - The Leading Commercial Bank in Vietnam,” available at www.agribank.com.vn/en/ve-agribank/gioi-thieu-agribank, accessed July 16, 2024.

⁸⁸² Vietcombank, *Annual Report: 2019 - Mastering Technology, Touching Future*, (2019), 57; and VietinBank, *Annual Report: 2019*, (2019), 67.

⁸⁸³ Vietcombank, *Annual Report: 2019 - Mastering Technology, Touching Future*, (2019), 7.

⁸⁸⁴ VietinBank, *Annual Report: 2019*, (2019), 17.

⁸⁸⁵ GOVN, *Planning Law (2017)*.

⁸⁸⁶ GOVN, *Planning Law (2017)*, Article 6.

⁸⁸⁷ GOVN, *Planning Law (2017)*, Article 3(5).

⁸⁸⁸ GOVN, *Planning Law (2017)*, Article 5(1).

with all plans that are superior to that particular plan, with all plans conforming to the national-level master plans.⁸⁸⁹ The planning cycle for national-level master plans is ten years,⁸⁹⁰ with each plan being reviewed every five years.⁸⁹¹

The GOVN's socio-economic development strategies and sectoral development strategies are the basis for formulating master plans.⁸⁹² The contents of the master plans articulate the GOVN's plans for the economy and specify uses for resources, including the zoning and distribution land and water resources.⁸⁹³ Provincial master plans, in particular, must have plans for the development of transport, power supply, telecommunications, and irrigation and water supply networks.⁸⁹⁴ The *Planning Law (2017)* mentions several elements that are fundamental to master plans: (i) public investment projects; (ii) investment projects funded by non-public investment fund sources; (iii) land use plans; and (iv) determination and use of resources for implementing master plans.⁸⁹⁵

According to the *Planning Law (2017)*, it is through master plans that the GOVN manages socio-economic development and ensures national defense and security and environmental protection.⁸⁹⁶ Key members of government and government bodies involved in the creation and implementation of master plans include: (i) the Prime Minister; (ii) Ministry of Planning and Investment; (iii) Ministry of Finance; (iv) Ministry of Natural Resources and Environment; (v) provincial-level People's Committees; (vi) and ministries and ministerial-level agencies.⁸⁹⁷ It is the Prime Minister's responsibility to form a master plan appraisal council to review national-level and regional master plans, and the Ministry of Planning and Investment is responsible for forming an appraisal council to review provincial master plans.⁸⁹⁸ It is the primary responsibility of the Ministry of Planning and Investment to arrange, in coordination with the Ministry of Finance, "funding sources for public investment projects under the laws on public investment and the state budget."⁸⁹⁹ The dissemination of land use plans is the primary responsibility of the Ministry of Natural Resources and Environment and provincial-level People's Committees for national-level and regional master plans and provincial master plans, respectively.⁹⁰⁰ Land-use plans are described in further detail in the *Land System* section in Factor Four.

⁸⁸⁹ GOVN, *Planning Law (2017)*, Article 6.

⁸⁹⁰ GOVN, *Planning Law (2017)*, Article 8(2).

⁸⁹¹ GOVN, *Planning Law (2017)*, Article 52(1).

⁸⁹² GOVN, *Planning Law (2017)*, Article 20.

⁸⁹³ GOVN, *Planning Law (2017)*, Article 26.

⁸⁹⁴ GOVN, *Planning Law (2017)*, Article 27.

⁸⁹⁵ GOVN, *Planning Law (2017)*, Article 45.

⁸⁹⁶ GOVN, *Planning Law (2017)*, Article 10(1).

⁸⁹⁷ GOVN, *Planning Law (2017)*, Article 55.

⁸⁹⁸ GOVN, *Planning Law (2017)*, Article 29.

⁸⁹⁹ GOVN, *Planning Law (2017)*, Article 47.

⁹⁰⁰ GOVN, *Planning Law (2017)*, Article 47.

2. Developments in the Economy

The Centralized Planning System in Vietnam. In many ways, the planning system in Vietnam is still highly centralized. The national-level Five-Year Plan, or socio-economic development plan (SEDP), is the primary planning document in Vietnam and is promulgated by the central government.⁹⁰¹ The national SEDP for 2021-2025 currently in place outlines the GOVN's industrial policy goals broadly, which include, *inter alia*, "strongly developing the processing and manufacturing industries in association with smart technology," "improv{ing} the capacity of design, construction and installation, construction management in the advanced and modern direction," and "promot{ing} the development and quality improvement of service industries, {and prioritizing} industries with advantages, knowledge- and technology-intensive industries and industries with high added value."⁹⁰² The current SEDP also states that the GOVN will "restructure credit institutions and dispose of bad debts."⁹⁰³

Pervasive Government Planning. The number of state plans at various levels of government in Vietnam has increased from 3,144 from the 2001 to 2010 period to 18,285 from the 2011 to 2020 timeframe.⁹⁰⁴ At the national level alone, 270 planning documents were in place for the 2011 to 2020 planning period.⁹⁰⁵ Although the *Planning Law* (2017) no longer calls for master plans to be created for specific industries and products, regional plans often call for industry- and product-specific outcomes.⁹⁰⁶ Over 3,000 provincial production plans exist for various regions, which determine the quantities produced of many commodities that are important to Vietnam's economy, including coffee, tea, milk, beer, shrimp, cattle, rice, cassava, rubber, acacia, steel, and concrete.⁹⁰⁷ According to an article in the *Journal of Vietnamese Studies*, "be it the quantity of steel, university students, golf courses, construction material, rice, housing space per capita, karaoke bars, industrial clusters, or Ho Chi Minh monuments across the country, virtually anything is subject to state-directed planning and, ultimately, expressed in quantitative targets."⁹⁰⁸

⁹⁰¹ World Bank and Ministry of Planning and Investment of Vietnam, *Vietnam 2035: Toward Prosperity, Creativity, Equity, and Democracy*, (2016), 224-25; and Simon Benedikter and Loan T.P. Nguyen, "Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform," *Journal of Vietnamese Studies* 13(4) (2018): 7-8.

⁹⁰² GOVN, *Resolution on the 2021-2025 Five-Year Socio-Economic Development Plan* (2021).

⁹⁰³ GOVN, *Resolution on the 2021-2025 Five-Year Socio-Economic Development Plan* (2021).

⁹⁰⁴ Simon Benedikter and Loan T.P. Nguyen, "Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform," *Journal of Vietnamese Studies* 13(4) (2018): 3-4.

⁹⁰⁵ Simon Benedikter and Loan T.P. Nguyen, "Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform," *Journal of Vietnamese Studies* 13(4) (2018): 9.

⁹⁰⁶ Simon Benedikter and Loan T.P. Nguyen, "Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform," *Journal of Vietnamese Studies* 13(4) (2018): 11.

⁹⁰⁷ Simon Benedikter and Loan T.P. Nguyen, "Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform," *Journal of Vietnamese Studies* 13(4) (2018): 11.

⁹⁰⁸ Simon Benedikter and Loan T.P. Nguyen, "Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform," *Journal of Vietnamese Studies* 13(4) (2018): 4.

Uncoordinated Planning, Decentralized Control and Ad Hoc Implementation. While planning in many respects is pervasive in Vietnam, it is also uncoordinated, and plans are not always implemented fully. Plans are often prepared by different government agencies, which results in plans not being coordinated with other plans.⁹⁰⁹ In addition, since objectives in the plans are often broad, they are not always implemented fully. However, this does not preclude the government, whether at the central or provincial level, from using plans as a means of implementing government policies. The lofty and broad goals called for in the plans allow the government, often at the local level, to use them to divert resources to particular areas of the economy in pursuit of government objectives.⁹¹⁰

The SOE Sector's Role in Carrying out GOVN Policies. Some government plans affect the economy as a whole, such as land-use plans, as described in the *Land System* section under Factor Four. However, many government plans target the SOE sector and SOEs are expected to carry them out. According to the OECD, "...SOEs in Viet Nam are widely perceived as executive agents of the government's developmental strategies and economic policy plans, rather than individual economic agents whose main objective is the maximization of long-term earnings."⁹¹¹ This is true even when planning documents do not explicitly target the SOE sector. In many cases, a state planning document will target a particular industry in which the SOE sector plays a dominant role, and the SOE sector is expected to carry out the government's plans.

For example, an important industrial planning document, the "National Strategy for {the} Fourth Industrial Revolution," calls for advancing technology in certain industries to increase productivity.⁹¹² It requires specific SOEs to help accomplish this goal by calling for enterprises managed by the CMSC to "develop investment plans for priority technology transfer to actively participate in the Fourth Industrial Revolution..."⁹¹³ Another national-level plan, the "Industrial Development Strategy Through 2025, Vision to 2035," sets out goals in specific processing and manufacturing industries.⁹¹⁴ It targets the following industries, which are all dominated by SOEs: chemicals; agriculture, forestry, and fishery product processing; garments, textile, leather, and footwear; electronics and telecommunications; and renewable energy.⁹¹⁵

⁹⁰⁹ Nguyen Thi Tue Anh, Luu Minh Duc, and Trinh Duc Chieu "Learning to Compete: The Evolution of Vietnamese Industry," Brookings Institution, (2016), 22; Simon Benedikter and Loan T.P. Nguyen, "Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform," *Journal of Vietnamese Studies* 13(4) (2018): 13.

⁹¹⁰ Simon Benedikter and Loan T.P. Nguyen, "Obsessive Planning in Transitional Vietnam: Understanding Rampant State Planning and Prospects of Reform," *Journal of Vietnamese Studies* 13(4) (2018): 16.

⁹¹¹ OECD, *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy*, (2020), 175.

⁹¹² GOVN, *National Strategy on the Fourth Industrial Revolution Towards the Year 2030*, (January 26, 2021), Part I: Situation and Context and Part II: Perspectives and Objectives.

⁹¹³ GOVN, *National Strategy on the Fourth Industrial Revolution Towards the Year 2030*, (January 26, 2021), Part IV: Tasks and Solutions, subsection 18.

⁹¹⁴ GOVN, *Industrial Development Strategy Through 2025, Vision to 2035*, (2014), Article 2.

⁹¹⁵ GOVN, *Industrial Development Strategy Through 2025, Vision to 2035*, (2014), Article 2.

The GOVN itself confirms SOEs' roles in carrying out the GOVN's state plans and industrial policies. According to a report of the Party's XIth-tenure Central Committee presented by General Secretary Nguyen Phu Trong on the Party's XIIth Congress: "the state's role is to...push up production and business and...to bring into play the role as owners of the people in socio-economic development."⁹¹⁶

As described in the SOE section under Factor Four, SOEs are required to have five-years plans that conform with the national SEDP, in addition to the five-year plans for the sector or industry of the economy relevant to each SOE.⁹¹⁷ According to the OECD, "the formulation of the enterprise's strategy is based on the orientations of the Party, the State and the government, general socio-economic development strategy of the whole country, as well as the national planning of sectors and fields related to enterprises. The strategy of SOEs is completed and approved by the competent authority only after the general socio-economic development strategy of the whole country is approved."⁹¹⁸

Resolution on Industrial Development Policy. Although the *Planning Law* no longer calls for master-level plans for specific industries, the GOVN still specifies growth and production targets for specific industries and sectors. In 2018, the GOVN passed the *Resolution No. 23-NQ/TW on the Direction on Formulating the Industrial Development Policy until 2030 with a Vision towards 2045* (*Resolution No. 23*), which outlines plans and policies for the development of a number of priority industries and sectors, such as the processing and manufacturing industries.⁹¹⁹ The resolution calls for output in the industrial and manufacturing industries to increase to 40 percent of GDP by 2030, with the processing and manufacturing industries increasing to 10 percent and 20 percent of GDP, respectively, over the same period.⁹²⁰ Furthermore, it calls for the growth rate of industrial labor productivity in these industries to reach an average of 7.5 percent per year and the share of employees in the services and industrial sector to reach 70 percent of the total workforce.⁹²¹ It stipulates the GOVN's role in supporting policies for and promoting investment in a number of "priority industries," such as information technology and telecommunications.⁹²²

⁹¹⁶ Vietnam Plus, "11th Party Central Committee's Report on Congress Documents," available at <https://en.vietnamplus.vn/11th-party-central-committees-report-on-congress-documents-post88330.vnp>, January 28, 2016.

⁹¹⁷ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 52.

⁹¹⁸ OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam*, (2022), 91.

⁹¹⁹ GOVN, *Resolution No. 23*, II(B)2.

⁹²⁰ GOVN, *Resolution No. 23*, II(B)2; and GOVN, "Gov't rolls out goals, solutions for industrial production development in next decade," *Government News*, available at <https://en.baochinhphu.vn/print/govt-rolls-out-goals-solutions-for-industrial-production-development-in-next-decade-11139211.htm>, September 4, 2020.

⁹²¹ GOVN, *Resolution No. 23*, II(B)2; and GOVN, "Gov't rolls out goals, solutions for industrial production development in next decade," *Government News*, available at <https://en.baochinhphu.vn/print/govt-rolls-out-goals-solutions-for-industrial-production-development-in-next-decade-11139211.htm>, September 4, 2020.

⁹²² GOVN, *Resolution No. 23*, III(2).

D. Price Regulation

Since NME analyses seek to determine whether prices and costs within the country are meaningful measures of value, the extent of government price regulation is central to this analysis. While government-regulated prices exist in many market economies, countries vary widely in terms of the extent of goods and services subject to price controls and the extent to which the government-controlled prices differ from market-based prices. This section provides an overview of state-controlled prices in Vietnam and evaluates their pervasiveness and impact on the overall price distortion of goods in the economy.

1. Legal Framework

The *Law on Price (2023)* provides a legal basis for the GOVN to “perform the unified state management of price and valuation” of goods and services in Vietnam.⁹²³ This section will evaluate the most recent version of the *Law on Price (2023)*, which took effect on July 1, 2024. The *Law on Price (2023)* includes two lists of goods and services: one that is subject to direct GOVN price-setting and one that is subject to “price valorization” by the GOVN, which includes various direct and indirect measures to impact prices of relevant goods and services.⁹²⁴

Goods and Services Subject to Direct Price-setting by the GOVN. Prices in the list of goods and services in Table 5.2 below are set directly by the GOVN. This list includes 66 goods and services, which generally fall into the categories of: electricity generation, transmission, and distribution; transportation; post and telecommunications services; royalties and other related compensations; public utility hydraulic products and services; certain financial services; water; national reserve goods; medical goods and services; tuitions and textbooks; certain housing; certain land and related services; cemetery services; and other public services.⁹²⁵ It is common for some of these prices to be regulated in market economy countries. At the time of the *Commerce’s Vietnam NME Determination (2002)*, the GOVN also set the prices of cement, steel, iron, other industrial products.⁹²⁶ Its removal of these price controls since that time is a positive development toward market liberalization.

In order to be subject to GOVN-regulated pricing, goods and services must meet any of the following criteria: (i) be legally subject to state monopoly in accordance with the *Commercial Law* and other relevant laws; (ii) be important resources as specified by the *Law on Resources*; (iii) be national reserve goods, public-utility products and services, or public non-business services funded by the state budget; or (iv) be “essential”, subject to exclusive sale or purchase,

⁹²³ GOVN, *Law on Price (2023)*, Article 13(1).

⁹²⁴ GOVN, *Law on Price (2023)*, Appendices 1 and 2.

⁹²⁵ GOVN, *Law on Price (2023)*, Appendix 2.

⁹²⁶ *Commerce’s Vietnam NME Determination (2002)*, 30.

or have a limited competitive market and have impacts on “the socioeconomic reality, people’s lives, and production and business activities.”⁹²⁷

The *Law on Price* (2023) lists the GOVN’s three principles of price management and regulation: (i) to manage and regulate prices under the market mechanism in line with socio-economic development policies; (ii) to protect lawful rights and interests of consumers, organizations and individuals trading in goods or providing services, and interests of the GOVN; and (iii) to contribute to stabilizing the macro-economy, ensuring social security and sustainable development, including “to adopt price policies suitable to areas with difficult socio-economic conditions.”⁹²⁸ According to the *Law on Price* (2023), one of the purposes of price regulation in Vietnam is to grant organizations and individuals the right to “reduce selling prices of goods or services without being regarded as violating the law on competition and law on anti-dumping of imports.”⁹²⁹

Various line ministries, ministerial-level agencies, and provincial-level People’s Committees are responsible for managing the prices of goods and services.⁹³⁰ The National Assembly Standing Committee of the central government approves of prices and price adjustments.⁹³¹ How prices of each good and service are set varies and is sometimes subject to additional legislation.⁹³² This includes, *inter alia*: the *Vietnam Land Law* (2014), which regulates land prices; the *Housing Law*, which regulates house prices; the *Electricity Law*, which regulates electricity and electricity-related service prices; the *Law on Medical Examination and Treatment*, which regulates medical service prices; and the *Intellectual Property Law* (2019), which regulates royalties for the use of certain works of others.⁹³³

⁹²⁷ GOVN, *Law on Price* (2023), Article 21(1)(a).

⁹²⁸ GOVN, *Law on Price* (2023), Article 5.

⁹²⁹ GOVN, *Law on Price* (2023), Article 8(4).

⁹³⁰ GOVN, *Law on Price* (2023), Article 14-16.

⁹³¹ GOVN, *Law on Price* (2023), Article 17(3).

⁹³² GOVN, *Law on Price* (2023), Appendix 2.

⁹³³ GOVN, *Law on Price* (2023), Appendix 2.

Table 5.2: Goods and Services that are Subject to Direct Price-setting by the GOVN⁹³⁴

1. Electricity (retail, wholesale); electricity services under the Electricity Law, including electricity generation, electricity transmission, electric system support, electric system-operating regulation, electricity market transaction administration, and electricity distribution services.
2. Pipeline natural gas transportation service for electricity generation.
3. Railway transport operation service on state invested railway infrastructure.
4. Road use service, for roads built under commercial road construction investment projects and placed under central management (except expressway use services).
5. Road use service, for roads built under commercial road construction investment projects and placed under local management (except expressway use services).
6. Ferry use service, for ferries invested with state budget funds and placed under the central management.
7. Ferry use service, for ferries invested with state budget funds and placed under local management.
8. Ferry use service, for ferries invested with capital sources outside the state budget and placed under the central management.
9. Ferry use service, for ferries invested with capital sources outside the state budget and placed under local management.
10. Services at seaports (including bridge, wharf and mooring buoy use, container loading and unloading and vessel towing services).
11. Port and terminal use service, for ports, inland waterway landing stages, fishing ports invested with state budget funds and placed under the central management.
12. Port and terminal use service, for ports, inland waterway landing stages, fishing ports invested with state budget funds and placed under local management.
13. Maritime pilot service.
14. Domestic air passenger transportation service.
15. Official VIP flight and VIP cabin service (with the cost for reserve aircraft taken into account) invested with state budget funds.
16. Aircraft parking space rental service; passenger check-in counter rental service; luggage conveyor rental service; passenger boarding bridge rental service; full-package commercial ground technical service at airports and aerodromes; automatic luggage sorting service; aviation fuel filling service; service of using underground fuel filling system infrastructure to supply fuel at airports and aerodromes; franchising of the right to operate aviation services at airports, including franchising of passenger terminals; cargo terminals and warehouses; ground commercial technical service; repair and maintenance of aviation vehicles and equipment; aviation techniques; provision of inflight meals; provision of aviation fuel.
17. Ground lease service and essential services at airports and aerodromes.
18. Aircraft takeoff and landing service; administration service for arrival and departure flights; administration service for flights through flight information regions managed by Vietnam; passenger services at airports and aerodromes.
19. Inspection service for means of transport, including inspection of transport vehicles, total components, parts and spare parts of vehicles; means and equipment for exploration, exploitation and transportation at sea; special-use loading and unloading and construction vehicles and equipment; machinery, equipment

⁹³⁴ GOVN, *Law on Price (2023)*, Appendix 2.

and supplies subject to strict occupational safety and health requirements in transportation and special-use technical equipment and devices.
20. Technical inspection service for machinery, equipment, supplies and substances subject to strict occupational safety requirements
21. Technical inspection service for machinery, equipment, supplies and substances subject to strict requirements on specialized safety of the industrial specialty.
22. Telecommunications connection service.
23. Public-utility postal and public-utility telecommunications service, except services invested with state budget funds by the order placement method.
24. Royalties for exploitation and use of works, specified by the law phonograms and video recordings in case of limitations on copyright and related rights under the Law on Intellectual Property.
25. Compensations for the right to use inventions licensed under compulsory decisions of competent agencies in case licensees of the right to use inventions and holders of exclusive right to use inventions cannot reach agreement Compensations for the right to use plant varieties licensed under compulsory decisions of competent agencies.
26. Public-utility hydraulic products and services for hydraulic works built with state budget funds under the management and order placement by the Ministry of Agriculture and Rural Development.
27. Public-utility hydraulic products and services for hydraulic works built with state budget funds under the management and order placement by localities.
28. Other hydraulic products and services for hydraulic works built with state budget funds under the management by the Ministry of Agriculture and Rural Development.
29. Other hydraulic products and services for hydraulic works built with state budget funds under the management and order placement by localities.
30. Services in the field of securities of the Vietnam Exchange and its subsidiaries and the Vietnam Securities Depository and Clearing Corporation.
31. Clean water.
32. National reserve goods (except cases of purchase of national reserve goods through open bidding, competitive offer, direct procurement or auction under the law on national reserves and national reserve goods in the field of national defense and security).
33. National reserve goods in the field of national defense and security.
34. Public products and services (public non-business services and public-utility products and services) on the list promulgated by competent authorities, invested with state budget funds and under the ordering competence of central agencies and organizations.
35. Public products and services (public non-business services and public-utility products and services) on the list promulgated by competent authorities, invested with state budget funds and under the ordering competence of local agencies and organizations.
36. Medical examination and treatment services priced by the State under the law on medical examination and treatment.
37. Medical quarantine and preventive medicine services at public medical establishments
38. Opioid addiction treatment services at public nonbusiness units.
39. Whole blood and blood products up to standards.

40. Testing services for drug specimens and medicinal ingredients at public non-business units that can self-cover regular expenses, public non-business units that can self-cover part of regular expenses, and public non-business units with regular expenses covered by the State.
41. Vaccination, antidotal and sterilization services for animals, veterinary diagnostics; drug testing services for animals and plants.
42. Textbooks.
43. Tuition fees and services in the field of education and training at public early childhood education institutions and general education institutions priced by the State under the law on education.
44. Tuition fees and services in the field of education and training at public higher education institutions priced by the State under the law on education.
45. Tuition fees and services in the field of education and training at public vocational education institutions priced by the State under the law on vocational education.
46. Brokerage service under brokerage contracts to send Vietnamese workers abroad; services of sending Vietnamese workers abroad as guest workers.
47. Official-duty houses.
48. Social houses under the Housing Law.
49. Condominium operation management service for state-owned apartment buildings in localities.
50. Housing and other services to be priced by the State under the Housing Law.
51. Goods and services provided for the performance of national defense and security tasks by national defense and security units and enterprises that have placed orders for such goods and services.
52. Auction service for property required by law to be sold through auction.
53. Public non-business services invested with state budget funds, with prices calculated under the roadmap on collection from service users.
54. Products and services that use information from databases and information systems managed by ministries and sectors at the request of organizations and individuals (excluding services for which charges and fees are collected under the law on charges and fees).
55. Land falling into cases subject to pricing by the State under the land law.
56. Special-use forests, protection forests and production forests owned by the entire people and placed under local management.
57. Cadastral survey and mapping services in cases competent state agencies allocate or lease land areas or permit land repurposing in localities where cadastral maps are not available.
58. Cemetery services and cremation services of cremation facilities invested with state budget funds.
59. Services of getting in and out of car terminals.
60. Passenger and luggage transportation services on urban railways.
61. Services of household solid waste collection, transportation, and treatment.
62. Water drainage and wastewater treatment services (except prices of water drainage and wastewater treatment services for industrial parks and cottage industry zones invested by capital sources outside the state budget).
63. Parking service invested with state budget funds.
64. Services of renting shared-use technical infrastructure facilities invested with state budget funds.
65. On-demand notarial services.
66. Service of using goods-selling spaces at markets invested with state funds.

Goods and Services Subject to Price Valorization. The nine goods and services in Table 5.3 below are subject to GOVN “price valorization,”⁹³⁵ which is defined in the *Law on Price (2023)* as “implementation by the State of solutions and measures provided in this Law to stabilize goods and service prices upon occurrence of abnormal price fluctuations during a given period of time.”⁹³⁶ These goods and services can be categorized as finished oil and gas products, milk for children, rice, fertilizer, animal feed, animal vaccines, pesticides, and essential drugs. Notably, price valorization measures can include both direct and indirect measures to influence prices, including setting “specific” prices, maximum and minimum prices, and price brackets, which are not significantly different from direct government price setting.⁹³⁷ To be subject to price valorization, goods and services must (i) be essential; or (ii) have “great impacts on socio-economic development, production and business activities, and people’s lives.”⁹³⁸

The *Law on Price (2023)* states that price valorization measures include: (i) regulating supply and demand, including, *inter alia*, the regulation of domestic production of goods, imports and exports, and buying or selling national reserve goods; (ii) taking financial and monetary measures; (iii) setting specific prices, maximum prices, minimum prices, or price brackets suitable to characteristics of goods or services; (iv) applying price-related support measures; and (v) using price valorization funds.⁹³⁹ Specific prices are prices that are set for individual items or services. For example, the *Vietnam Land Law (2014)* calls for the GOVN to set specific land prices in certain instances.⁹⁴⁰ The *Law on Price (2023)* states that price valorization funds are financial funds not included in the state budget balance which are used for the price valorization purpose.⁹⁴¹

However, the law does not state exactly how these funds are used to influence prices. Price valorization measures are to be determined by “agencies competent to decide on price valorization measures,” which are to assess the extent of fluctuation in the market price levels of the relevant goods or services as well as “their impacts on the socio-economic reality, production and business activities, and people’s lives.”⁹⁴² Price valorization measures are intended to be temporary, with the time period they are in place for being subject to change.⁹⁴³

⁹³⁵ GOVN, *Law on Price (2023)*, Article 17(2).

⁹³⁶ GOVN, *Law on Price (2023)*, Article 4(9).

⁹³⁷ GOVN, *Law on Price (2023)*, Article 19(1).

⁹³⁸ GOVN, *Law on Price (2023)*, Article 17(1).

⁹³⁹ GOVN, *Law on Price (2023)*, Article 19(1).

⁹⁴⁰ GOVN, *Vietnam Land Law (2014)*, Article 114(3).

⁹⁴¹ GOVN, *Law on Price (2023)*, Article 19(1).

⁹⁴² GOVN, *Law on Price (2023)*, Articles 19(2) and 20(1).

⁹⁴³ GOVN, *Law on Price (2023)*, Article 19(2).

Table 5.3: Goods and Services Subject to Price Valorization by the GOVN⁹⁴⁴

1. Finished gas and petrol products.
2. Liquefied petroleum gas (LPG).
3. Milk for children under 6 years old.
4. Ordinary paddy and rice.
5. Nitrogen fertilizer; DAP fertilizer; and NPK fertilizer.
6. Animal feed and aquatic feed.
7. Vaccines for livestock and poultry disease prevention.
8. Pesticides.
9. Drugs on the list of essential drugs used at medical examination and treatment establishments.

2. *Developments in the Economy*

2.1 Price Controls in Vietnam Compared to Other Countries

Price controls are often used in market economies, and especially in emerging markets and developing economies.⁹⁴⁵ It is common for advanced economies to impose price controls on basic utilities (including electricity and water), and telecommunications and postal services.⁹⁴⁶ In addition, it is common for developing economies to impose price controls on petroleum products, such as gasoline and liquified petroleum gas, and on basic food products including flour, bread, sugar, and rice.⁹⁴⁷

The World Bank found that around 90 percent of emerging markets and developing economies employ price controls for energy products (including nearly 80 percent for petroleum products and around 60 percent for electricity); around 80 percent employ price controls for food and beverages; and around 75 percent employ price controls for other goods and services.⁹⁴⁸ Therefore, while price controls have the potential to result in non-market based prices, they are prevalent in many market economies, especially those that are still developing.

However, although many countries employ price controls, Vietnam has more price controls in place than many Asian countries. Figure 5.5 below shows that Vietnam scores below the Asia and Australasia average for price controls, indicating that they are more pervasive in Vietnam

⁹⁴⁴ GOVN, *Law on Price* (2023), Appendix 1.

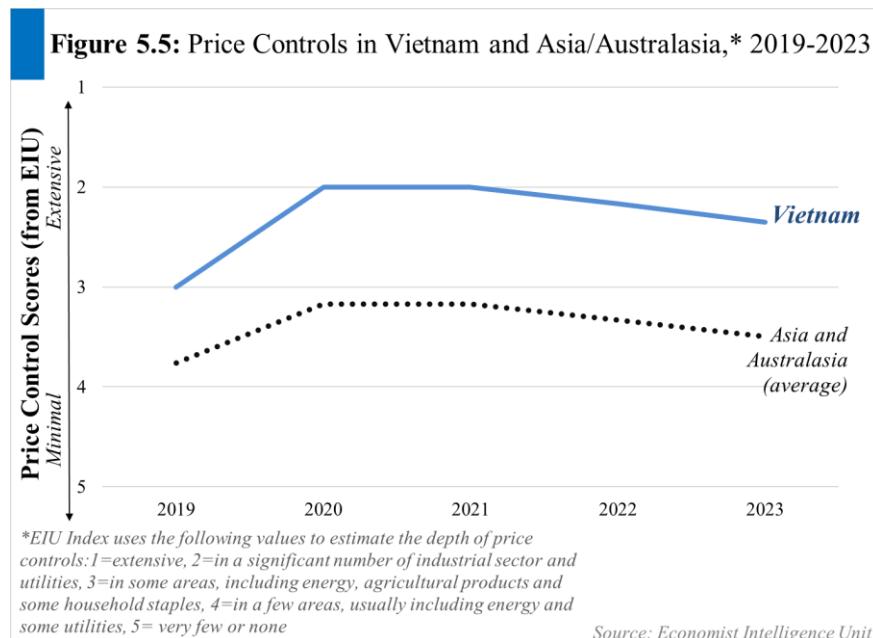
⁹⁴⁵ Justin-Damien Guénette, "Price Controls: Good Intentions, Bad Outcomes," World Bank Policy Research Working Paper 9212, (April 2020), Abstract.

⁹⁴⁶ Justin-Damien Guénette, "Price Controls: Good Intentions, Bad Outcomes," World Bank Policy Research Working Paper 9212, (April 2020), 5.

⁹⁴⁷ Justin-Damien Guénette, "Price Controls: Good Intentions, Bad Outcomes," World Bank Policy Research Working Paper 9212, (April 2020), 5.

⁹⁴⁸ Justin-Damien Guénette, "Price Controls: Good Intentions, Bad Outcomes," World Bank Policy Research Working Paper 9212, (April 2020), 4-5.

compared to other Asian and Australasian countries.⁹⁴⁹ As of 2023, Vietnam's score is 2.35, and the Asian/Australasian average is 3.50.⁹⁵⁰ A score of 2 indicates that there are a significant number of price controls in industrial sectors and utilities; a score of 3 indicates that price controls exist in some areas, including energy, agricultural products and some household staples.



2.2 The Impact of Price Controls on Overall Prices in Vietnam

The CPI measures the overall change in consumer prices based on a representative basket of goods and services over time. In 2019, the IMF estimated that the GOVN's continued efforts to liberalize administered prices in Vietnam were expected to add about two percentage points to the CPI.⁹⁵¹ This suggests that the GOVN's administered prices suppress prices in Vietnam. In 2019, the CPI was around 3.5,⁹⁵² so adding two percentage points to this figure would increase it considerably to an annualized rate of 5.5 percent.

2.3 Electricity

As described above, the GOVN regulates the prices of electricity in Vietnam. According to the Economist Intelligence Unit, electricity prices in Vietnam "remain heavily regulated by the Vietnamese government."⁹⁵³ The controlled electricity prices are at levels that have caused EVN,

⁹⁴⁹ EIU, *Regulatory Environment: Vietnam*, (April 1, 2024), 62.

⁹⁵⁰ EIU, *Regulatory Environment: Vietnam*, (April 1, 2024), 62.

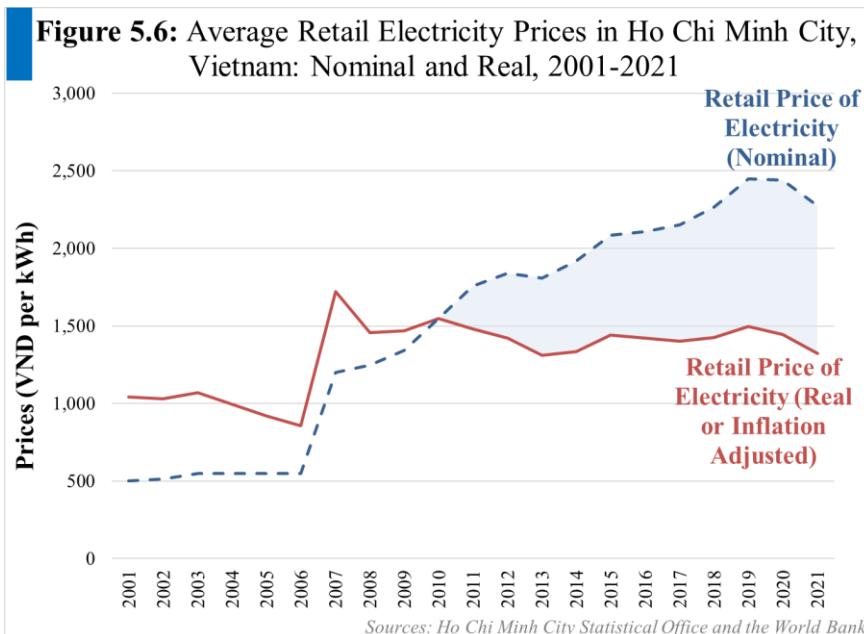
⁹⁵¹ IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation*, (June 4, 2019), 13 and 27.

⁹⁵² IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation*, (June 4, 2019), 13 and 27.

⁹⁵³ EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 66.

the SOE that supplies the majority of electricity in Vietnam, to consistently lose large amounts of money.⁹⁵⁴ Although the GOVN has gradually increased electricity prices in Vietnam, the price has not always kept up with inflation.⁹⁵⁵ One study found that, during the period studied, which was from 2010 to 2016, Vietnam's electricity prices actually declined in real (*i.e.*, inflation-adjusted) terms.⁹⁵⁶

More recent data similarly indicates that electricity prices have declined in real terms. As can be seen in Figure 5.6 below, the real retail price of electricity in Ho Chi Minh City increased significantly in 2006 and has steadily declined since that time. Retail electricity prices were only available for Ho Chi Minh City and not for the whole of Vietnam. However, all electricity prices in Vietnam fall within the relatively narrow range of the government-set bracket and therefore can be assumed to be relatively homogenous across Vietnam.



The GOVN most recently increased the price of electricity in February 2023 from 1,826.22 VND/kWh to 2,444.09 VND/kWh, or roughly 7.4 to 9.9 U.S. cents/kWh.⁹⁵⁷ This increased the price of electricity by around 14 percent.⁹⁵⁸

⁹⁵⁴ In 2022, EVN lost 31 trillion dong, or roughly USD \$1.26 million. See Reuters, “Vietnam hikes electricity floor price by nearly 14%,” February 6, 2023. See Factor Four for more information on EVN.

⁹⁵⁵ David Dapice, “Vietnam’s Crisis of Success in Electricity Options for a Successful Clean Energy Mix,” Harvard Kennedy School, Ash Center for Democratic Governance and Innovation, (December 2018), 9-10.

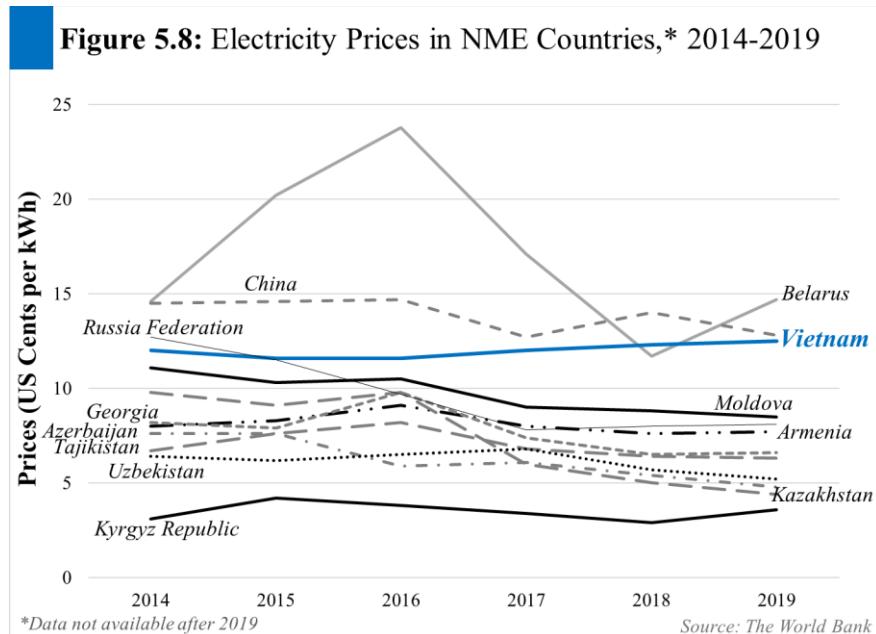
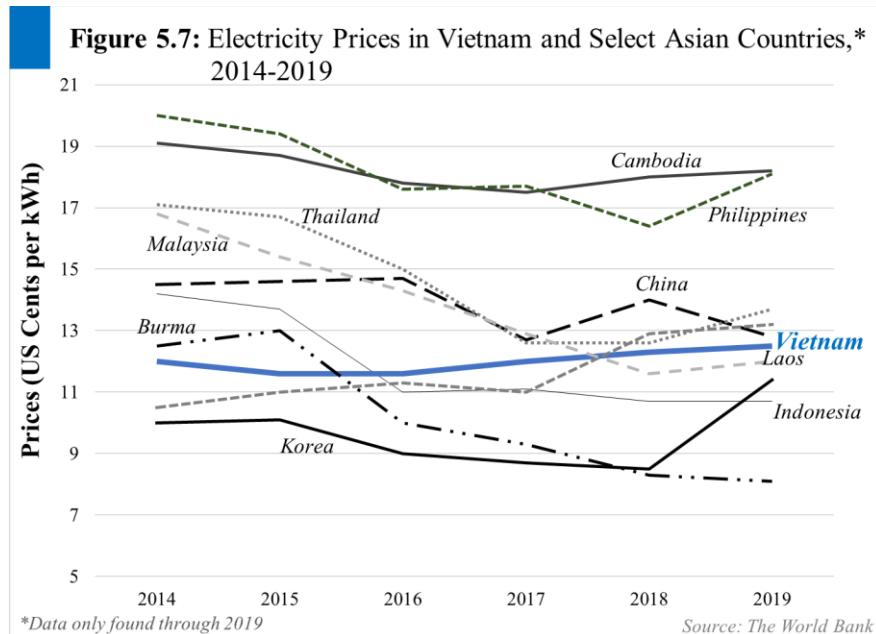
⁹⁵⁶ David Dapice, “Vietnam’s Crisis of Success in Electricity Options for a Successful Clean Energy Mix,” Harvard Kennedy School, Ash Center for Democratic Governance and Innovation, (December 2018), 9-10. This study reported the prices to be around 7.5 U.S cents/kWh.

⁹⁵⁷ GOVN, *Decision on the average electricity retail price bracket*, (February 3, 2023), Article 2.

⁹⁵⁸ Reuters, “Vietnam Hikes Electricity Floor Price by Nearly 14%,” available at

www.reuters.com/article/business/energy/vietnam-hikes-electricity-floor-price-by-nearly-14-idUSL4N34M1SN/, February 6, 2023.

While Vietnam's GOVN-set electricity prices cause EVN to lose money and have declined in real terms, they are not outside the range of electricity prices of other Asian countries or of other NME countries, as can be seen in Figures 5.6 and 5.7 below. These figures compare the prices of electricity in Vietnam with other NME countries and other Asian countries, respectively, from 2014 to 2019 (the most recently available data). Vietnam's electricity price increased slightly during that time period.



2.4 Oil and Gas

The GOVN regulates the prices of retail oil and gas products, which are used for, among other things, fueling vehicles. The GOVN sets the base prices for retail oil and gas products, which are intended to stabilize the prices compared to the world market prices.⁹⁵⁹ According to *Decree No. 83/2014/NĐ-CP on Petrol and Oil Trading*, the base price of gasoline is measured using a formula that includes: (i) the world gasoline price (10 or 15 day average); (ii) insurance cost; (iii) the cost of freight transportation to Vietnam; (iv) import duties; (v) excise taxes; (vi) the exchange rate; (vii) adjustment of price stabilization fund; (viii) Vietnam's environmental protection tax; (ix) value-added tax; (x) profits; and (xi) additional expenses, taxes and charges.⁹⁶⁰ This calculation prevents gasoline prices in Vietnam from fluctuating as drastically as world market prices while still keeping the Vietnamese price relatively close to the world price.

Since the methodology for calculating gasoline prices in Vietnam results in gasoline prices fluctuating less than world market prices, the gasoline price in Vietnam is at times above and at times below the world market prices. To allow companies to afford to sell at prices that are sometimes below the world price, the GOVN uses a price stabilization fund, which releases funds to petroleum-trading enterprises when the world price of the previous period increases.⁹⁶¹ Similarly, when the world price of the previous period declines, funds are collected from petroleum-trading companies.⁹⁶² Overall, the GOVN's methodology for calculating retail oil and gas prices does not necessarily result in oil and gas prices that are far below world prices.⁹⁶³ It is found that the prices are often in line with those of other countries, including those in Asia.⁹⁶⁴

In some cases, taxes are used to influence domestic oil and gas prices. For example, it is common for the GOVN to adjust taxes on gasoline to encourage consumer spending or curb inflation.⁹⁶⁵

⁹⁵⁹ Pham Minh Thuy, "An Analysis of Petrol Price Management Policies in Vietnam from 2020 to 2022," *Journal of Finance and Economics* 11(1) (2023): 63.

⁹⁶⁰ GOVN, *Decree No. 83/2014/NĐ-CP on Petrol and Oil Trading* (September 3, 2014), Article 3(9); and Pham Minh Thuy, "An Analysis of Petrol Price Management Policies in Vietnam from 2020 to 2022," *Journal of Finance and Economics* 11(1) (2023): 62.

⁹⁶¹ Vietnam Investment Review, "Stabilisation Fund Not the True Answer for Reducing Costs in The Petrol Market," available at <https://vir.com.vn/stabilisation-fund-not-the-true-answer-for-reducing-costs-in-the-petrol-market-96546.html>, September 22, 2022.

⁹⁶² Vietnam Investment Review, "Stabilisation Fund Not the True Answer for Reducing Costs in The Petrol Market," available at <https://vir.com.vn/stabilisation-fund-not-the-true-answer-for-reducing-costs-in-the-petrol-market-96546.html>, September 22, 2022.

⁹⁶³ Pham Minh Thuy, "An Analysis of Petrol Price Management Policies in Vietnam from 2020 to 2022," *Journal of Finance and Economics* 11(1) (2023): 64.

⁹⁶⁴ Simon Black, Antung A. Liu, Ian Parry, and Nate Vernon, "IMF Fossil Fuel Subsidies Data: 2023 Update," IMF, WP/23/169 (August 2023): 14; and Trading Economics, "Gasoline Prices: Asia," available at <https://tradingeconomics.com/country-list/gasoline-prices?continent=asia>, January 2024.

⁹⁶⁵ S&P Global, "Vietnam Accelerates Efforts To Lower Retail Fuel Prices, Diversify Middle Distillate Supply Sources," July 12, 2022.

In 2022, the GOVN reduced the environmental protection tax on oil and gas products three times to result in less of an increase in retail gasoline compared to the world market prices.⁹⁶⁶

E. Assessment of the Factor

Commerce finds that there is significant government control over resource allocations in Vietnam, and in particular over financial and land resources.⁹⁶⁷ Commerce further finds that price controls in Vietnam are more pervasive than in other Asian countries and that the GOVN's administered prices do indeed serve to suppress overall Vietnamese prices. In the context of the IMF's 2022 Articles of Agreement Article IV consultations, the IMF found that unequal access to land and finance are some of the primary distortionary factors in the Vietnamese economy, and serve to create barriers to entry for new (and productive) firms while hampering the expansion of SMEs.⁹⁶⁸ It further found that Vietnamese firms in sectors with higher misallocation grow more slowly, as resources are locked in potentially unproductive firms.⁹⁶⁹ Lastly, it found that “{r}emoving barriers to growth and reducing resource misallocation are thus key to fostering innovation and productivity.”⁹⁷⁰

Commerce finds that state ownership in the banking sector appears to have declined since *Commerce's Vietnam NME Determination* (2002), although the extent of the decline is unknown. At least 50 percent of Vietnam's banking sector is accounted for by majority state-owned banks, whereas in 2002 the banking sector was 70-80 percent state-owned.⁹⁷¹ Through state ownership, the GOVN continues to exercise significant control over the banking sector. State-owned banks lend disproportionately to SOEs despite SOEs often being less efficient than their private counterparts, which results in a misallocation of resources. In addition, the GOVN continues to set maximum lending rates that banks are required to follow for certain types of loans that are made, which may account for most loans in Vietnam. Such cap-setting of interest rates precludes the option for certain rates to effectively incorporate market-determined risk premia.

Furthermore, the GOVN uses state-directed planning to communicate its objectives for the economy in terms of business outcomes and resource allocations. While the goals articulated in state plans are often broad and not always fully implemented, they provide a basis for the GOVN to allocate resources at its discretion and carry out policy objectives. Government plans often dictate outcomes for Vietnamese SOEs, which have corresponding plans that conform with the GOVN's state plans. Some types of plans, including the land-use plans described under Factor

⁹⁶⁶ Pham Minh Thuy, “An Analysis of Petrol Price Management Policies in Vietnam from 2020 to 2022,” *Journal of Finance and Economics* 11(1) (2023): 63.

⁹⁶⁷ See Government control over land allocation is described under Factor Four.

⁹⁶⁸ IMF, *Vietnam: Staff Report for the 2022 Article IV Consultation*, (May 16, 2022), 80.

⁹⁶⁹ IMF, *Vietnam: Staff Report for the 2022 Article IV Consultation*, (May 16, 2022), 80.

⁹⁷⁰ IMF, *Vietnam: Staff Report for the 2022 Article IV Consultation*, (May 16, 2022), 80.

⁹⁷¹ *Commerce's Vietnam NME Determination* (2002), 39.

Four, have more pervasive influence over market outcomes, including those of private enterprises.

Since *Commerce's Vietnam NME Determination* (2002), the GOVN has removed price controls on certain commodities that are not normally subject to price regulation in market economy countries, including steel, cement, and iron. Regulated prices remain on 75 goods and services, many of which are commonly regulated in market economy countries. While many countries employ price controls, they are more pervasive in Vietnam than in other Asian countries.⁹⁷² Moreover, evidence suggests that the GOVN's administered prices do indeed serve to suppress prices in Vietnam,⁹⁷³ although certain administered prices do not seem to be inconsistent with those of comparable countries. Finally, land prices, which are described under Factor Four, are significantly distorted due to government ownership and control in the land system.

⁹⁷² EIU, *Country Commerce Report 2023: Vietnam*, (April 2023), 69.

⁹⁷³ In 2019, the IMF estimated that the GOVN's continued efforts to liberalize administered prices in Vietnam was expected to add about two percentage points to the Consumer Price Index (CPI), which measures the overall change in consumer prices based on a representative basket of goods and services over time, and at that time was around 2.7. IMF, *Vietnam: Staff Report for the 2019 Article IV Consultation*, (June 4, 2019), 13 and, 27.

FACTOR SIX: SUCH OTHER FACTORS AS THE ADMINISTRATING AUTHORITY CONSIDERS APPROPRIATE

This section examines the rule of law and corruption in Vietnam since 2002, and evaluates how they have influenced market economy conditions in the country. Since *Commerce's Vietnam NME Determination* (2002), Vietnam has implemented substantial legal reforms by improving the protection of legal rights of corporations, facilitating fairer competition, increased transparency, and enhanced corporate governance. The GOVN has also enacted the *Anti-Corruption Law, No. 36/2018/QH14 (Anti-Corruption Law (2018))*, which has expanded anti-corruption measures and introduced stricter asset declaration requirements. Despite these efforts, the persistent influence of the CPV in Vietnam's legal system continues to undermine judicial independence and effective law enforcement. Challenges also include the inconsistent enforcement of laws, as well as ongoing regulatory transparency and accountability issues. Moreover, corruption remains pervasive, with high-profile cases highlighting the gaps between legislative intent and practical implementation. These issues not only deter foreign investment but also impede Vietnam's progress towards a fully functional market economy.

After this introductory section in Part A, Part B of the analysis of this factor focuses on Vietnam's rule of law, legal reforms, and regulatory enforcement, as well as the countries' general system of governance. Part C evaluates the pervasiveness and influence of corruption on market conditions in Vietnam and includes an assessment of the legal framework and economic developments related to anti-corruption efforts. Finally, Part D describes Commerce's assessment of how the rule of law and corruption effect market conditions in Vietnam.

A. Introduction

Commerce's Vietnam NME Determination (2002) evaluated trade liberalization, rule of law, and corruption issues as they affected market-economic conditions at that time.⁹⁷⁴ While it found that Vietnam did take measures to liberalize trade, it was too early to determine how effectively implemented and enforced those measures would be. At that time, Commerce also highlighted problematic aspects of Vietnam's generally weak legal system and identified high corruption levels as barriers to operating as a market-oriented economic system, acknowledging that corruption challenges in and of themselves were not an absolute determinant on NME activity.

Since *Commerce's Vietnam NME Determination* (2002), Vietnam has implemented notable legal reform. Key improvements to its legal system include important amendments to the *Enterprise Law* (2020) and *Vietnam Constitution* (2013) that helped enhance legal stability, protect property rights, and promote transparency. The *Anti-Corruption Law* (2018), moreover, expanded anti-corruption measures in Vietnam, introduced stricter asset declaration requirements, and widened the scope of judicial oversight to include non-state organizations. Additionally, Vietnam ratified

⁹⁷⁴ *Commerce's Vietnam NME Review* (2002), 40.

international treaties, such as the CPTPP and ILO conventions, committing to higher standards of labor rights and anti-corruption practices.

Despite these efforts, considerable challenges to Vietnam's legal system still exist. The inconsistent application of law enforcement and a continued CPV influence over the judicial system continue to hinder the full realization of legal reform in Vietnam. Moreover, while a decline in overall corruption levels constitute a welcome development, systemic problems in this area still exist. There are widespread reports of bribery and rent-seeking opportunities persisting in Vietnam, including ones that have been reported at the highest levels of government.⁹⁷⁵ Such high levels of corruption in Vietnam have often been associated with GOVN officials determining business outcomes.

B. Rule of Law

Rule of law within a country is the extent to which all persons and legal entities are accountable to the laws within the country.⁹⁷⁶ The academic literature has shown that not only does corruption have a negative impact on economic growth and development, but also that the "Rule of Law is an indispensable foundation for a market economy," with "market engaging institutions" fundamentally relying on the rule of law, and that economic freedoms, as typically found in market economies, themselves have an indirect effect on corruption, resulting in a significant "overlap between the most economically free and least corrupt countries."⁹⁷⁷ The extent to which all actors within a country possess representation and are subjected to the same rule of law can influence the extent to which markets are able to effectively function.

1. Legal Framework

In *Commerce's Vietnam NME Determination* (2002), Commerce found that Vietnam's rule of law was not sufficiently effective in several areas and lacked regulatory transparency and an

⁹⁷⁵ Transparency International, "Vietnam: Citizens Against Corruption," available at www.transparency.org/en/news/vietnam-citizens-against-corruption, September 12, 2013; Huy Tran, "The Problem Of Corruption In Vietnam - A Deep Dive," Le & Tran Law, available at <https://letranlaw.com/insights/the-problem-of-corruption-in-vietnam-a-deep-dive>, December 13, 2023; and CNN, "Tycoon's Death Penalty in \$12.5 Billion Fraud Case Highlights Vietnam's Corruption Crisis," available at www.cnn.com/2024/04/12/business/truong-my-lan-vietnam-corruption-crisis-hnk-intl/index.html, April 12, 2024.

⁹⁷⁶ United States Courts, *Overview: Rule of Law*, available at www.uscourts.gov/educational-resources/educational-activities/overview-rule-law, accessed July 9, 2024.

⁹⁷⁷ Samuel Bufford, "International Rule of Law and the Market Economy," *Southwestern Journal of Law and Trade in the Americas* 12 (2006) (303-312); Nandini Ramanujam and Francesca Farrington, "Market-Engaging Institutions: The Rule of Law, Resilience and Responsiveness in an Era of Institutional Flux," *Hague Journal on the Rule of Law* 15 (April 2023); Jason Brennan and Peter Jaworski, *Markets without Limits: Moral Virtues and Commercial Interests*, Second Edition (New York: Routledge, 2022); Eleftherios Spyromitros and Minas Panagiotidis, "The Impact of Corruption on Economic Growth in Developing Countries and a Comparative Analysis of Corruption Measurement Indicators," *Cogent Economics & Finance* 10(1) (October 2022); Klaus Gründler and Niklas Potrafke, "Corruption and Economic Growth: New Empirical Evidence," *European Journal of Political Economy* 60(1) (December 2019).

independent judiciary.⁹⁷⁸ Since 2002, Vietnam implemented legal reforms aimed at strengthening the rule of law. In its comments for this NME review, the GOVN identified its recent amendments to the *Enterprises Law (2020)* that have provided a clearer and more stable legal environment for both domestic and foreign investors by protecting the legal rights of businesses, facilitating fair competition, and promoting transparency in corporate governance.⁹⁷⁹ Additionally, the GOVN stated in its comments that amendments to the *Vietnam Constitution (2013)* affirmed respect for property rights and established a clearer legal basis for the protection of individual and organizational properties, aligning Vietnam's legal framework with international standards.⁹⁸⁰

In the pursuit of maintaining an internally consistent legal framework and rationalizing the law and treaty making process, the GOVN has similarly made significant progress. According to the WTO's 2021 Trade Policy Review of Vietnam, the *Law on Promulgation of Legal Documents, No. 80/2015/QH13 (Law on Legal Documents (2015))* replaced inconsistent and contradictory laws regarding the implementation of legislation at the central and local levels in 2015.⁹⁸¹ This law established a clear hierarchy for the forms of legal documentation in Vietnam, where the constitution supersedes all other legal documents, followed by the codes, laws, and resolutions of the National Assembly. The law also established a coordination mechanism through which government agencies, private parties, and individuals can participate in the regulatory process through comments during the drafting process.⁹⁸²

Under the *Law on Legal Documents (2015)*, laws must be promulgated within 15 days of their passage, and the period between the promulgation of a law and the entry into force of a law can be now shorter than 45 days at the national level.⁹⁸³ This law was further amended in 2021 by the *Law Amending and Supplementing a Number of Articles of the Law on Promulgation of Legal Documents, Law No. 63/2020/QH14*, which sought to lend greater efficiency to the regulatory process.⁹⁸⁴

These reforms collectively aim to create a more robust and accountable legal environment essential for fostering a market economy. However, there remain significant obstacles to the full realization of the rule of law in Vietnam, such as inconsistent enforcement of these laws and CPV influence imposed upon the judiciary.⁹⁸⁵

⁹⁷⁸ Commerce's Vietnam NME Review (2002)

⁹⁷⁹ GOVN Comments (2023), 19.

⁹⁸⁰ GOVN Comments (2023), 73.

⁹⁸¹ World Trade Organization, *Trade Policy Review*, WT/TPR/S/410, (March 2, 2021), 34

⁹⁸² World Trade Organization, *Trade Policy Review*, WT/TPR/S/410, (March 2, 2021), 35.

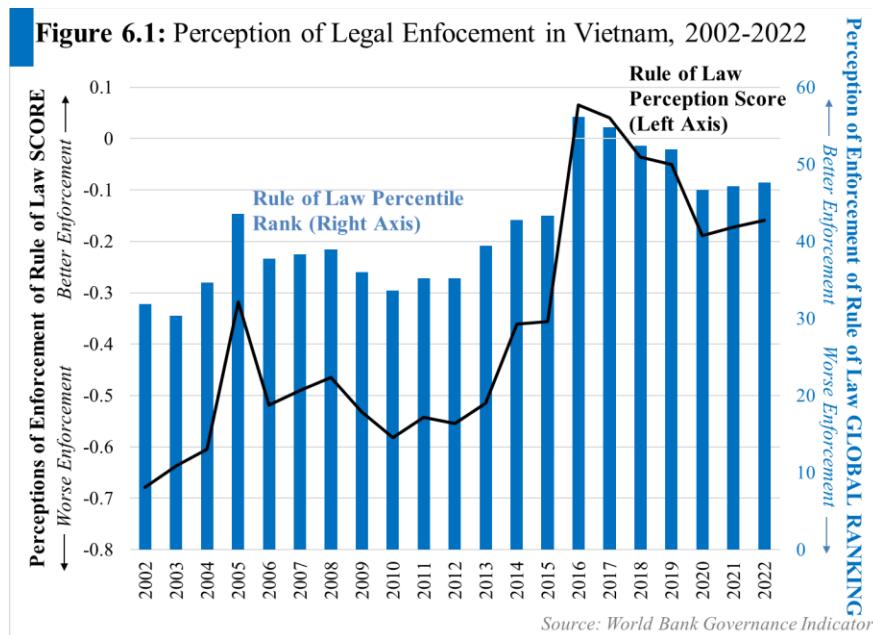
⁹⁸³ World Trade Organization, *Trade Policy Review*, WT/TPR/S/410, (March 2, 2021), 34.

⁹⁸⁴ GOVN, *Law Amending and Supplementing a Number of Articles of the Law on Promulgation of Legal Documents, Law No. 63/2020/QH14*, (June 18, 2020).

⁹⁸⁵ U.S. Department of State, *2023 Investment Climate Statements: Vietnam*, (2023), Chapter 3.

2. Developments in the Economy

Rule of Law. Rule of law indicators are one of six dimensions the World Bank uses to assess its overall Worldwide Governance Indicators (WGI). It defines its rule of law indicator as one that captures “perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.”⁹⁸⁶ With regard to Vietnam, the World Bank has observed a general improvement in domestic perceptions of the efficacy of the countries legal system since 2002. As can be seen in Figure 6.1 below, this general improvement has been matched by a rise in global rankings, suggesting that domestic perceptions in Vietnam have also risen compared to those in other countries. While Vietnam’s improvements in these areas is a welcome development, it should be noted that both the original and relative indicators of domestic perceptions regarding the effectiveness of legal enforcement have reversed course starting in 2016, motivating the need for subsequent analysis in these issues.⁹⁸⁷



In its independent assessment, the EIU found that Vietnam’s judiciary was a medium source of risk, and stated that the absence of a common law system has led to arbitrary decisions, bribery, and government interference are prevalent issues.⁹⁸⁸ More generally, the organization found that

⁹⁸⁶ World Bank, *Worldwide Governance Indicators Frequently Asked Questions*, available at www.worldbank.org/en/publication/worldwide-governance-indicators/frequently-asked-questions, accessed July 3, 2024.

⁹⁸⁷ World Bank, *World Governance Indicators*, available at <https://info.worldbank.org/governance/wgi/home/reports>, accessed June 6, 2024.

⁹⁸⁸ EIU, “EIU’s 2023 Democracy Index: Conflict and Polarisation Drive a New Low for Global Democracy,” available at www.economistgroup.com/group-news/economist-intelligence/eius-2023-democracy-index-conflict-and-polarisation-drive-a-new-low-for, accessed July 5, 2024.⁹⁸⁸ EIU, “EIU’s 2023 Democracy Index: Conflict and Polarisation Drive a New Low for Global Democracy,” available at www.economistgroup.com/group-

Vietnam's system of law and other factors compromised its effectiveness in governance,⁹⁸⁹ attributable in large part to poor implementation of legal reforms, resistance from conservative elements, and the influence of protectionist lobbies.⁹⁹⁰ These factors are indicative of systemic deficiencies where government intervention and a lack of legal autonomy disrupt market functions.

The World Justice Project's (WJP) Rule of Law Index investigates the degree to which governments practice accountability, fair law, open government, and accessible and impartial justice. These qualities are measured through eight categories: constraints on government powers, open government, the absence of corruption, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice.⁹⁹¹ To determine the extent of rule of law in each country, the WJP administers four expert questionnaires and one household questionnaire resulting in the formation of 44 rule of law indicators across countries.⁹⁹²

According to the WJP index, Vietnam ranked 87th out of 142 total countries in 2023.⁹⁹³ There were several significant areas of weakness across each of eight categories, including that Vietnam lacks limits on government powers through the legislature and the judiciary, has poor information dissemination systems, and does not respect due process in administrative proceedings. The WJP noted that Vietnam's rule of law rankings were constrained by weaknesses in the civil and criminal justice systems as well as delays and the exertion of improper influence in the civil justice system.⁹⁹⁴

Other sources corroborate the WJP's findings on rule of law and the judicial system. For example, the Bertelsmann Transformation Index (BTI) found that Vietnam's judicial system is not independent from its governing system and is often influenced by the CPV.⁹⁹⁵ BTI also found that the persistent influence of the CPV undermines the judiciary's ability to hold leaders accountable and deliver unbiased justice.⁹⁹⁶ These challenges significantly hinder the overall

news/economist-intelligence/eius-2023-democracy-index-conflict-and-polarisation-drive-a-new-low-for, accessed July 5, 2024.

⁹⁸⁹ The EIU uses a scoring system to evaluate various aspects of governance and business environments, where scores typically range from 0 to 100, with 0 indicating the highest risk and 100 indicating the lowest risk. The letter grades (A to E) correspond to these scores, with A being the best and E being the worst. In this context, a score of 66 falls within the 'D' grade category, which signifies significant limitations and risks in government effectiveness.

⁹⁹⁰ EIU, "EIU's 2023 Democracy Index: Conflict and Polarisation Drive a New Low for Global Democracy," available at www.economistgroup.com/group-news/economist-intelligence/eius-2023-democracy-index-conflict-and-polarisation-drive-a-new-low-for, accessed July 5, 2024.

⁹⁹¹ World Justice Project, "WJP Rule of Law Index," available at <https://worldjusticeproject.org/rule-of-law-index/factors/2023>, accessed on July 5, 2024.

⁹⁹² World Justice Project, "WJP Rule of Law Index," available at <https://worldjusticeproject.org/rule-of-law-index/factors/2023>, accessed on July 5, 2024.

⁹⁹³ World Justice Project, "WJP Rule of Law Index," available at <https://worldjusticeproject.org/rule-of-law-index/factors/2023>, accessed on July 5, 2024.

⁹⁹⁴ World Justice Project, "WJP Rule of Law Index Countries: Vietnam," available at <https://worldjusticeproject.org/rule-of-law-index/country/2023/Vietnam/Civil%20Justice/>, accessed June 26, 2024.

⁹⁹⁵ Bertelsmann Stiftung, *BTI 2022 Country Report – Vietnam*, Gutersloh: Bertelsmann Stiftung, (2022).

⁹⁹⁶ Bertelsmann Stiftung, *BTI 2022 Country Report – Vietnam*, Gutersloh: Bertelsmann Stiftung, (2022).

efficacy of the rule of law in Vietnam and pose obstacles to its classification as a market economy.

C. Corruption

The World Bank defines corruption as the abuse of public office for private gain.⁹⁹⁷ Corruption includes many types of activities including embezzlement, bribery, diversion of public funds, and nepotism in the civil service.⁹⁹⁸ In the literature, corruption is generally considered to have a negative impact on economic growth and is known to discourage both foreign and domestic investment.⁹⁹⁹ Extensive corruption can act as a deterrent to potential investors, not only because of the risk of contravening local laws against bribery and other corrupt acts, but also because of potential criminal liability in their home country.¹⁰⁰⁰ For example, U.S. companies are required to comply with the Foreign Corrupt Practices Act, which prohibits U.S. citizens and entities from bribing foreign government officials to benefit their business interests.¹⁰⁰¹ Corruption is often linked to government intervention in the economy, as state intervention creates opportunities for government officials to implement policies with a certain level of discretion.¹⁰⁰² State intervention, in the form of price controls, subsidies, trade restrictions, and more, can create incentives for individuals to bribe officials or seek to acquire unfair amounts of goods or resources below market-value.¹⁰⁰³ In addition, extensive state intervention could also grant officials a “monopoly” of power which could enhance the likelihood of corruption.¹⁰⁰⁴ When corruption is deep and pervasive, such that officials can exercise a high degree of influence over market outcomes, corruption negatively impacts the ability of markets to function freely within an economy.

1. Legal Framework

Commerce's Vietnam NME Determination (2002) found that there were widespread reports of corruption in Vietnam but noted that the GOVN was taking steps to address this problem.¹⁰⁰⁵ Since 2002, the GOVN has made improvements to its legal framework to address corrupt practices. The GOVN passed the *Anti-corruption Law, No. 55/2005/QH11* (*Anti-corruption Law*

⁹⁹⁷ World Bank, *Anticorruption Fact Sheet*, available at www.worldbank.org/en/news/factsheet/2020/02/19/anticorruption-fact-sheet, accessed June 6, 2024.

⁹⁹⁸ World Bank, *Anticorruption Fact Sheet*, available at www.worldbank.org/en/news/factsheet/2020/02/19/anticorruption-fact-sheet, accessed June 6, 2024.

⁹⁹⁹ Shang-Jin Wei, “Corruption in Economic Development, Beneficial Grease, Minor Annoyance, or Major Obstacle?” *The World Bank Economic Research Group*, (February 1999).

¹⁰⁰⁰ OECD, *OECD Investment Policy Reviews: Viet Nam 2018*, (2018), 36.

¹⁰⁰¹ Justice, *Foreign Corrupt Practices Act Of 1977 and the Foreign Extortion Prevention Act of 2023*, available at www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977, accessed June 6, 2024.

¹⁰⁰² Paolo Mauro, “Why Worry About Corruption?” *IMF Economic Issues No. 6*, (February 1997), 4.

¹⁰⁰³ Paolo Mauro, “Why Worry About Corruption?” *IMF Economic Issues No. 6*, (February 1997), 4-6.

¹⁰⁰⁴ Vito Tanzi, “Corruption Around the World: Cause, Consequences, Scope and Cures,” in *Governance, Corruption, and Economic Performance*, edited by Sanjeev Gupta and George Abed, IMF, (September 24, 2002), 27.

¹⁰⁰⁵ *Commerce's Vietnam NME Review* (2002), 42.

(2005)) in 2005, which was amended in 2007 and 2012,¹⁰⁰⁶ and provided regulations on preventing and detecting corruption and applied to state organizations and persons in power in these organizations. In 2018, the GOVN passed a new *Anti-corruption Law, No. 36/2018/QH14 (Anti-Corruption Law (2018))*, which replaced the previous version and came into effect in 2019.¹⁰⁰⁷ The new law updated Vietnam's anti-corruption regulations, including extending the scope of the law to apply to non-state organizations, expanding requirements for declaring assets and income, providing guidelines on receiving gifts, and issuing reporting requirements regarding conflicts of interest.¹⁰⁰⁸ The GOVN has subsequently issued decrees providing guidance on implementing the *Anti-corruption Law (2018)*.¹⁰⁰⁹

The GOVN has also issued other regulations to combat corruption and increase government accountability. Vietnam's *Penal Code No. 100/2015/QH13 (Penal Code (2015))* includes regulations on corruption and position-related offenses.¹⁰¹⁰ Last amended in 2017, the penal code includes provisions that expanded the scope of corrupt practices considered criminal acts. Additionally, the GOVN also introduced an initiative to improve the business environment and increase business competitiveness in Vietnam by reducing excessive red tape.¹⁰¹¹

Vietnam has several government entities tasked with overseeing anti-corruption work. These organizations include the Government Inspectorate, the Central Steering Committee for Anti-Corruption, the provincial-level People's Committees, as well as other government ministries.¹⁰¹² As discussed in the section on rule of law in Vietnam, there are significant problems within the bureaucracy overseeing anti-corruption work as there is no independent body with oversight and enforcement authority to ensure enforcement of anti-corruption laws and regulations.

2. *Developments in the Economy*

In order to evaluate the effectiveness of Vietnam's anti-corruption laws, it is important to assess different indicators of anti-corruption enforcement mechanisms and developments in the economy since 2002. The following analysis evaluates Vietnam's scores and ranks on various authoritative anti-corruption indicators as well as assess the current pervasiveness of corruption reports in Vietnam.

World Bank Worldwide Governance Indicators – Control Over Corruption. The WGI includes the Control Over Corruption index, which captures perceptions of the extent to which public power is exercised for private gain and the influence of elites and private interests over

¹⁰⁰⁶ GOVN, *Anti-Corruption Law (2018)*, Article 96.

¹⁰⁰⁷ GOVN, *Anti-Corruption Law (2018)*.

¹⁰⁰⁸ GOVN, *Anti-Corruption Law (2018)*.

¹⁰⁰⁹ GOVN, *Decree No. 59/2019/ND-CP (2019)*; and *Decree No. 134/2021/ND-CP (2021)*.

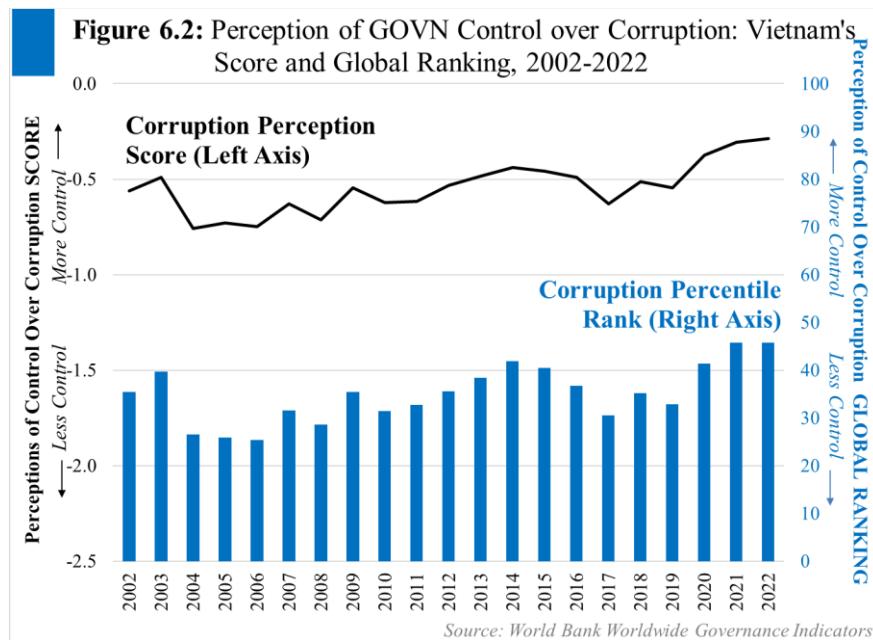
¹⁰¹⁰ GOVN, *Penal Code (2015)*.

¹⁰¹¹ GOVN, *Resolution No. 02/NQ-CP (2022)*.

¹⁰¹² GOVN, *Decree No. 134/2021/ND-CP (2021)*; *Resolution No. 1039/2006/NQ-UBTVQH11 (2006)*.

government decisions.¹⁰¹³ Each country is given a score that ranges from approximately -2.5 (weak control over corruption) to 2.5 (strong control over corruption).¹⁰¹⁴

As can be seen in Figure 6.2 below, this indicator suggests that corruption has been better controlled in Vietnam since 2002, both from the country's perspective as well as from a comparative perspective.¹⁰¹⁵ Specifically, the data suggests a gradual improvement in Vietnam's control over corruption score between 2002 and 2022 that is complemented by a gradual improvement in its percentile ranking (from 35 in 2002 to 45 by 2022) reflecting its relative progress compared to other countries. When compared to other Asian countries, Vietnam's performance presents a mixed picture: while it lags behind countries like Malaysia and China on corruption, it outperforms others such as Indonesia, Thailand, the Philippines, Laos, Myanmar, and Cambodia. These comparisons indicate that while Vietnam has made significant strides in controlling corruption, ongoing challenges remain. Again, these indicators are not, in and of themselves, pure indicators of market activity, but it is generally believed that high levels of corruption in systems that lack independent judiciaries can lead to distortions in market activity.



¹⁰¹³ World Bank, "World Governance Indicators," available at <https://info.worldbank.org/governance/wgi/Home/Reports>, accessed June 6, 2024. The six aggregate indicators are based on over 30 underlying data sources reporting the perceptions of governance of a large number of survey respondents and expert assessments worldwide. Details on the underlying data sources, the aggregation method, and the interpretation of the indicators, can be found in the WGI methodology paper: Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, "The Worldwide Governance Indicators: A Summary of Methodology, Data and Analytical Issues," World Bank Policy Research Working Paper No. 5430, (2010).

¹⁰¹⁴ World Bank, "World Governance Indicators," available at <https://info.worldbank.org/governance/wgi/Home/Reports>, accessed June 6, 2024.

¹⁰¹⁵ World Bank, "World Governance Indicators," available at <https://info.worldbank.org/governance/wgi/Home/Reports>, accessed June 6, 2024.

Transparency International – Corruption Perceptions Index. Transparency International's Corruption Perceptions Index ranks 180 countries and territories by their perceived levels of public sector corruption based on data from international surveys and expert assessments.¹⁰¹⁶ A country ranked first (at 1) is perceived to have the least corruption in its public sector, while a country ranked last (at 180) is perceived to have the most corruption.¹⁰¹⁷ The Corruption Perceptions Index also assigns each country with a score on a scale of 0 (highest corruption levels) to 100 (lowest corruption levels).¹⁰¹⁸

As shown in Figure 6.3 below, Vietnam's ranking and score on the Corruption Perceptions Index mirror some of the World Bank's findings. While it is true that these indicators are not fully independent of one another (the World Bank consolidates the findings of a variety of sources including Transparency International as part of its analysis), the other independent indicators used in the World Bank's analysis point to consistent themes.¹⁰¹⁹

Since Transparency International made its annual corruption perceptions index publicly available in 2012, Vietnam's score and ranking have improved (from 123rd of 180 countries in 2012 to 81st in 2023), reflecting its relative progress compared to other nations. Despite these advancements, Vietnam's Corruption Perceptions Index score remains below the Asia-Pacific average of 41 and the global average of 43, indicating persistent challenges in fully addressing corruption.

Reports of Corruption in Vietnam. There have been widespread reports of corruption in Vietnam, including high-profile cases involving government officials.¹⁰²⁰ Recent reports include the resignation of two of Vietnam's presidents in 2023 and 2024 in connection with corruption charges, as well as corruption cases involving two deputy prime ministers and many GOVN officials.¹⁰²¹ In 2024, a former SBV official was charged with accepting \$5.2 million in bribes in connection to a real estate tycoon who was sentenced to death on corruption charges in a \$12.5 billion fraud case.¹⁰²² These cases showcase that while the GOVN is taking action to combat corruption, pervasive and extensive corruption remains a significant challenge in Vietnam.

¹⁰¹⁶ Transparency International, "Corruption Perceptions Index Technical Methodology Note," available at www.transparency.org/en/news/how-cpi-scores-are-calculated, accessed June 6, 2024.

¹⁰¹⁷ Transparency International, "Corruption Perceptions Index Technical Methodology Note," available at www.transparency.org/en/news/how-cpi-scores-are-calculated, accessed June 6, 2024.

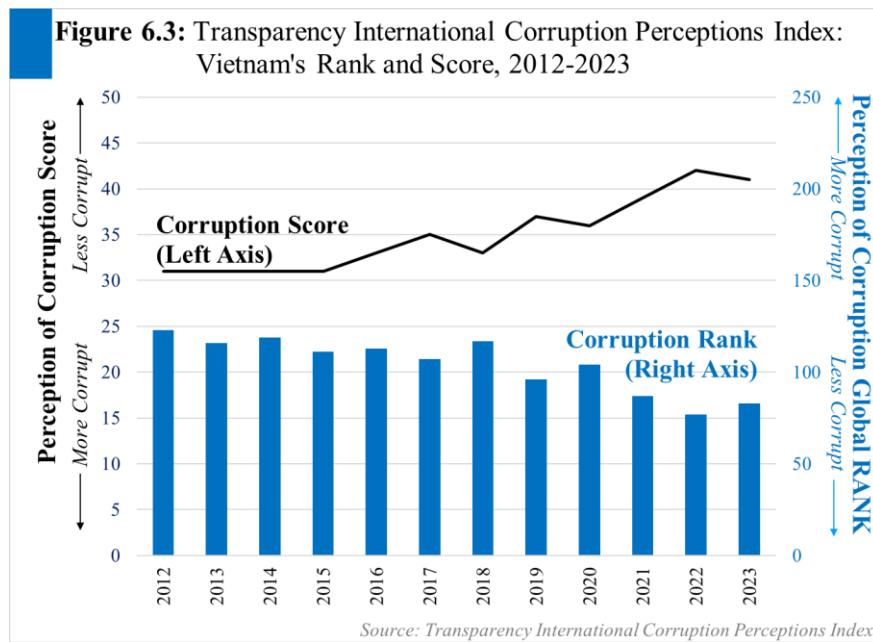
¹⁰¹⁸ Transparency International, "Corruption Perceptions Index Technical Methodology Note," available at www.transparency.org/en/news/how-cpi-scores-are-calculated, accessed June 6, 2024.

¹⁰¹⁹ World Bank, "Can We Measure the Power of the Grabbing Hand? A Comparative Analysis of Different Indicators of Corruption," Working Paper 8299, (January 2018).

¹⁰²⁰ EIU, "Corruption in Vietnam: Business as Usual," available at <https://country.eiu.com/article.aspx?articleid=282068411>, accessed July 15, 2024.

¹⁰²¹ BBC, "Truong My Lan: Vietnamese Billionaire Sentenced to Death for \$44bn Fraud," April 11, 2024.

¹⁰²² AP News, "A Vietnamese Property Tycoon Accused Of Embezzling \$12.5 Billion Begins Her Trial," March 5, 2024; and CNN, "Tycoon's Death Penalty In \$12.5 Billion Fraud Case Highlights Vietnam's Corruption Crisis," April 12, 2024.



D. Assessment of the Factor

Despite improvement in the legal framework surrounding corruption and Vietnam's ranking on various corruption indexes, continued reports of high-level and widespread corruption suggest that the GOVN has yet to fully resolve this issue. The persistence of corruption cases highlights the gaps between the *de jure* regulatory efforts and *de facto* realities. This discrepancy serves as one challenge in Vietnam's ability to operate as a market economy. Moreover, the presence of corruption often creates a distorted, unfavorable business environment as some companies gain preferential treatment through bribes, among other practices. As a result, resource allocation, loans, credits, and production may not be distributed based on market principles. High levels of corruption also impact foreign investors' willingness to operate in Vietnam's economy. As Vietnam seeks to transition to a market-economy, it will be crucial that the GOVN strengthens efforts to reduce the pervasiveness of corruption.

The rule of law is another crucial element in assessing Vietnam's market economy status. Since *Commerce's Vietnam NME Determination* (2002), Vietnam has introduced several notable legal reforms aimed at fortifying the rule of law, including updates to the *Enterprise Law* (2020) and amendments to the *Vietnam Constitution* (2013), which aim to establish a more stable and transparent legal environment for businesses and investors. Moreover, Vietnam has taken steps to enhance its judicial system and tackle corruption through the *Anti-Corruption Law* (2018) and the adoption of international treaties. Despite these advancements, notable challenges persist. The judiciary's lack of independence and the pervasive influence of the CPV continue to obstruct these reforms, undermining efforts to hold officials accountable and deliver impartial justice. Vietnam's mixed performance in transparency and accountability, characterized by ongoing corruption and misuse of public office for personal gain, further complicate the situation. These

problems are evident in both civil and criminal justice systems, which suffer from delays, corruption, and undue influence. Although there have been strides in regulatory enforcement and government accountability, inconsistent law enforcement and CPV influence remain significant barriers to fully realizing the rule of law in Vietnam. These issues highlight that while Vietnam is progressing, it has yet to develop the robust legal and institutional framework required for the efficient and effective functioning of market activity.

Commerce's Vietnam NME Determination (2002) identified corruption as an additional factor contributing to Vietnam's NME status. Despite noting widespread corruption in Vietnam, *Commerce's Vietnam NME Determination* (2002) also acknowledged efforts by the GOVN to address these high levels of corruption. Since 2002, the GOVN promulgated the *Anti-Corruption Law*, which was most recently updated in 2018, to expand the GOVN's efforts to quell widespread corruption. These legislative developments were complimented by additional regulations to increase transparency and accountability in Vietnam. These legal improvements have been reflected in various corruption indexes which capture Vietnam's increasing control on corruption and a decline in the perception of corruption in Vietnam.

FINAL ASSESSMENT

Since *Commerce's Vietnam NME Determination (2002)*, the GOVN has undertaken notable market-oriented reforms to promote the development of a more market-based economic system. These reforms have helped make its national currency, the dong, more readily convertible, increased Vietnam's openness to foreign investment, and gradually reduced government ownership over the means of production within the economy. As a result, the dong is now more responsive to market forces, Vietnam has become one of the most open economies in Southeast Asia for investment, and the size of state sector has slowly decreased.

Despite these market-oriented reforms, the GOVN remains entrenched in many aspects of the Vietnamese economy. The SBV is still not independent and continues to intervene in the foreign exchange market to influence the value of the dong. Labor unions remain dominated by the state-controlled VGCL, hindering genuine collective bargaining and ultimately creating conditions for suppressed wages and labor costs. Although Vietnam has taken steps to make its overall FDI environment more attractive, market access barriers, regulatory transparency, and restrictions on corporate control and foreign ownership persist.

Importantly, despite substantial reforms, Vietnam's economy is still characterized by significant state ownership and control over the means of production, most notably over companies and land. The GOVN continues to play a significant role over the pricing and allocation of credit in Vietnam. State-owned enterprises command a disproportionate amount of lending credit, among other structural advantages, despite the SOE's relatively low efficiency levels compared to their private-sector counterparts. The GOVN also uses state-directed planning to communicate its objectives for the economy in terms of business outcomes and resource allocations, and pervasive government price controls continue to influence final prices of goods in Vietnam. Finally, the CPV's influence over the judicial system and persistent challenges with corruption continue to undermine some of Vietnam's reform initiatives.

In conclusion, while Vietnam has implemented notable market-oriented reforms, the extent of government involvement in the economy continues to distort market conditions, rendering Vietnamese prices and costs unusable for U.S. antidumping duty calculations. Therefore, based on the totality of the six factors analyzed, Commerce determines that Vietnam remains a non-

market economy for purposes of U.S. antidumping law. This decision is based on information gathered from public comments, the public May 8, 2024 hearing, and authoritative third-party sources that Commerce consolidated and analyzed for the purposes of this NME review.

Agree

Disagree

8/1/2024

X



Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

APPENDIX I: SUMMARY OF PUBLIC COMMENTS

1. Parties Who Support Changing Vietnam's NME Status

1.1 Ministry of Industry and Trade (MOIT) of the Socialist Republic of Vietnam

The MOIT of the GOVN argues that Vietnam's economy has undergone significant reforms since *Commerce's Vietnam NME Determination (2002)*.

- Factor One:
 - Since 2002, Vietnam has advanced its currency convertibility. The SBV regulates foreign exchange of the VND under a managed floating rate regime and does not intervene to manipulate the VND.
 - In 2005, Vietnam accepted IMF Articles of Agreement Article VIII obligations to refrain from restricting overseas payments and transfers, and to refrain from discriminatory currency practices. Vietnam no longer implements a surrender requirement for foreign currency earnings into VND as observed in 2002.
 - In 2006, Vietnam removed restrictions on currency convertibility for current and capital account purposes. Vietnam reaffirmed its obligation to permit transfers of capital contributions, profits, and proceeds when it ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in 2019.
 - In 2016, Vietnam established a daily foreign exchange rate based on three market factors: the VND/USD exchange rate of the previous day; a basket of currencies of trading partners; and macroeconomic considerations.
 - In 2022, Vietnam increased its daily exchange rate target band from +/- 3 percent to +/- 5 percent.
 - Vietnam requires foreign currency exchange to be made at authorized financial institutions. Countries with similar restrictions have been graduated to ME status.
 - According to the 2021 KAOPEN Index for capital account liberalization, Vietnam's level of liberalization was equivalent to other ME countries.
- Factor Two:
 - Wages are market-based, and foreign enterprises compete with wages offered in the private domestic sector with no direct government intervention in wage policies. High labor mobility allows workers to choose their place of employment.
 - Workers have legal rights to join unions, engage in collective bargaining, participate in legal strikes and allow illegal strikes to occur without repercussions. The amended *Law on Trade Unions* from 2012 serves as the legal basis for the enforcement and enhancement of employees' right to join trade unions. The *Vietnam Constitution (2013)* prohibits discriminatory treatment, forced labor or employment of people below the minimum working age.
 - The 2014 *Law on Social Insurance* provides for employee benefits, expanding social insurance, sickness allowance, and various pregnancy requirements.
 - The 2019 *Labor Code* adopted ILO standards and commitments from the CPTPP and EU-Vietnam Free Trade Agreement. Guidance on this law is forthcoming.

- The *Labor Code* also provides basic protections and empowers labor parties to determine wages and working condition issues using dialogue and collective bargaining. This ensures compliance with ILO standards of freedom of association and collective bargaining; non-discrimination in labor; and protection of juvenile workers. For the first time, it includes a chapter on trade unions, guaranteeing the right to join a trade union and for such unions to collectively bargain. Strikes are also permitted under the *Labor Code*.
- Vietnam is an ME country of the ILO and has ratified 25 Conventions to date, including nine of the core ILO Labor Conventions.
- Factor Three:
 - FDI is regulated by the 2020 *Investment Law* and *Decree 31/2021/NĐ-CP (Decree 31)*. Foreign and domestic investors are eligible for investment incentives based on sector, location, project scale, and number of workers.
 - The GOVN reduced the number of conditional subsectors in the *Law on Investment. Resolution 31/NQ-CP* of 2023 requests ministries and local officials to narrow the list of conditional subsectors.
 - FDI projects no longer require approval from the Ministry of Planning and Investment, or the Prime Minister as stated in the 2014 *Law on Investment*. Only FDI projects in conditional subsectors must be reviewed and approved.
 - The GOVN introduced directives to reduce administrative procedures required for business operations. A 2018 resolution directs government ministries and local officials to cut and simplify at least 50 percent of investment and business conditions; reduce commodities and products subject to specialized inspections to at least 50 percent; conduct post-inspections instead of pre-inspections; and reduce authorities involved in specialized management and inspection.
 - *Resolution No. 68/NQ-CP* (2020) sets a 2025 target to cut business regulations and compliance costs by 20 percent. Vietnam upgraded its National Information System of Foreign Investment to streamline investor registration processes. GOVN officials discuss with investors on ways to improve the FDI environment.
 - The *Law on Investment* and *Public-Private Partnership Law* encourages FDI in large infrastructure projects with limited GOVN involvement, increasing linkages between foreign investors and the private sector. The new *Securities Law* states intentions to remove foreign ownership limits for investment in most industries.
 - Vietnam participates in 15 free trade agreements (FTAs), 50 bilateral investment treaties, and 26 treaties with investment provisions, making it easier to attract FDI. Since 2002, FDI net inflows have increased by an average annual rate of 17.7 percent.
- Factor Four:
 - Starting in 2002, the GOVN implemented regulatory changes allowing a greater degree of privatization in the economy. *Decree No. 64/2002/NĐ-CP* transformed SOEs into shareholding companies; Article 4-5 regulated the conversion of SOEs into joint-stock companies via the “equitization” process.

- The private sector continues to grow and reached 42 percent of GDP in 2018. Private companies account for half of the top 50 largest publicly traded companies in terms of market capitalization.
- In 2017, *Decree No. 126/2017/ND-CP* converted SOEs and one-member limited liability companies with 100 percent charter capital invested by SOEs into joint-stock companies, which came into effect in 2018.
- In 2020, *Decree No. 140/2020/ND-CP* further loosened equalization restrictions.
- In 2022, *Resolution No. 19/NQ-CP* and *Resolution No. 02/NQ-CP* outlined goals to improve the business environment and enhance national competitiveness.
- SOE shares in Vietnam's economy are decreasing. As of 2020, 96.4 percent of total enterprises were non-state enterprises. Non-state enterprises account for the majority of assets, capital source, net revenue, labor, and total profit (2018-2021).
- Land belongs to the GOVN; however, the GOVN does not interfere in the secondary land use market.
- The 2013 *Land Law* regulates land administration, rights, and obligations. The GOVN administers land use and designates essential land types without interfering in the transfer, lease, conversion, mortgaging, and inheritance of land.
- The *Land Law* stipulates binding conditions on land use rights in certain circumstances, such as converting agricultural land, transferring, or donating land to ethnic minorities. The law provides for leasing land with annual payments to reduce risks with transactions and ensures the land will be used effectively. The law also stipulates conditions for land use rights transfer in housing development projects and infrastructure investment projects.
- The *Land Law* does not limit the right to transfer land for other use purposes consistent with GOVN approved land-use plans and expands the right for foreigners to use land.
- *Decree No. 01/2017/ND-CP* reduced processing time for administrative procedures related to land. The *Land Law* streamlined administrative procedures and promoted the development of the land and the real estate market.
- Factor Five:
 - Vietnam has liberalized prices and increased privatization of its commercial banking sector. Price regulations remain for sectors considered natural monopolies and to ensure prices reflect market conditions.
 - The *Law on Prices No. 11/2012/QH13* (2012) deregulated prices. Enterprises determine product prices without government intervention, except for products in Article 19. Article 19 reduced price controls from 17 commodities to 9 commodities. Vietnam implements price controls in its electricity, postal and telecommunication services, and fuel markets. The level of price controls is comparable to other ME countries including Turkey, India, and Thailand.
 - Article 20 of the *Law on Prices* requires products with price controls be priced at levels that cover the production costs and provide reasonable profit to the producer.

- Article 16 of the *Law on Prices* provides for price stabilization when prices are affected by unusual events such as natural disasters, epidemics, economic crises, or temporary supply/demand imbalances. This law is narrowly applied.
- Vietnam developed regulations for price appraisals which provide advisory services on asset valuation for transactions such as property sales, mortgages, capital contributions, joint ventures, SOEs equitization, and asset procurement by the GOVN. Price appraisers contribute to setting prices in natural monopolies.
- The *Anti-trust Law* was modified in 2019. Vietnam introduced an updated *Law on Bankruptcy* in 2014, specifying credit institutions are subject to bankruptcy and no longer under special control of the SBV.
- Vietnam has moved towards its Basel II commitments and brought financial institutions more in line with Basel III. Credit institutions are largely free to set lending policies and rates. In July 2021, the SBV required lending institutions to establish risk provisions for loans and capital adequacy ratios for banks and foreign bank branches in a manner broadly consistent with the Basel II principles.
- Since 2002, the level of private ownership in commercial banks has increased. Only one of the ten largest commercial banks is wholly owned by the GOVN.
- Factor Six:
 - Vietnam increased its integration into the international economic community and made progress on rule of law and corruption. In 2007, Vietnam became an ME country member of the WTO. Vietnam believes it has fully implemented its WTO accession requirements and has not been named a respondent in WTO dispute settlement.
 - Vietnam is party to multiple bilateral and multilateral free trade agreements.
 - Vietnam has improved its legal system based on WTO commitments and now has a more comprehensive legal system.
 - Vietnam has amended its *Vietnam Constitution (2013)* to improve rights for business owners and reformed its judicial system to increase openness and ensure legitimate rights and interests of citizens, businesses, and organizations.
 - Since 2003, Vietnam improved its ranking on the World Bank Worldwide Governance Indicators index in control of corruption and rule of law.
 - Transparency International ranked Vietnam above several ME countries in its 2022 Corruption Perceptions Index. Vietnam seeks to improve corporate governance.
 - The 2021 *Law on Enterprises* seeks to protect the legitimate rights and interests of investors, shareholders, and enterprises. This law broadly follows the OECD Council on Principles of Corporate Governance recommendations.
 - The same law improves corporate governance laws, protections for investors and shareholders, and transparency requirements.
 - Vietnam is taking steps to improve environmental performance, pledging to reach net zero emissions by 2050 at the 2021 United Nations Climate Change

Conference (UN COP26). The GOVN issued *Decision 450/QD-TTg* to improve environmental performance by 2030.

1.2 U.S.-ASEAN Business Council (U.S.-ABC)¹⁰²³

The U.S.-ABC argues GOVN's use of the label "socialist" is solely for "maintaining political correctness and has little impact on the actual development of the economy."

- Factor One:
 - The VND is fully convertible for current account purposes. SBV adopted a "managed floating" exchange rate based on the currencies of countries that have relations with Vietnam. The SBV has widened its currency band for the VND against the USD from 1 percent to 3 percent.
- Factor Two:
 - Vietnam's *Labor Code* favors all employees and wage rates are determined by free bargaining. Minimum wage is determined by the National Wage Council which consists of representatives from the Ministry of Labor, VGCL, Vietnam Chamber of Commerce and Industry and trade associations alongside independent experts.
- Factor Three:
 - In 2014, Vietnam switched from a "positive list" regime to a "negative list" regime which reduced the number of restricted industries from 386 to 272. Now, 25 industries are prohibited for foreign investors as they fall under strict regulations or are deemed politically sensitive by the government.
- Factor Four:
 - SOEs influence land, resource allocation, tax revenues, GOVN funding, insurance systems, financial services, infrastructure, etc. This influence has declined.
 - Vietnam has a robust secondary land market for industrial and residential purposes, granting capital or mortgage rights to transfer, lease, sublease, and contribute to ownership of land assets.
- Factor Five:
 - The GOVN does not intervene in enterprises' decisions on allocation of resources, prices and outputs. The GOVN regulates prices for essential goods and services. According to the 2023 *Law on Price*, the GOVN only intervenes when steep price hikes occur from events such as emergencies, natural disasters, disruptions of supply chains, etc.
- Factor Six:
 - U.S.-ABC argued that some legal frameworks, such as the *Price Law*, are passed simply to make a political statement. The *Price Law* does not have a big impact on the development of the economy or how prices are determined. The GOVN

¹⁰²³ The U.S.-ABC is a non-profit organization that conducts research and analysis on countries of the Association of Southeast Asian Nations. See US-ASEAN Business Council, *About Us*, available at www.usasean.org/about-us, accessed May 22, 2024.

seeks to operate with market principles. Economic inefficiencies are from lack of competence in executing market-based policies rather than favoring a command economy.

1.3 National Association of State Departments of Agriculture (NASDA)

The NASDA represents all state-level departments of agriculture in the United States as well as in Guam, American Samoa, Puerto Rico, and the Virgin Islands. NASDA argues that Vietnam's NME status is an obstacle to export American agriculture products. Vietnam has implemented political reform to warrant a change in its market status.

1.2. Vietnam Leather, Footwear and Handbag Association (LEFASO)

The LEFASO is an NGO that represents Vietnam's leather and footwear industry and advocates pro-business policies. LEFASO argues U.S. businesses will benefit from Vietnam being granted ME status.

- Factor One:
 - The VND is fully convertible. Export transactions of footwear and handbag products are conducted in USD. Constituents have no difficulties making or receiving payments in USD, paying loans with USD, or exchanging currency.
- Factor Two:
 - Labor contracts have no wage ceilings or fixed wage rates; wage rates are based on free negotiations. Labor unions protect employee rights and represent employees in wage- and conditions-related cases.
- Factor Three:
 - FDI faces no restrictions in the leather and footwear industry. Over 100 foreign-invested enterprises operate in the industry and account for 80 percent of output.
- Factor Four:
 - The leather and footwear industry are predominantly composed of private and foreign enterprises. LEFASO is unaware of any acts of favoring SOEs.
- Factor Five:
 - Companies have free autonomy over material sourcing for products and can freely determine the quantity and price on outputs.
- Factor Six:
 - Constituents have implemented social responsibility initiatives, including transparency in material sourcing and preventing forced labor.

1.3. National Retail Federation (NRF)

The NRF is the world's largest retail trade association and believes reforms in Vietnam warrant granting Vietnam ME status. Constituents have shifted supply chains to Vietnam, following suggestions to find alternative suppliers to the PRC. Vietnam offers price sensitive consumer goods. Although NRF confused "NME" and "ME" in its comments, it believes Vietnam should be treated as an ME country.

1.4. Optima Steel International, LLC (Optima Steel)

Optimal Steel is a steel importer and distributor with offices in the United States. Optimal Steel claims Vietnam's NME status presents significant challenges and high costs for U.S. importers, particularly in the steel industry. Optimal Steel believes Vietnam obtaining ME status will not only benefit Vietnam, but also U.S businesses and those exporting from Vietnam.

- Factor One:
 - Vietnam's currency is convertible based on market principles. Capital transactions increase liberalization. The legal framework has been improved to limit GOVN intervention.
- Factor Two:
 - Free bargaining exists between labor and management and is protected by a regulatory framework based on market principles. The *Labor Code* ensures employee's basic rights and reinforces international agreement commitments.
- Factor Three:
 - Vietnam has improved its investment environment, and FDI has increased over the past 20 years. The GOVN claims to treat foreign and domestic investors equally.
- Factor Five:
 - The GOVN does not control resource allocations, prices, or output decisions. Companies' production decisions are legally protected by the 2020 *Enterprise Law*, and Vietnam does not have excess capacity in major industries.
 - Private bank credits accounts for most commercial loans and overwhelmingly fund private enterprises. Only 4.2 percent of credit went to SOEs in 2021.
- Factor Six:
 - Vietnam established legal frameworks for bankruptcy, corporate governance, state auditing, a unified legal system, and diversified foreign economic relations.

1.5. Retail industry Leaders Association (RILA) and the American Apparel & Footwear Association (AAFA)

Members of RILA and AAFA operate in many sectors of the U.S. economy. Commercial ties with Vietnam are integral to both constituents' operations and profitability. Members can attest to Vietnam's progress in market-based economic reforms. Business dealings in Vietnam reflect an ME country in that they are competitive, market-driven and no have GOVN intervention.

- Factor One:
 - Vietnam has an exchange system free of restrictions on payments and transfers for current international transactions, with few exceptions for security reasons.
- Factor Two:
 - The legal framework, including the 2019 *Labor Code*, recognizes basic labor rights of the freedom of bargaining for wages and benefits between labor and management. Vietnam is in the process of joining ILO Convention No. 87.
- Factor Three:

- Vietnam has demonstrated ongoing commitment to increasing access for foreign investment through FTAs, including RCEP, CPTPP, and ongoing IPEF negotiations.
- Factor Four:
 - Vietnam's economy is shifting away from SOEs, especially in competitive sectors like textiles and retail. Vietnam has privatized 4,000 firms from 1999-2019. While some sectors have been slow to privatize, Vietnam has signaled market openness.
- Factor Five:
 - Vietnam aims to reduce direct government control in the economy and has abolished many price controls. Vietnam implemented financial reforms governing credit access. The share of state-owned commercial banks has declined steadily.
- Factor Six:
 - Since 2002, Vietnam has established legal frameworks for bankruptcy, state audits, and alternative dispute settlement through arbitration and mediation.

1.6. Samsung Electronics America, Inc.

Samsung did not provide comments on each of the statutory factors, but generally claimed that Samsung has not faced any discrimination as a foreign headquartered investor in Vietnam. Samsung helped grow the Vietnam private sector and is a key supplier to U.S. consumers.

1.7. Vietnam Beekeepers Association (VBA)¹⁰²⁴

- Factor One:
 - The VND is fully convertible to USD. Constituents are free to sell USD for VND or fulfill payment obligations in USD, including loan payments.
- Factor Two:
 - Wages are determined by employee-employer negotiations and employees' productivity without a ceiling or fixed wage rate binding labor contracts.
 - Trade unions represent the rights of employees and participate in resolving wage and working condition issues. About 80 percent of VBA members have established trade unions.
- Factor Three:
 - There are no restrictions on foreign-invested enterprises in the beekeeping industry.
- Factor Four:
 - The private sector prevails in the honey industry and there is no control or interference by the government in production output or pricing.
- Factor Five:
 - VBA is not aware of any discrimination in favor of SOEs in the industry.
- Factor Six:

¹⁰²⁴ Commerce could not find an official, English version of the VBA's website to provide an introduction of the VBA.

- VBA members actively implement corporate social responsibility measures, including those to prevent forced labor and child labor in the industry.

1.8. Vietnam Cotton and Spinning Association (VCOSA)¹⁰²⁵

- Factor One:
 - The VND is fully convertible into USD. All cotton import and export transactions between Vietnam and the U.S. are in USD. VCOSA states ME country members reported no difficulties in making transactions through Vietnam-incorporated banks.
- Factor Two:
 - Wage rates are freely negotiated between employees and employers, and there are no wage ceilings or fixed wage rates. Trade unions protect the rights of employees.
- Factor Three:
 - The cotton industry does not have FDI restrictions, and many enterprises in this industry have foreign investment.
- Factor Four:
 - Vietnam does not discriminate between SOEs and private or foreign-invested enterprises in “capital, market access, land, and law enforcement.”
 - Land leases are based on prices determined independent of the government.
- Factor Five:
 - Enterprises have autonomy selecting raw materials and the quantity and pricing.
- Factor Six:
 - Constituents import from markets with no forced labor allegations and use origin tracing systems.

1.9. Vietnam Association of Aluminum Profile (VAA)¹⁰²⁶

- Factor One:
 - The VND is fully convertible into USD for purposes of trade transactions. VAA members face no obstacles in making or receiving payments in USD.
- Factor Two:
 - Wage rates are freely negotiated by employees and employers. About 80 percent of VAA members have established trade unions.
- Factor Three:
 - There are no restrictions on foreign-invested enterprises in aluminum production. In this industry, 35 percent of enterprises have FDI out of 90 enterprises.
- Factor Four:

¹⁰²⁵ On their website, the VCOS describes themselves as a non-government organization and the legal representatives of members and enterprises in the cotton and spinning industry. Vietnam Cotton & Spinning Association, *VCOSA Introduction* Available at <https://vcosa.vn/en/about-us>, accessed May 22, 2024.

¹⁰²⁶ Commerce could not find an official, English version of the VAA’s website to provide an introduction of the VAA.

- The private sector dominates the aluminum extrusion industry, and the government does not interfere in decisions on production output or pricing.
- Factor Five:
 - Relating to allocation of resources, the VAA is not aware of any discrimination favoring SOEs over private or foreign-invested enterprises.
- Factor Six:
 - VAA members are involved in corporate social responsibility efforts. Vietnam aluminum profile manufacturers are also building corporate governance systems.

1.10. Vietnam Packaging Association (VINPAS)

The VINPAS is an organization representing all enterprises in the Vietnamese packaging industry.

- Factor One:
 - Vietnam's currency is fully convertible into USD for trade transactions. VINPAS members face no obstacles in making or receiving payments in USD.
- Factor Two:
 - Wages are freely negotiated with no ceiling or fixed rates.
 - Most VINPAS members have established a trade union.
- Factor Three:
 - Major global packaging enterprises have a presence in Vietnam.
- Factor Four:
 - The majority of members are limited liability and joint-stock companies.
 - The private sector dominates the packaging industry. The GOVN treats limited liability companies, joint-stock companies, foreign enterprises, and SOEs equally.
 - Factories and offices are either built on the owner's land or leased within industrial zones. Rental prices are determined by mutual agreement.
- Factor Five:
 - Businesses have autonomy to determine output and prices.
- Factor Six:
 - The packaging industry and other sectors follow international standards on environmental protections, use of forced or child labor, and social responsibilities.

1.11. Vietnam Printing Association (VPA)¹⁰²⁷

- Factor One:
 - Vietnam's currency is fully convertible into USD for purposes of trade.
- Factor Two:
 - In the printing industry and other industries, wage rates are freely negotiated.
- Factor Three:
 - There are no restrictions on foreign-invested enterprises in the printing industry.

¹⁰²⁷ Commerce could not find an official, English version of the VPA's website to provide an introduction of the VPA.

- Factor Four:
 - There is no GOVN control or interference over decisions on quantities or prices.
- Factor Five:
 - VPA is not aware of any discrimination in favor of SOEs in the industry.
- Factor Six:
 - VPA is active in preventing forced labor in the printing and packaging industry.

1.12. Vietnam Steel Association (VSA)

VSA has fostered strong relationships between the Vietnamese steel industry and U.S. business partners. VSA advocates for more transparent regulatory frameworks.

- Factor One:
 - The VND is fully convertible into USD for international trade purposes.
- Factor Two:
 - Wage rates are freely negotiated with no ceiling or fixed wage rates in labor contracts. Vietnam's legislation only regulates minimum wages.
 - Most VSA members have trade unions.
- Factor Three:
 - There is no restriction on foreign-invested enterprises in the steel industry.
 - Foreign enterprises account for the majority of production in hot and cold rolled coils.
- Factor Four:
 - VSA is not aware of any discrimination in favor of SOEs.
- Factor Five:
 - Regardless of ownership type, steel producers are granted full autonomy over decisions on sourcing raw materials and price and quality of finished products.
- Factor Six:
 - VSA members actively participate in corporate social responsibility programs.

1.13. Vietnam Timber and Forest Products Association (VIFOREST)

VIFOREST represents wood processing and companies in Vietnam and believes Vietnam meets all six legal factors to be considered an ME country. Vietnamese wood operators comply with the U.S. Lacey Act and other legal provisions which regulate wood production and trade in the United States. VIFOREST adds the GOVN and U.S. signed the Agreement on Controlling Illegal Timber Harvesting and Trade which demonstrates the GOVN's (and private sector's) commitment to ensuring legal deforestation of wood products.

- Factor One:
 - The VND is fully convertible into USD for transactions. Members face no challenges in making or receiving USD payments.
- Factor Two:
 - Wage rates are freely negotiated by employees and their employers.
- Factor Three:

- Vietnam has no restrictions on foreign investment in the wood processing and trading industry.
- Factor Four:
 - The GOVN does not own or control businesses' production means.
 - Enterprises can lease land for factories in and outside industrial zones and claim land-use certificates from authorities.
 - Lease terms are decided by local authorities and restricted to 50 years. Leases for investment projects in "difficult economic regions" can be extended to 70 years.
- Factor Five:
 - Wood businesses have full autonomy over sourcing resources and setting prices.
- Factor Six:
 - Businesses comply with U.S. legal provisions on regulating wood products.
 - Vietnam and the U.S. have signed the Agreement on Controlling Illegal Timber Harvesting and Trade, demonstrating the commitment of the GOVN and private sector to assure legal and deforestation-free wood and wood product supply chains, improve forest governance and responsible forest product trade.
 - The GOVN implemented measures to combat origin fraud and circumvention/evasion of import duties on wood products to the U.S.

1.14. Vietnam Chamber of Commerce and Industry (VCCI)

The VCCI is a national organization for entrepreneurs, employers and business associations in Vietnam that works for business benefits of more than 10,000 registered members.

- Factor One:
 - The VND is freely convertible into USD. The exchange rate is adjusted by the SBV with a broad amplitude of +/- 5 percent since October 2022.
- Factor Two:
 - VCCI is involved in drafting Vietnam's labor laws and is partnered with the ILO to implement the 25 ILO conventions, in which Vietnam is a member.

1.15. American Chamber of Commerce in Hanoi (AmCham Hanoi)

AmCham Hanoi, an NGO with 750 members in Vietnam, emphasizes GOVN's economic reforms. AmCham Hanoi addresses investment challenges, including corruption, a weak legal system, shortage of vocational labor, slow government decision-making, and obstacles in key sectors. U.S. businesses and investors operate in almost every sector. FDI expands global supply chains and benefits American consumers. Trade relations with Vietnam have increased employment and tax revenues and offer greater regional security.

1.16. American Chamber of Commerce in Vietnam (AmCham Vietnam)

AmCham Vietnam is an NGO that supports U.S. businesses and promotes trade and investment. Vietnam has improved transparency, regulatory standards, and reliance on market pricing over 25 years. American businesses benefit from Vietnam's reliability in international trade markets.

1.17. American Association of Exporters and Importers (AAEI)

The AAEI advocates for American companies engaged in global trade. Vietnam's ME status would positively impact U.S.-Vietnam relations and benefit U.S. trade industries and the economy.

1.18. Ban Me Thuot Honeybee Joint Stock Company (BMT)

BMT is a Vietnamese company that produces and exports honeybees. BMT argues that Vietnam adheres to the statutory factors in U.S. AD law. BMT states that granting Vietnam ME status would benefit both the U.S. and Vietnamese economies.

- Factor One:
 - The VND is fully convertible. BMT has not experienced any difficulty in making or receiving payments in transactions. Vietnamese banks provide all necessary instruments for these transactions.
- Factor Two:
 - Wages are based on free negotiation. BMT's wages are not influenced by the GOVN or other organizations and are not subject to wage ceilings or fixed rates.
- Factor Four:
 - Companies freely determine the category, goods quantity, and source of materials. Materials and finished products have no price controls or production restrictions.
- Factor Six:
 - BMT is free to engage in philanthropic pursuits of "corporate social responsibility initiatives" and strives to provide a working environment with a social welfare regime that ensures product quality and transparency in the origin of products.

1.19. Boston Global Forum (BGF)¹⁰²⁸

BGF claims that Vietnam has made sufficient progress to graduate to ME status. The VND is convertible to other currencies based on market principles. Free bargaining and Vietnam's legal framework ensures employee's basic rights. Vietnam improved its investment environment with equal treatment of domestic and foreign investors. The GOVN reduced its ownership and control over means of production and does not have control over resource allocation, price or output decisions. The legal framework addresses bankruptcy and improves corporate governance transparency. Vietnam's graduation to ME status would benefit the economies of Vietnam and the U.S.

1.20. British Petroleum (bp)

Bp is an integrated energy company that is listed on both the London and New York stock exchanges. A subsidiary of bp, Castrol bp, has operated a joint venture in Vietnam since 1991 with Petrolimex, a state-owned oil and gas company. Bp comments that foreign companies can

¹⁰²⁸ On their website, BGF describes themselves as a business network headquartered in Massachusetts that offers a venue for leaders to address global challenges; see Boston Global Forum, *About Boston Global Forum* Available at <https://bostonglobalforum.org/about/>, accessed May 22, 2024.

invest in Vietnam and complying with local law. Bp's joint venture has succeeded and enjoyed Vietnam's favorable investment environment.

1.21. Consumer Brands Association (CBA)

The CBA is a U.S.-based trade association of companies in the consumer-packaged goods industry, representing nearly 2,000 brands. CBA manufacturers seek to diversify inputs to avoid supply chain disruptions. The CBA believes that Vietnam does not meet the criteria to be considered an NME country, and members who work with Vietnam have not witnessed NME practices. The fact that there are few existing countervailing duty orders on products from Vietnam indicate a lack of GOVN influence over domestic manufacturers.

1.22. Dragonberry Produce Inc.¹⁰²⁹

Dragonberry Produce comments that Vietnam is an important market for U.S. fruit exports and encourages Commerce to reduce entry barriers to the Vietnamese market to balance trade.

1.23. EP Steel Trading Co., LTD

EP Steel Trading Co., LTD is an American steel manufacturing and trading company that imports from Vietnam. It argues that Vietnam adheres to the six statutory factors of U.S. AD law governing NME status. Changing Vietnam's status would benefit American businesses in trade remedy investigations.

1.24. Energy Capital Vietnam (ECV)¹⁰³⁰

ECV supports reevaluating Vietnam's NME status with consideration of the reforms and developments since 2002.

- Factor 1:
 - Vietnam has improved its currency convertibility which has resulted in a four-fold increase of foreign currency reserves since 2015.
- Factor 2:
 - Wages have been increasingly determined by free bargaining which has resulted in a transition away from state-controlled wages.
- Factor 3:
 - Vietnam has taken steps to implement a market-oriented approach to foreign investment and foreign businesses, including openness to joint ventures and FDI.
- Factor 4:
 - GOVN's control over the means of production has declined. Vietnam has taken steps to privatize companies and reduce the role of the state within the economy.

¹⁰²⁹ On their website, Dragonberry Produce Inc. describes themselves as a Pacific Northwest-based distributor of fruits and vegetables products. Dragonberry Produce Inc., *About Dragonberry Produce*, available at www.dragonberryproduce.com/about, accessed May 22, 2024.

¹⁰³⁰ On their website, ECV identifies themselves as a U.S. based project development and holding company focused on direct investment into Vietnam's energy and infrastructure sectors. Energy Capital Vietnam, *Focusing on the Opportunity of Energy & Infrastructure Transformation in Vietnam*, available at <https://ecvholdings.com/>, accessed May 22, 2024.

The Politburo *Resolution No. 55 (2020)* focuses on private investments and ownership in the energy sector, including a plan to reduce state-monopolies.

- Factor 5:
 - GOVN control over resource allocation, price determination, and quantity fixing has declined, reflecting efforts to liberalize the economy.
- Factor 6:
 - Vietnam has improved its legal and regulatory framework and enforcement of intellectual property (IP) rights.

1.25. Footwear Distribution and Retailers of America (FDRA)

FDRA is a footwear industry trade and business association representing more than 500 U.S. companies and brands. FDRA believes Vietnam qualifies for ME status.

- FDRA members have no concerns about Vietnam's foreign exchange policies, including currency convertibility. Vietnam has committed to avoid manipulating exchange rates and to improve the flexibility and transparency of exchange rates.
- Vietnam welcomes FDI and has increasingly removed FDI barriers. In FTAs, Vietnam committed to opening its markets and protecting investments. In the first 10 months of 2023, FDI grew by 54 percent compared to the same period in 2022.
- Vietnam committed to adopt and maintain laws and practices on ILO fundamental rights, including minimum wage, work hours, and occupational safety. FDRA freely negotiates wage rates as a result of market competition.
- SOEs declined in numbers and shares via divestment and equitization programs. GOVN ownership is prominent in certain sectors, but the same is true of other economies.
- Vietnam plays an important role in the 2023 Comprehensive Strategic Partnership.

1.26. Goldsun Packaging and Printing Joint Stock Company (GVSN)

GVSN is a Vietnamese printing and packaging producer and exporter.

- The VND is fully convertible. GSVN faces no limits in sending or receiving payments in USD. Commercial banks provide payment instruments for international transactions.
- GSVN can freely negotiate wages and is not restricted by salary ceilings or fixed salaries.
- GVSN's prices are based on market demand and negotiation with customers and are not subject to GOVN control over output decisions.

1.27. Hoa Phat Group Joint Stock Company & Affiliates (Hoa Phat Group)

Hoa Phat Group is one of the leading industrial manufacturing groups in Vietnam. Hoa Phat Group specializes in the production of furniture, steel pipe, steel, refrigeration, real estate and agriculture.

- Factor One:
 - The VND is convertible based on market principles, fairness, and non-discrimination. Hoa Phat Group can purchase foreign currencies from licensed credit institutions with valid documents and can use VND or other currencies accepted by credit institutions as the payment currency for current transactions.

- Factor Two:
 - Wage rates are determined by free negotiations. Regulations implemented provide regional minimum wages, maximum working hours, and overtime pay.
 - Corporate labor unions are managed by the labor union at the city or district level.
- Factor Three:
 - Joint ventures or other foreign investments are permitted. Legal reforms on foreign investment have been carried out in the 2020 *Investment Law*, Foreign Investment Cooperation Strategy (2021-2030), and 2023 *Directive No. 14*.
- Factor Four:
 - The private sector plays an important role in Vietnam's trade activities and has full autonomy over production decisions and investment in assets and raw materials.
- Factor Five:
 - Industrial strategies are not mandatory and are not intended to distort prices or output. Strategies offer forecasts and guidance for the future development of industries and encourage private sector investment.
 - Under the law, the GOVN is not allowed to control the price of goods.
- Factor Six:
 - Vietnam has increased the number of FTAs it participates in.

1.28. *Madison Steel, Inc.*

Madison Steel, Inc. is a U.S.-based metals wholesale company. Graduating Vietnam to ME status would positively impact the U.S.-Vietnam economic relationship, as Vietnam has become an important trading partner.

- The GOVN does not have a minimum investment capital requirement or limit the ownership ratio of foreign investors participating in joint ventures. Export partners in Vietnam plan to expand production and prices without influence from the government.

1.29. *Maruichi Sun Steel Joint Stock Company (SUNSCO)*

SUNSCO, a 100 percent foreign-owned enterprise operating in Vietnam's steel industry, asserts that Vietnam has undergone significant economic reforms and is now operating as an ME country.

- The VND is fully convertible. There are no issues converting VND to other currencies.
- SUNSCO can hire and freely negotiate wages with its workers.
- Administrative procedures and business conditions have been relaxed and senior government leaders hold regular dialogues with private and foreign-invested sectors.
- The private sector has developed. The largest steel companies are mostly private.
- SUNSCO is unaware of constraints on prices and output. SUNSCO faced no obstacles accessing production resources, such as land, electricity, loans, or raw materials.

1.30. *Northwest Horticultural Council (NHC)*

NHC represents U.S. fruit growers and exporters. It stated that Vietnam is an important fruit export market and improvements to U.S.-Vietnam trade relationship will benefit U.S. exporters.

1.31. Seba International Inc.

Seba International Inc., a steel trading and distribution company headquartered in Texas, supports their partner, Hoa Sen Group. Seba stated that Vietnamese steel products meet high quality standards and are priced competitively.

1.32. Trans Pacific Resources Corp

Trans Pacific Resources Corp, a leading steel trading company based in the U.S., states that its partner, Hoa Sen Group, Vietnam's steel industry and other sectors operate under an ME framework. Vietnamese steel products meet high quality standards and are priced competitively.

1.33. Victory Metals

Victory Metals, a steel manufacturing and trading company based in the United States, states that its partner, Hoa Sen Group, along Vietnam's steel industry and other sectors operate as an ME country. Products of Vietnamese steel companies meet quality standards and have reasonable pricing.

1.34. Kumho Tire Vietnam

Kumho Tire, a tire business with headquarters in South Korea and investments in Vietnam, requests that Vietnam be considered and recognized as an ME country.

- Factor 1:
 - Kumho Tire reports no difficulty converting the VND to other currencies and opening accounts in multiple currencies. Account flexibility enables remittance of payments and converts currency when needed.
- Factor 2:
 - Wages are based on open negotiations and determined with consideration of employees' capabilities and productivity. Employees understand their labor rights.
- Factor 3:
 - Reforms resulted in an increase in FDI into Vietnam and highlight GOVN efforts to create a favorable business environment. Kumho Tires has received support from communication with senior officials.
- Factor 4:
 - The GOVN has been taking steps to implement reforms and privatize SOEs. This process is set to occur on a predefined schedule.
- Factor 5:
 - Kumho Tire has full autonomy over setting production quantities and prices and has no difficulties accessing land, electricity, loans, and raw materials.

1.35. Mega Steel and Tube

Mega Steel and Tube is a U.S. headquartered company that specializes in steel production and trade. Mega Steel and Tube identified Vietnam as a valuable partner offering high quality, reasonably priced products with a highly regarded warranty policy. Their comments support their partner, Hoa Sen Group, and argue that Vietnam complies with U.S. law.

- Factor 1:
 - Vietnam's currency exchangeability is based on market principles of transparency, fairness, and non-discrimination.
- Factor 2:
 - Wage determination is based on free negotiation between labor and management. Strong legislative framework supports workers' rights.
- Factor 3:
 - Vietnam's investment landscape provides fair treatment towards domestic and foreign companies.
- Factor 4:
 - A decline in GOVN ownership and influence over means of production has been encouraged by the private sector development, reorganization and divestiture of SOEs and land reform.
- Factor 5:
 - The GOVN has little control over resource allocation, prices, or production decisions.
- Factor 6:
 - Vietnam has taken market-oriented steps to establish a unified legal system and improve the legal framework for bankruptcy and state audits with a focus on corporate governance and diverse international commercial relations.

1.36. Hoa Sen Group (HSG)

HSG, a leading steel company based in Vietnam that engages in manufacturing and trading of steel products, confirms that Vietnam meets the six factors to be considered an ME country. HSG exports to more than 87 countries and territories, including the United States.

1.37. Tamlong Craft Co., Ltd (TLC)

TLC, a Vietnamese manufacturer and exporter, argues that Vietnam should be granted ME status.

- Factor One:
 - TLC has no issues with U.S. payments in USD.
- Factor Five:
 - TLC determines its prices. During negotiations, importers have full autonomy over selling price.
- Factor Six:
 - Seventy-two countries already recognize Vietnam as an ME country.

1.38. Vietnam Association of Seafood Exporters and Producers (VASEP)

The VASEP is a non-governmental organization with leading Vietnamese seafood producers and exporters.

- Factor One:
 - The GOVN does not manipulate its exchange rate.
 - USTR found that there is no governmental action under section 304 of the trade act since the SBV followed through with its commitments (July 2021).
 - Treasury is satisfied with the progress of Vietnam's currency practices.
- Factor Two:
 - The GOVN only regulates the minimum wage. Vietnam ratified 25 ILO conventions.
- Factor Three:
 - Foreign investors are subject to the same investment restrictions as domestic investor and can invest in any sector not on the negative list (*Investment Law (2020)*).
- Factor Four:
 - The seafood industry is privately owned and exports billions of USD of seafood to multiple countries including the United States.
- Factor Five:
 - The GOVN has no control over the allocation of resources or private enterprises' prices.

1.39. Vietnam Rubber Association (VRA)

The VRA is an organization that represents Vietnamese enterprises in the rubber industry.

- Factor One:
 - The VRA can freely convert the VND into any currency including USD and has not faced any obstacles in currency convertibility.
- Factor Two:
 - Wages are freely negotiated, and labor contracts are not bound by fixed wages.
- Factor Three:
 - Within the rubber industry, there are no limits on foreign investments.
- Factor Four:
 - VRA members have full autonomy over setting prices and output.
- Factor Five:
 - There is no preferential treatment of SOEs and SOEs follow the *Enterprise Law*. Contracts set conditions for domestic and international trade. SOEs do not disrupt imports and production of natural rubber.
- Factor Six:
 - The VRA takes part in efforts to prevent forced labor.

1.40. Allied Trading Inc.

Allied Training, located in Nevada, is an importer of products by the Hoa Phat Group. Prices are determined by agreements between Allied Trading and Vietnamese importers. Seventy-two

countries have recognized Vietnam as an ME country since 2018. They express concern about investments and exports into Vietnam and wish to expand their market in Vietnam.

2. Parties Who Support Maintaining Vietnam's NME Country Status

2.1. The Catfish Farmers of America and individual U.S. catfish processors America's Catch, Inc., Alabama Catfish, LLC d/b/a Harvest Select Catfish, Inc., Consolidated Catfish Companies, LLC d/b/a Country Select Catfish, Delta Pride Catfish, Inc., Guidry's Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. d/b/a Pride of the Pond, and Simmons Farm Raised Catfish, Inc., Columbia Forest Products, the Rebar Trade Action Coalition, the Steel Manufacturers Association, the U.S. Aluminum Extruders Coalition, and the Wind Tower Trade Coalition (collectively "Domestic Interested Parties (DIP)")

The DIP concurs with the analysis presented by the Honey Petitioners and argues that Vietnam's governance structure prevents it from operating as an ME country. In their comments, the DIP emphasizes that granting Vietnam ME status would not only ignore the reality of GOVN control over the Vietnamese economy, but would also prove harmful to American industries, communities, and workers.

- The CPV controls over 30 percent of GDP and intervenes in the banking system, currency, SOEs, private companies, and foreign trade. The CPV has permanent authority to veto projects and issues economy-wide and industry-specific plans, mandating officials, industry associations and SOEs implement CPV priorities, of state-mandated policies and efforts to increase production and export capacities.
- SOEs occupy many sectors, accounting for 24.6 percent of the state's overall investment capital and 12 percent of societal investment capital during 2016-2020.
- SOEs have preferential access to land, capital, and loans from state-owned banks. CPV subsidies promote growth in priority industries, including loans, grants, preferential tax treatment, and reduced land and water lease fees, and are inconsistent with Vietnam's WTO commitments. Vietnam has not provided full notification of subsidies since 2020.
- State-owned banks account for more than half of total loans.
- There is widespread corruption, weak rule of law, and human rights abuses. Companies encounter bribery, political interference, and facilitation payments in all sectors. Vietnam scored 42 out of 100 in the 2022 Corruption Perceptions Index.
- Corruption reaches the highest levels of government. In 2023, reports of corruption schemes involve the President and two deputy prime ministers. Anti-corruption prevention and enforcement have been weak, resulting in low investor confidence.
- Vietnam's legal system is controlled by the CPV and is subject to manipulation by a corrupt judicial system and central government intervention.
- An estimated 1.75 million children engage in labor with over 500,000 in hazardous work. An estimated 30,000 individuals, including children, are forced to work in government-operated labor institutions. Forced labor practices violate international law including the

ILO Forced Labor Convention, ILO Minimum Wage Convention, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights.

- The CPV prohibits domestic organization of labor unions and advocacy groups. The CPV engaged in retribution against human rights activists and imprisoned journalists who have reported on corruption and human rights abuses.
- Weak environmental regulations depress prices in sectors such as steel, aquaculture, and forestry. Many exporters operate in industrial parks with weak environmental regulations.
- Inadequate IP protection is a barrier for foreign investors. Civil remedies for copyright infringement are impeded by lack of legal transparency and weak law enforcement hinders resolving IP cases. Cyber attacks also threaten IP theft.
- Granting Vietnam ME status will enable the PRC to exercise greater power and influence over Vietnam. As of 2022, Vietnam has a \$59.2 billion trade deficit with the PRC, accounting for over 15 percent of Vietnam's GDP and Vietnam has borrowed over \$20 billion USD from the PRC with FDI increasing in recent years.
- Vietnam's cheap labor and low environmental standards incentivize PRC companies to relocate or expand operations to Vietnam. Commerce has made affirmative circumvention determinations in eight Chinese cases which occurred through Vietnam.
- Granting Vietnam ME status will increase the U.S.-Vietnam trade deficit and harm U.S. industries and workers by removing AD and CVD duty protections.

2.2. Alliance for American Manufacturing (AAM)

AAM is a non-profit, non-partisan partnership formed in 2007 by some of America's leading manufacturers and the United Steelworkers. AAM concurs with and incorporates by reference the arguments made by Kelley Drye & Warren LLP in their comments opposing graduating Vietnam ME country status.

- Factor One:
 - The VND is not freely convertible due to restrictions and controls on foreign exchange. The GOVN manipulates the value of the VND, and Treasury has returned Vietnam to its monitoring list for currency manipulation.
- Factor Two:
 - Wages are not determined by free bargaining between labor and management. Workers in Vietnam lack fundamental rights to organize, bargain, and strike.
 - Any supposed reforms are either currently unrealized or insufficient to transition the country to a truly free labor market.
- Factor Three:
 - The GOVN restricts joint ventures and investments from foreign firms.
 - Numerous sectors of the economy have high barriers to entry for foreign firms and the GOVN prohibits investment altogether in many sectors.
 - FDI in Vietnam is small compared to other countries and to Vietnam's economy. Much of the permitted FDI comes from the PRC.
- Factor Four:
 - The GOVN has extensive influence over the means of production and resources.

- SOEs account for a significant share of GDP and dominate many sectors. The private sector is limited by SOEs and government control of the financial sector.
- All land is owned by the state; there is no private land ownership in Vietnam.
- Factor Five:
 - The GOVN exercises significant control over the allocation of resources, prices, and output decisions of businesses.
 - The commercial banking sector is state-controlled and lacks the traits of a competitive banking system. The GOVN controls interest rates and lending while also providing crucial financial support to SOEs.
- Factor Six:
 - Vietnam is a hub for forced labor and Uyghur Forced Labor Prevention Act circumvention. Graduating Vietnam would be contrary to the U.S. pro-labor commitment and efforts to protect American industries, communities, and workers from unfair trade.

2.3. Alpek Polyester USA, LLC

Alpek Polyester is a leading global petrochemical company and a U.S. producer of a variety of polyethylene terephthalate (“PET”) products. Alpek Polyester (formerly DAK Americas LLC) is a domestic producer of PET resin and a petitioner in the original investigations on PET resin from several countries. Alpek Polyester concurs with and incorporates by reference the arguments made by Kelley Drye & Warren LLP in comments opposing graduating Vietnam to an ME country.

- Graduating Vietnam to ME status would jeopardize the United States’ economic and national security interests given the GOVN’s formal and informal entanglement with the PRC – a designated NME country – in political, defense, and economic terms.
- Vietnam is also a proven source of dumped imports, and of circumvention for dumped imports, found to injure domestic industries and their workers and communities.

2.4. American Federation of Labor and Congress of Industrial Organization (AFL-CIO)

The AFL-CIO is a federation of 60 affiliated unions representing over 12.5 million American workers. The AFL-CIO endorses the comments of its affiliate, the United Steelworkers (USW) and opposes any change to Vietnam’s NME status.

- Vietnam does not meet the six statutory criteria necessary to be granted ME status.
- The government maintains ownership in critical industries and in November 2023, Vietnam was placed on Treasury’s monitoring list for currency manipulation.
- Vietnam has failed to ratify ILO Convention 87 on the freedom of right to organize and Vietnam’s predominant union is state controlled.
- U.S. AD laws protect American industries against unfairly traded goods. Granting Vietnam ME status would harm U.S. workers and the manufacturing base. There are 20 AD duty orders and investigations against producers in Vietnam that could be adversely impacted by a change of status.

- Granting Vietnam ME status would add to the U.S. trade deficit with Vietnam, which could be exacerbated by using Vietnam as a final assembly destination for intermediate products manufactured in PRC.

2.5. American Iron and Steel Institute (AISI)

The AISI members include integrated and electric arc furnace steelmakers and associate members who are suppliers to or customers of the steel industry. AISI believes Vietnam is properly classified as an NME country.

- Factor One:
 - The VND lacks full convertibility, and the GOVN manipulates the value of the currency to subsidize its domestic exporters, including Vietnamese steel producers.
- Factor Two:
 - The only Vietnamese labor union that has real authority is the state-controlled VGCL. Vietnam failed to ratify ILO Convention 87 on freedom of association and protection of the right to organize.
- Factor Three:
 - Vietnam restricts FDI. Investments from the PRC, a key supplier of NM inputs, are central to Vietnam's manufacturing base and produce unfairly traded exports that harm U.S. industries and workers.
- Factor Four:
 - SOEs operate in pillar industries of the economy, including electricity, minerals, petroleum, finance, food, and telecommunications. Restructuring plans to divest hundreds of SOEs have been unsuccessful. SOEs accounted for 33 percent of Vietnam's GDP, despite accounting for only 0.6 percent of all registered companies (2020).
- Factor Five:
 - Vietnam continues to impose export taxes on iron ore and other metals, as well as coal and billets. Vietnam continues to use price controls.
- Factor Six:
 - The GOVN and its steel industry have been repeatedly found to be actively engage in efforts to circumvent U.S. trade remedy orders.

2.6. The Bristol Group PLLC (Bristol Group)

The Bristol Group counsels American manufacturing and agricultural businesses in AD/CVD proceedings.

- Factor One:
 - Vietnam's currency remains under close government supervision, with the GOVN aiming to control foreign exchange and restrict the dong's convertibility. Both inbound and outbound foreign currency transactions are controlled by the government-backed SBV. The VND exchange rate arrangement is a "crawling

peg,” with the GOVN allowing it to fluctuate within a fixed trading band. Treasury returned Vietnam to its currency manipulation monitoring list (2023).

- Factor Two:
 - Vietnam’s informal sector represents approximately 70 percent of all employment, rendering labor reform inapplicable for the majority of the workforce. Vietnamese laborers are subject to low wages, underenforced labor standards, and weak governance. This provides a significant opportunity for exploitation, resulting in reports of forced labor, child labor, and labor violations. There is no legitimate regulatory enforcement of labor rights, particularly in the informal sector.
- Factor Three:
 - Vietnam highly regulates FDI. There are many sectors in which foreign investment is restricted or completely prohibited (2020 Law on Investment Decree 31/2021/NĐ-CP). Within sectors accessible to FDI, there are numerous regulatory and administrative hurdles that limit investment.
- Factor Four:
 - SOEs account for 30 percent of Vietnam's GDP and 22.8 percent of its capital. SOEs receive preferential treatment. Sectoral ministries and local governments grant affiliated SOEs privileges, including access to capital, natural resources, land, and human resources. The GOVN maintains complete ownership of all land.
- Factor Five:
 - Vietnam's financial sector is dominated by state-owned commercial banks (SOCBs). In 2020, Commerce found that SOCBs owned 44.7 percent of total banking sector assets in Vietnam. As a result, the credit market is tilted toward SOEs.
- Factor Six:
 - Corruption is a systemic problem in Vietnam across the judicial system, law enforcement, public services, land, tax, and customs administrations. The intersection of corruption with state involvement magnifies the impact of corruption on the economy.

2.7. Seaman Paper Company of Massachusetts, Inc (Seaman Paper).

Seaman Paper is a leading U.S. producer of decorative tissue paper and crepe paper products. In their comments, Seaman explicitly references the Bristol Group PLLC’s analysis of Vietnam regarding the six factors. Based on this analysis, Seaman believes that Vietnam should remain an NME country.

2.8. Southern Shrimp Alliance (SSA)

The SSA represents America’s warmwater shrimp industry bordering the South Atlantic and the Gulf of Mexico. The SSA argues that Vietnam’s NME status should not be changed due to repeated dumping of seafood products into the U.S. markets. The SSA stresses that Vietnam has failed to meet several of the six statutory factors. Liberalization reforms have yet to transition

Vietnam's economy to one that adheres to market principles; the prices of Vietnamese products are distorted, and this distortion would grow in severity if Vietnam's NME status changed.

- Factor One:
 - The SBV controls the exchange rate and manages the value of the VND to unfairly benefit Vietnam's export industries.
 - In a 2020 investigation of Vietnam's currency practices, U.S. Trade Representative (USTR) found that Vietnam's "currency undervaluation effectively lowers the price of exported products from Vietnam into the United States." Currency undervaluation makes it difficult for American companies to compete because Vietnamese exports' prices are artificially lower.
 - Currency-related reforms have not sufficiently addressed Vietnam's non-market exchange practices. Treasury included Vietnam on its monitoring list for currency manipulation in 2023.
- Factor Two:
 - Vietnam's informal sector represents approximately 70 percent of all employment, rendering labor reform unapplicable for the majority of the workforce.
 - Vietnamese laborers are subject to low wages, underenforced labor standards, and weak governance, creating the opportunity for exploitation, which caused widespread reports of forced labor, child labor, and labor violations.
- Factor Four:
 - The GOVN does not permit private ownership of land. The GOVN has provided exemptions and reductions on rent which offer unfair advantages to certain industries and do not adhere to market principles. This interference creates economic distortions, resulting in supply and demand not dictating land prices.
- Factor Five:
 - The GOVN controls the banking sector, and the financial sector is dominated by banks. The SBV dictates policy and influences actions of other banks.
 - In 2020, Commerce found reforms of the banking system have mostly revolved around sector stability and meeting macroeconomic growth targets.
 - A policy roadmap through 2025 calls for dominance of state-owned banks with no reference to reducing state intervention.
- Factor Six:
 - Monetary and fiscal policies grant Vietnamese seafood companies preferential treatment.

2.9. United States Steel Corporation (U.S. Steel)

U.S. Steel is a fully integrated producer of American steel products. U.S. Steel argues that Vietnam's NME status should not be changed because the GOVN's level of involvement in the economy is not in accordance with market principles. It argues that reductions in government interference and economic liberalization have been modest and insignificant in the steel industry.

- Factor One:

- There are restrictions on converting the VND.
- Factor Two:
 - Workers are not able to legally form independent unions, and the only union with “real authority” is the government-controlled VGCL.
- Factor Three:
 - FDI does not flow freely in Vietnam: FDI is prohibited in 25 categories and restricted in 59 categories. Some American businesses face difficulties when trying to renew and extend investment certificates.
- Factor Four:
 - Although the prevalence of SOEs in Vietnam has declined since 2002, SOEs still constitute 22.8 percent of Vietnam’s capital and 30 percent Vietnam’s GDP. Land-use rights have not undergone any reforms.
- Factor Five:
 - Commercial bank reform has been insufficient and SOEs have an outsized effect on the economy due to preferential treatment in the banking system.

2.10. Steel Dynamics, Inc. (SDI), the American Kitchen Cabinet Alliance (AKCA), and the American Shrimp Processors Association (ASPA)

SDI is a U.S. steel producer, the AKCA is an association of U.S. producers of wooden cabinets, vanities, and components thereof, and the ASPA represents the interests of more than 30 processors of U.S. wild-caught warmwater shrimp. SDI, the AKCA, and the ASPA agree with the analysis and conclusions set forth in submissions made by Kelley Drye & Warren LLP and Wiley Rein LLP on behalf of the domestic raw honey petitioners and other domestic interested parties and hereby incorporate their comments by reference.

- The Vietnamese steel industry has grown exponentially and become highly export oriented as a result of state subsidies, state ownership, price controls, and other state support and direction.
- Vietnam has become a hub for circumvention of U.S. trade remedies, including in the wooden cabinet, vanities, and components industry. Granting Vietnam ME status would injure the U.S. shrimp industry.

2.11. Steel Manufacturers Association (SMA)

SMA is the largest steel industry association in North America, with members responsible for producing steel through modern electric arc furnaces (EaFs) and accounting for 74 percent of America's steel production. SMA opposes Vietnam's ME status because it believes granting Vietnam ME status will cause long-term threats to the domestic steel industry and other U.S. industries relying on the trade. SMA argues that Vietnam's economy is still under strict government control. Steel-making demand is separate from domestic demand. Vietnam's policy objective for the steel industry is to expand production capacity and grow steel export volumes. The GOVN distorts the steel market rather than allowing the market to freely dictate outcomes. Vietnam's steel-making capacity has undergone a fourfold increase from 2010 to 2020.

**2.12. American Honey Producers Association and Sioux Honey Association
(Petitioners)**

The American Honey Producers Association and Sioux Honey Association are domestic producers of raw honey and were petitioners in the original Raw Honey investigation from Vietnam the current CCR. Edsal Manufacturing Co., Inc also contributed to the comments. Petitioners oppose granting Vietnam ME status given concerns over, among other things, fair wages and labor rights.

- Factor One:
 - The GOVN manipulates the VND and Vietnam therefore lacks a freely convertible currency which does not sufficiently connect its economy to global market prices. Controls exist on currency and capital account conversion for resident and non-resident foreign exchange.
- Factor Two:
 - Wage rates are distorted by a lack of free labor-management bargaining.
 - In the 2002 *determination* of Vietnam's NME status, the GOVN maintains *de jure* control but is inconsistent in the enforcement of labor controls in the *de facto* free market.
 - Vietnam lacks the freedom of organization. Labor reforms are misleading given most Vietnam workers are in the informal sector.
- Factor Three:
 - FDI is limited by considerable statutory and regulatory barriers. These policies have suppressed FDI inflows over the past two decades and continue to impede foreign investment.
- Factor Four:
 - SOEs are predominant and influence the market based on GOVN objectives.
 - The GOVN manipulates the market with subsidies for sectors it wants to promote.
 - Private land ownership is prohibited. Since 2002, the GOVN has yet to update its legal framework on land use and land rights.
- Factor Five:
 - The economy is constrained by GOVN price setting across key sectors.
 - In 2010, Vietnam created a new set of price controls on goods ranging from cement and steel to sugar and rice to tame inflation. Vietnam also has new price controls on baby formula and gasoline.
- Factor Six:
 - There have been reports of forced and child labor, violations of human rights and inadequate protection on intellectual property rights.

2.13. United Steelworkers Union (USW)

USW is the largest industrial union in North America. The USW believes Vietnam does not meet the criteria to be granted ME status. Vietnam's authoritarian governance and state control is a major concern alongside of these other points USW mentions.

- Factor One:

- The SBV is not independent.
- Factor Two:
 - Government-body VGLC controls the trade unions. Labor rights are a concern.
- Factor Three:
 - FDI faces various regulations, controls, and approval processes. FDI mainly came from the PRC.
- Factor Four:
 - SOEs benefit from preferential treatment and privileges from the government.
SOEs control the banking, energy, telecommunication and transportation sectors.
- Factor Five:
 - The GOVN exercises comprehensive price controls, including in the banking sector.

2.14. American Wire Producers Association (AWPA)

AWPA members include wire producers located in the United States, Canada, and Mexico. AWPA is against granting Vietnam ME status due to AWPA's involvement in many AD/CVD proceedings on steel wire products from Vietnam.

- Factor One:
 - The use, transfer, and exchange rate of the VND is significantly restricted.
 - In 2021, USTR claimed that the GOVN manages its exchange rate based on economic goals.
- Factor Two:
 - Despite some progress on labor issues, third-country analysts observe the absence of a true right of association in Vietnam where collective bargaining agreements remain the exception rather than the rule.
- Factor Three:
 - The GOVN imposes formal and informal restrictions on foreign investment and joint ventures with foreign partners.
- Factor Four:
 - Government ownership and control over means of production is a staple in Vietnam.
- Factor Six:
 - Widespread corruption, regulatory uncertainty in key sectors, a weak and opaque legal regime, poor enforcement of intellectual property rights, skilled labor shortages, restrictive labor practices and slow government decision-making processes preclude Vietnam from being an ME country.

2.15. Catfish Petitioner Group (9 parties) (Catfish Group)

The Catfish Group argues that if Vietnam was granted ME status, the Commerce would be unable to effectively address unfairly traded frozen fish imports from Vietnam made with forced labor, in unsafe working conditions, using inputs from the PRC, and subject to weak environmental regulations. The Catfish Group emphasizes that the U.S. catfish industry, based in

Alabama, Arkansas, Mississippi and Louisiana, offers thousands of jobs to Black and Latinx communities, and women. Over the last 20 years, the catfish industry has been a victim of traditional trade policy, subjected to unfair trade imports from Vietnam. Since 2000, over 65 percent of the U.S. catfish supply comes from Vietnam, resulting in a reduction in industry production volume and jobs. Granting Vietnam ME status will result in decimation of the domestic catfish industry and contribute to a significant number of layoffs, especially for underserved communities.

2.16. Coalition for a Prosperous America (CPA)

The CPA is a bipartisan organization representing domestic producers across many industries in the U.S. The CPA argues that Vietnam is not an ME country due to dominance of SOEs and PRC firms in the economy.

- Factor One:
 - The VND is not convertible due to strict foreign exchange controls. The SBV regulates the exchange rate and sets daily reference rates based on a “basket of currencies.”
 - Foreign investors have issues with profits and capital from Vietnam and need approval from the SBV to comply with certain conditions.
- Factor Two:
 - Free labor negotiations between unions and management are controlled by one party and are not independent of the ruling communist party or of employers.
- Factor Three:
 - Foreign investors are discriminated against. The *Law on Commercial Arbitration* prevents foreign investors from filing a dispute in foreign jurisdiction courts.
- Factor Four:
 - SOEs still account for one-third of Vietnam’s GDP and dominate the energy, transport, telecommunications, and finance sectors.
 - Land rights remain an issue. If land leased is not used within 12 consecutive months or delayed by 24 months, the GOVN is entitled to reclaim the land.
- Factor Six:
 - Vietnam's legal system is very underdeveloped.

2.17. Brooklyn Bedding LLC, Carpenter Company, Corsicana Mattress Company, Future Foam, Inc., FXI, Inc., Kolcraft Enterprises Inc., Leggett & Platt, Incorporated; Serta Simmons, Bedding, LLC, Southerland Inc.; Tempur Sealy International, Inc., the International Brotherhood, of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied, Industrial and Service Workers International Union, AFL-CIO (“USW”)

These organizations represent American manufacturing of products. Brooklyn Bedding, *et al.*, believes that Vietnam's labor rights, dominance of SOEs, and currency and wage restrictions have not changed dramatically over the years. The United States will not benefit from granting Vietnam ME status and instead the PRC will be able to utilize leverage over Vietnam.

- Factor One:
 - The GOVN limits foreign exchange and restricts VND convertibility. Despite claims of liberalization, the VND remains controlled by the government-controlled, SBV.
 - In 2017, the IMF stated that the Vietnamese economy is still centrally planned and that the central bank is an integral component of the state.
 - Vietnam's commercial banking sector is completely controlled by the GOVN. There is no competition in the banking sector and many Vietnamese citizens do not have access to credit.
 - The General Statistics Office of Vietnam found that the value of Vietnam's good exports in 2021 exceeded its services exports by a factor of more than 60. In 2022, Vietnam's goods trade surplus totaled \$12.4 billion USD, and its goods exports accounted for over 90 percent of its GDP. The manufacturing sector accounted for 94.3 percent of Vietnam's goods exports in 2022, nearly one-fourth of its GDP.
- Factor Two:
 - Vietnam has made some progress on labor issues, including the alleged formation of independent unions. However, the only union with authority is the state-controlled VGCL.
 - Vietnam has yet to act on its commitment to the ILO convention 87 on the "freedom of association and protection of the right to organize."
 - The GOVN emphasizes labor rules and GDP per capita increases without providing evidence for reforms.
- Factor Three:
 - The GOVN claims foreign and domestic investors receive the same treatment.
 - In 2020, the GOVN revised the *Investment Law (2020)*, which is supposed to apply equally to domestic and foreign investors.
 - Since that time there have been a number of constraints on FDI, including preventing FDI in 25 categories of business activities and partially restricting FDI for an additional 59 categories of business activities.
 - The World Bank reports that FDI into Vietnam as a share of GDP remained flat, increasing from 4.0 percent in 2002 to 4.4 percent in 2022.
- Factor Four:
 - SOEs are still an integral part of the Vietnamese economy. The OECD finds that SOEs remain economically significant by international standards. SOEs constitute 22.8 percent of the country's capital and 30 percent of the GDP.
 - The GOVN controls 87 percent of the electricity sector and 90 percent of the mobile telecommunications sector through SOEs.
 - Vietnam's land market is state owned and land use cannot be considered an equal alternative to private ownership.
- Factor Five:
 - Vietnam's private sector has not stopped Vietnam from enacting price controls.

- The price control of commodities, such as petrol, steel, concrete, transport, livestock feed, food and medical equipment, are a top priority for Vietnam and there is no plan to increase prices under the existing controls and administrative fees. Price controls also extend to land ownership.

2.18. *Polyethylene Retail Carrier Bag Committee, Polyethylene Retail Carrier Bag Committee, the Laminated Woven Sacks Fair Trade Coalition, the Coalition of Domestic Folder Manufacturers, and the Coalition for Fair Trade in Shopping Bags*

The Polyethylene Retail Carrier Bag Committee, *et al.*, adopted and incorporated the comments submitted by the American Honey Producers Association, *et al.*, and by the Catfish Farmers of America, *et al.*, which stated that Commerce should treat Vietnam as an NME country.

3. Rebuttal Comments

3.1. American Honey Producers Association and Sioux Honey Association (Petitioners)

The Petitioners oppose the changes to Vietnam's NME status.

- Factor One:
 - The SBV's authority comes from the CPV. The IMF confirmed the SBV lacks operational freedom from political interference.
 - The SBV lacks transparency to support GOVN's claims that it does not interfere in the foreign exchange market and manipulate the VND.
 - Vietnam's trade surplus with the U.S. has expanded over the last five years and provides a strong incentive for currency intervention.
 - Articles of Agreements' Article VII confirms the VND is not convertible.
- Factor Two:
 - Employees have no right to organize or bargain for their wages. The GOVN suppresses activists who try to form independent labor unions and promote workers' rights.
 - The GOVN maintains *de jure* control and influences market dynamics.
 - The 2019 *Labor Code* is hypothetical and not implemented.
 - Vietnam is on Department of State's 2023 "Tier 2 Watch List" on Trafficking in Persons Report. Vietnam depends on child labor for goods such as bricks, cashews, coffee, fish, footwear, furniture, leather, pepper, rice, rubber, sugarcane, tea, textiles, timber and tobacco, and garments.
- Factor Three:
 - The GOVN has yet to ease regulations on foreign investment and foreign business. The GOVN still discriminates against foreign-owned companies.
 - FDI levels are comparatively low to other Asian countries and countries with a similar level of economic development. Vietnam's FDI per capita is \$141 USD lower than the ASEAN per country average.
- Factor Four:

- SOEs control numerous industries and constitute 30 percent of Vietnam's GDP.
- No land in Vietnam is privately owned. Chapter II Section I on the rights and obligations of the state over land confirms all land is controlled by the state.
- Factor Five:
 - The GOVN controls the allocation of resources, prices, and output decisions. The GOVN has yet to liberalize prices, implement commercial banking reforms, or address how individuals and businesses can engage in business activities.
 - The GOVN admits it controls the industries electricity, postal and telecommunications, and fuel, and prices of land, steel concrete, transportation, livestock feed, food baby formula and medical equipment. The *Law on Price* (2023) details goods and services subjected to price measures or priced by the state to take effect on July 1, 2024. These goods include gasoline, oil, liquefied petroleum gas, milk for young children, rice, fertilizer, animal feed, aquatic feed, various vaccines, pesticides, and a number of medical drugs.
 - The WTO reports concern over the list of goods and services subject to price management and its effects for economic activity and life.
- Factor Six:
 - The GOVN's participation in bilateral and multilateral agreements do not equate to market-based reforms. Vietnam has violated a number of bilateral and multilateral commitments as proof of economic liberalization.
 - Areas of concern include basic human rights, lack of enforcement of laws and regulations, environmental harms, and relations with Russia and the PRC.

3.2. *The Catfish Farmers of America and individual U.S. catfish processors America's Catch, Inc., Alabama Catfish, LLC d/b/a Harvest Select Catfish, Inc., Consolidated Catfish Companies, LLC d/b/a Country Select Catfish, Delta Pride Catfish, Inc., Guidry's Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. d/b/a Pride of the Pond, and Simmons Farm Raised Catfish, Inc., Columbia Forest Products, the Rebar Trade Action Coalition, the Steel Manufacturers Association, the U.S. Aluminum Extruders Coalition, and the Wind Tower Trade Coalition (collectively, "Domestic Interested Parties(DIP)")*

The DIP responds to comments made by the GOVN regarding Factor Three and Factor Six.

- Factor Three:
 - Laws, regulations, and statistics the GOVN referenced ignore the investment environment in Vietnam.
 - The 2021 *Law on Investment No. 61/2020/QH14* and *Decree 31* restrict FDI in 227 lines of business and prohibit FDI in 25 sectors. *Decree 31* restricts foreign investment across industries that are not natural monopolies such as advertising, real estate, insurance, logistics, and e-commerce. *Decree 31* directs relevant ministries and agencies to submit proposals for additional business lines to be considered conditional and other investment conditions.

- The 2021 *Law on Investment* allows the government to stop investment activities if deemed harmful to national security, which is not clearly defined by the law.
- All FDI projects must be approved by the People's Committee in the province where the project will occur.
- The definition of “FIE” was amended from any company where foreign ownership was ≥ 51 percent to any company where foreign ownership was ≥ 50 percent.
- Factor Six:
 - Corruption is rampant and exists at all levels of government and at all strata of the economy – from routine public sector bribes to multibillion dollar fraud.
 - The court system is highly corrupt, and the legal system is subservient to the CPV. The CPV selects all judges, and most judges are CPV members.
 - Vietnam is not a signatory or contracting state to the International Centre for Settlement of Investment Disputes (ICSID), regarded as the leading organization for international investment dispute settlement.
 - Decree 72 would force foreign firms to store data locally. There is weak corporate governance of SOEs and only 40 percent of SOEs submit any corporate disclosures. Bankruptcy laws are weak and selectively available.

3.3. Ministry of Industry and Trade (MOIT) of the Socialist Republic of Vietnam

The MOIT states that parties opposing granting Vietnam ME status “misrepresented, misstated, or otherwise misunderstood,” changes made to adhere to the six statutory factors. The MOIT argues that Vietnam is a market-oriented economy that operates on market principles.

- Factor One:
 - Vietnam has made advancements in currency convertibility and exchange rate flexibility since 2002 and can no longer be accused of currency manipulation.
 - Vietnam’s currency management and exchange rate do not amount to currency controls. *Decree No. 70/2014/ND-CP* permits the payment, transfer, and remittance of currency for current and capital account purposes, including VND earning transfers from direct investments and foreign currency revenue transfers earned from imports and exports of goods and services.
 - Institutions, such as the IMF, Department of State, WTO, and World Bank, attest that Vietnam has few restrictions on currency payments, transfers, and exchanges, and the ones maintained are for security reasons. Foreign investors have no restrictions on the transfer of capital contributions and gains, profits, intercompany loans, asset disposal incomes, IP rights royalties, and other processes.
 - Foreign exchange must occur through authorized credit institutions to ensure banking security and prevent financial crimes.
 - The interbank market has progressed, with the development of the foreign exchange market increasing three-fold in value between 2018 and 2023. Other countries have been granted ME status despite similar legal restrictions.

- Opposing parties misrepresented the results of reports on Vietnam's foreign exchange controls and did not mention the numerous exceptions to the requirement that transactions must be in VND. *Circular 32/2013/TT-NHNN* includes further exceptions. Other countries limit the use of foreign currencies.
- Factor Two:
 - Vietnam's labor laws ensure market-based wage rates, high labor mobility, and workers' right to join unions and participate in strikes.
 - *De jure* and *de facto* protections of workers' rights are offered through the 2012 *Law on Trade Unions* and the *Labor Code (2019)*. The *Vietnam Constitution (2013)* and *Labor Code (2019)* guarantees the right to join unions and collective bargaining. This code adopts international labor standards of the ILO and various FTA commitments. Vietnam has plans to expand its labor rights protection efforts through the inclusion of an additional 15 ILO conventions.
 - The *Law on Trade Unions (2012)* grants workers the right to join trade unions and participate in collective bargaining, and of unions to execute tasks. The law specifies four levels of trade unions (grassroots unions, upper-grassroot trade unions, provincial trade unions, and the VGCL) and their authority to engage in collective bargaining at different levels of government. VGCL is represented by elected governing bodies of all levels of unions. It does not oversee all wage agreements.
 - The Vietnam Trade and Industry Union reported 90 percent of companies with a grassroots trade union signed collective labor agreements.
 - The *Labor Code (2019)* provides the right to strike and procedural requirements of strikes. Strikes that do not follow the procedural requirements (wildcat strikes) are not prohibited. In 2022, there were 157 "wildcat strikes," which is an increase from 107 in 2021.
 - Formal and informal employment sectors are subject to labor laws. The *Labor Code* states that workers without labor relations are still legally covered by the law. Other laws also include protections for employees in the informal sector, including the *Employment Law (2013)*, *Vocational Education Law (2014)*, *Law on Occupational Safety and Health (2015)*, and the *Law on Social Insurance (2014)*.
 - Other ME countries have large informal employment sectors.
 - Wages are subject to the labor market. In 2021, wages were 2.2 to 2.3 times higher than the minimum wage, reflecting successful wage negotiation practices.
- Factor Three:
 - Vietnam has made progress in decreasing restrictions on conditional business sectors to improve the investment climate. Between 2014 and 2020, 73 conditional subsectors were removed, and Vietnam is striving to remove more conditional subsectors.
 - The U.S. Department of State's 2022 Investment Climate Statement recognizes Vietnam's guidelines for foreign investment are clear and available. *Decree 31*

- requires foreign investment guidelines be posted on Vietnam's National Investment Portal.
- Investment procedures, regardless of the source, have similar registration procedures, project implementation procedures, and investment incentives. Investment procedures are straightforward and serve a record-keeping purpose.
 - Some restrictions depend on the investors' ability to provide services in certain sectors. For example, Vietnam does not impose any "restrictions" on legal services, but foreign-invested law firms can only advise on Vietnamese laws when lawyers have received a law degree in Vietnam and meet conditions for practicing law in Vietnam. In the field of securities, foreign investors are free to establish a 100 percent foreign-invested securities company or purchase 100 percent ownership in an existing securities company as long as they meet capability and qualification conditions set forth in the *Securities Law*.
 - Factor Four:
 - Since 2002, Vietnam's government has introduced legislation to encourage privatization within the economy and liberalize land usage.
 - The GOVN passed legislation to reduce limits on private nationals' ability to purchase private firm shares, allow payments of equitization deposits in foreign currencies, streamline administrative processes, and enable state-owned commercial banks to carry out equitizations.
 - Non-SOEs account for most enterprises based on numbers, assets, net business revenue, labor, and profit from 2018 – 2021.
 - From 2018 – 2022, SOEs contributed 20.54 to 21.34 percent of GDP. There is no state monopoly in energy, transportation, and telecommunication industries.
 - Foreign investors make up the majority share of crude oil extraction and Vietnam only operates two refineries. Vietnam relies on imported crude oil and petroleum products, resulting in domestic prices for gasoline and diesel falling in line with international market prices.
 - GOVN's shares of the electricity market has declined. The GOVN has introduced incentives for private investment in clean energy and state divestment from electricity companies, as well as passed legislation to create a competitive electricity market.
 - Non-state actors' shares of the transportation sector increased from 64.5 percent in 2010 to nearly 90 percent in 2022.
 - Private, public, and foreign companies operate in the telecommunications sector. The 2023 *Telecommunication Law* removed foreign ownership limits in investment in certain telecommunications services.
 - Although all land belongs to the government, the GOVN does not actively interfere in the secondary land use market.
 - The 2013 *Land Law* granted all organizations, within the land use period, the ability to transfer, lease, and make capital contributions in land-use rights, land-attached assets, and mortgage rights.

- The 2024 *Land Law*, which was passed on January 18, 2024, states the list of land prices that are not applicable to the secondary market. Meaning the State does not intervene on land prices in the secondary market. Under the 2024 *Land Law*, land prices are set based on market principles.
- Factor Five:
 - Since 2002, Vietnam has made progress in liberalizing its price controls, reforming the commercial banking sector, and encouraging entrepreneurship.
 - Vietnam exercises minimal price controls. The existing price controls reflect market mechanisms and efforts to prevent non-competitive and harmful pricing behavior in the event of emergencies or crises.
 - The *Price Law, No. 16/2023/QH15* affirms that GOVN price management ensures international integration and compliance with WTO regulations and respects the autonomy of business organizations and individuals to decide prices.
 - The *Law on Prices* (2012) removed eight commodities from price stabilization. Article 20 states that products subjected to price controls must be priced at a level that covers the cost of production and provides reasonable profit to the producer.
 - The GOVN does not influence prices. Under Article 8.1.d of the 2018 *Law on Competition*, state agencies are prohibited from taking advantage of their positions and powers to illegally intervene in competition.
 - Private ownership has substantially increased in the commercial banking sector. Only one out of the ten largest commercial banks are state-owned.
 - Foreign ownership limits have been relaxed and the remaining state-owned commercial banks have private and foreign investors as well as state owners.
 - The 2010 *Law on Credit Institutions* provides all credit institutions, including SOCBs, full autonomy over commercial activities and prohibits any entities from interfering with such operations.
 - Credit to SOEs has decreased annually. From 2014 to 2022, SOEs' lending share decreased four times while credit to other sectors increased, demonstrating the government does not provide undue preferential treatment to SOEs.
 - CPV programs regarding SOEs are meant to increase their effectiveness. Despite accounting for only 4 percent of the total credit to the economy, SOEs accounted for 20 percent of the total profit before tax in 2021.
 - From 2016 to 2020, SOEs' capital accounted for 13.4 percent to 16.3 percent of GOVN investment and 4.5 percent to 5.7 percent of societal investment at current prices. The credit market share of state-owned commercial banks decreased from 47 percent in 2019 to 44 percent in 2022.
 - Private companies are not obligated to follow any industrial strategy. Under the 2020 *Enterprise Law*, private enterprises have the right to engage in any line of business that is not prohibited by law, decide on business model and area of operation, as well as how to mobilize, distribute, and use capital.
- Factor Six:

- Vietnam committed and carried out measures to strengthen the rule of law and combat corruption to a level that is consistent with or exceeds other ME countries.
- Vietnam prohibits the use of forced labor and child labor. The *Vietnam Constitution (2013)*, *Labor Code (2019)*, and *Criminal Code (2015)* classify the use of child labor as a prosecutable offense. *Decision No. 782/QD-TTg* launched a three-pronged program in partnership with the ILO and United Nations Children's Fund to prevent and reduce child labor. According to the ILO, the children engaged in labor in Vietnam decreased from 15.5 percent in 2012 to 9.1 percent in 2018.
- Vietnam entered international commitments to protect against forced labor by ratifying ILO Convention 105 on Abolition of Forced Labor.
- Vietnam and the United States entered into a CMAA to exchange information and support investigations for security and lawful trade, including preventing shipments of goods in violation of the Uyghur Forced Labor Prevention Act.
- *Decision No. 824/QD-TTg* and *Resolution No. 119/NQ-CP* prohibit country of origin fraud and illegal transshipment.
- Since 2007, Vietnam has undertaken measures to strengthen its laws and legal enforcement capabilities. Vietnam has reinforced protections for business operations for citizens and non-citizens, addressed cybersecurity, securities, investment, and environmental issues.
- Since 2022, Vietnam has cracked down on corruption throughout the government, resulting in 444 corruption cases at the provincial level and 530 cases at the local level. Vietnam has created steering committees for anti-corruption efforts in all provinces and cities. Investor confidence has not declined due to reports of corruption, and instead FDI reached its peak in 2022 at \$17.9 billion USD.
- Vietnam has pursued steps to improve its environmental performance and reduce its environmental impact. At the United Nations COP26, Vietnam pledged to reduce its emissions to net zero by 2050.
- *Decree 06/2022/NĐ-CP* mandates facilities subject to *Decision 01/2022/QD-TTg* measure greenhouse gas emissions and implement plans to mitigate greenhouse gas emissions according to quotas set by the Ministry of Natural Resources and Environment for 2026 to 2030. This decree includes measures on sustainable forest management. Vietnam's carbon emissions decreased for the first time in three consecutive years from 2019 to 2022. The Prime Minister approved Vietnam's Eight National Power Development Plan (PDP VIII) to shift towards renewable energy. Vietnam is part of the Just Energy Transition Partnership.
- Vietnam has taken steps to improve the protection and enforcement of IP rights.
- Allegations that the GOVN is sponsoring cyberattacks for corporate espionage purposes have not been validated by the U.S.
- The amended *Intellectual Property Code* makes illegal uploading and streaming a violation of IP rights. Vietnam amended its *Intellectual Property Law* and acceded to the World Intellectual Property Organization's Performances and

Phonograms Treaty and the Copyright Treaty, as well as partnered with USTR to monitor ongoing implementation of the 2015 *Penal Code* for IP law enforcement. The IP Office of Vietnam has provided pertinent information on Vietnam's IP protection and enforcement to assist with USTR's monitoring efforts for the Special 301 Report.

- The U.S. Department of State noted that the IP Law amendments in 2022 brought Vietnam's IP regulations in line with international agreement commitments.
- Vietnam has made IPR protection and enforcement a top priority and has created National Steering Committee No. 389 to enforce IPR.

3.4. Aluminum Association

The Aluminum Association opposes changes to Vietnam's NME status.

- Factor One:
 - Vietnam's claims that its currency is convertible are false. The SBV does not operate independently of the CPV and intervenes in the currency market at the CPV's direction without publishing data on these interventions.
 - Vietnam was placed on Treasury's currency manipulation watch list in 2023.
- Factor Two:
 - “Workers organizations” are not unions and the VGCL dominates the workforce and unions. Workers face intimidation for striking and strikes remain unlawful.
 - Reports claim that close to two million children are exploited for labor.
- Factor Three:
 - FDI restrictions undermine the business environment. Businesses face *de facto* state interference and corruption problems.
 - FDI is low compared to neighboring countries. The GOVN strictly limits FDI and funnels FDI into select parts of the economy.
- Factor Four:
 - Government data on SOE equitizations are misleading as the state maintains control over many sectors. The GOVN has failed to meet its equitization targets.
 - The GOVN owns all land and changes to land-use and ownership laws are superficial. The government compounds state support for SOEs by conducting land seizures, restricting private credit access, and ignoring corruption.
- Factor Five:
 - Vietnam has expanded its price controls since 2002.
 - The GOV claims on its anti-monopoly laws do not reflect the alws' blanket exceptions that allow for monopolies which serve state interest.
 - Vietnam's economy is distorted by preferential lending to SOEs, undermining a free market and private entrepreneurialism.
- Factor Six:
 - Vietnam's one-party government seeks to maintain control over the economy.
 - Vietnam ignores environmental standards to reduce costs and undercut foreign competitors.

3.5. *McWane, Inc.*

McWane, Inc. is a leading manufacturer of iron and steel products for the waterworks industry that employs thousands of American workers. McWane opposes changing Vietnam's NME status and concurs with and incorporates by reference the Domestic Industry comments.

- Factor One:
 - Vietnam's currency is not convertible. The SBV does not operate independently and is an arm of the CPV. The SBV is a majority owner of many enterprises.
- Factor Two:
 - The government continues to prevent the development of a free labor market.
 - Vietnam's workforce and unions are dominated by the state-established VGCL.
 - Close to two million children are exploited for labor and many adults are victims of forced labor.
- Factor Three:
 - The GOVN limits FDI. Foreign entities that conduct business in Vietnam suffer from GOVN interference and corruption that harms the business environment.
 - The GOVN funnels FDI into only select parts of its export economy.
 - Investments intend to take advantage of low-cost labor and materials, including inputs from the PRC. The PRC is one of the largest sources of FDI and is a key supplier of the inputs that power Vietnam's export-dependent economy.
- Factor Four:
 - The GOVN owns all land and has only made superficial changes to land-use and ownership laws. Monopolies in Vietnam serve state interests.
 - SOEs control key sectors of the Vietnamese economy. The GOVN has failed to meet its equitization targets and SOEs that have become public-private joint ventures remain under government control via state majority ownership.
- Factor Five:
 - Vietnam has expanded the scope of its price controls regime since 2002.
- Factor Six:
 - Shell companies are used by PRC manufacturers to circumvent U.S. trade laws.
 - Vietnam ignores its poor human rights record, rampant corruption, harmful environmental policies, and close relations with Russia and the PRC to reduce costs and undercut foreign competitors.

3.6. *Vietnam Chamber of Commerce and Industry (VCCI)*

VCCI is committed to promoting business rights and benefits of more than 10,000 registered members and the business community in Vietnam.

- Factor One:
 - An IMF report finds that the SBV moved away from spot FX interventions towards six month forward purchase contracts, allowing for greater exchange rate flexibility. Treasury excluded Vietnam from its list of currency manipulators.
- Factor Two:

- Vietnam's situation will change when it fulfills commitments to the CPTPP and the EU Free Trade Agreement (EVFTA) wages are negotiated in Vietnam.
- Factor Three:
 - FDI contributes to 20 percent of Vietnam's GDP. FDI accounts for 69 percent of import-export turnover and is important to Vietnam's economic development.
- Factor Four:
 - SOEs make up 0.6 percent of the economy compared to that in the 1990s. The GOVN implements efforts to minimize SOEs.

3.7. Alex Blay

Alex Blay opposes changing Vietnam's NME status. Vietnam failed to ratify ILO convention 87 of the freedom of the right to organize. Vietnam's union is predominately controlled by the GOVN.

3.8. Harris Kent

Harris Kent is a steelworker. He opposes recognizing Vietnam as an ME country.

3.9. Hoa Sen Group (HSG)

HSG argues that Vietnam has met the statutory factors necessary to be graduated to an ME country.

- Factor One:
 - HSG has no issues converting VND into USD or other currencies. Most of HSG's import and export activities are conducted in USD.
 - HSG is required by commercial banks to convert VND to foreign currencies to demonstrate the real purpose of transactions in order to prevent illegal transactions.
- Factor Two:
 - Employees freely negotiate with management about wages and other benefits.
 - HSG's employees founded a trade union which can consult with management about improving employee benefits. HSG has not experienced strikes.
- Factor Three:
 - Vietnam maintains a list of prohibited and conditional sectors, including sectors not related to national security and defense.
 - Foreign and domestic investment projects are treated equally. Domestic investment projects require approval from the national assembly, Prime Minister and provincial committees.
 - Vietnam's FDI and GDP ratios are better than those of most ME countries.
- Factor Four:
 - SOEs accounted for 20.5 to 21.3 percent of GDP from 2018-2022.
 - Foreign and private enterprises account for the majority of total steel output.
 - The GOVN does not control land transfer or lease prices. HSG leases land in industrial parks and prices are negotiated without government interference.

- Factor Five:
 - Vietnamese law maintains a list of limited essential goods and services subject to price stabilization, which does not include steel, cement, or concrete. The GOVN does not influence steel prices of enterprises including SOEs.
- Factor Six:
 - Vietnam is a partner of IPEF.
 - Granting Vietnam ME status will not cause injurious dumping practices since Commerce can deny the cost of production procured by Vietnamese producers.

3.10. Goldsun Packaging and Printing JSC (Goldsun)

Goldsun supports granting Vietnam ME status and argues that based on their experience, Vietnam meets all the criteria to become an ME country.

- Factor One:
 - Goldsun has faced no issues with foreign exchange restrictions for trade. Procedural requirements for foreign currency exchange ensure legal transactions.
- Factor Two:
 - Wage rates are based on free bargaining and determined by employees' productivity. Goldsun regularly negotiates with its employees on wage increases and work condition improvements.
- Factor Three:
 - Goldsun's business environment has improved since the GOVN eliminated unnecessary procedures and business inspections.
- Factor Four:
 - Goldsun is independent from the GOVN.
- Factor Six:
 - Granting Vietnam ME status will not cause U.S. economic and national security issues. American businesses can still request an AD investigation.

3.11. Hoa Phat Group Joint Stock Company & Affiliates (HPG)

The rebuttal comments of HPG support granting Vietnam ME status.

- Factor One:
 - Vietnam controls its foreign exchange and manages its monetary policy to control the inflation rate. The foreign exchange rate determined by the SBV is not intended to limit currency conversion Vietnam.
- Factor Two:
 - The GOVN does not influence the salaries of HPG employees or other privately owned enterprises. Vietnam agreed to over 30 conventions with the ILO from 2021-2030. Provisions of these conventions are legislated into the labor law of Vietnam.
- Factor Three:

- Foreign investors are not allowed to freely access business activities that impact sovereignty, culture, national defense, and security. This includes blasting services, journalism, judicial services, military equipment production, etc. Foreign investors operate in 19 out of 21 industries in the economy. Foreign investors' capital contributions increased 32.1 percent to over USD \$36.6 billion in 2023.
- Factor Four:
 - SOEs' GDP contribution decreased from 21.34 to 20.54 percent (2018-2022).
- Factor Five:
 - The SBV does not intervene in the interest rates of loans commercial banks provide their customers. It only regulates the interest rate between the SBV and credit institutions. The SBV has cut interest rates four times from March to June 2023.
 - The SBV encourages credit institutions to cut operational costs to reduce the lending interest rates to support recovery from COVID-19.
 - State-owned banks have no authority to provide loans to SOEs with different terms and conditions of those applied to privately owned enterprises.

3.12. U.S.-ASEAN Business Council (U.S.-ABC)

U.S.-ABC supports granting Vietnam ME status.

- Factor One:
 - The VND is liberalized, and Vietnam no longer faces a USD shortage. None of U.S.-ABC's members have had issues with currency conversion.
- Factor Two:
 - The *Labor Code* allows for free bargaining between labor and management.
- Factor Three:
 - The *Law on Investment* expanded foreign investment opportunities to participate in Vietnam's economy and switched from a "positive list regime" to a "negative list regime."
 - Investments decreased from 386 to 272. Foreign investment is prohibited in 25 industries deemed politically sensitive and restricted in 59 industries.
- Factor Four:
 - SOEs in Vietnam have decreased, accounting for 21.18 percent of the economy.
- Factor Five:
 - Parties are free to negotiate prices of transferring, leasing, and subleasing land-use rights without government interference.
 - Nine essential goods (gasoline and diesel oil, LPG, baby formula, rice, animal feed and vaccines, crop protection agents and essential drugs for humans) are subjected to price stabilization under the 2023 *Law on Price*.
 - Authorities enact temporary price stabilization measures when abrupt price hikes occur due to emergencies.

3.13. Vietnam Leather, Footwear, and Handbag Association (LEFASO)

LEFASO supports granting Vietnam ME status.

- Factor One:
 - LEFASO handles most of its currency in USD. Members are freely able to convert VND to USD and other foreign currencies.
 - LEFASO can borrow foreign currencies and conduct swap transactions with commercial banks.
- Factor Two:
 - Free wage bargaining occurs between employees and the employer at LEFASO. Wages paid to employees were also higher than Vietnam's minimum wage.
 - Some grassroot unions request wage increases and non-cash employee benefits.
- Factor Three:
 - Vietnam allows foreign investment and businesses access to government channels to propose changes to reduce administrative obstacles.
- Factor Four:
 - Vietnam's policies treat private enterprises and SOEs equally.
 - The land market is established on legal recognition of the disposition of land-use rights which includes transferring, leasing, subleasing, capital contribution, gift and inheritance. Leased land prices are based on negotiations with developers of infrastructure. The GOVN does not regulate these prices.
- Factor Five:
 - The GOVN does not have policies that control prices and outputs of enterprises. These decisions are determined independently. In the footwear and handbag industry, there are no specific government plans that need to be followed.
- Factor Six:
 - LEFASO does not engage their employees in informal, forced, or child labor.

3.14. Vietnam Association of Aluminum Profile (VAA)

The rebuttal comments by the VAA support granting Vietnam ME status.

- Factor One:
 - VAA reports no obstacles converting VND to USD. The VAA receives foreign currencies from sales in foreign markets.
- Factor Two:
 - In the aluminum industry, wage rates are set between labor and management.
- Factor Three:
 - 35 percent of the 90 enterprises that operate in the Aluminum industry in Vietnam have foreign investments. Foreign enterprises account for over 50 percent of total Aluminum output in Vietnam.
- Factor Four:
 - In 2022, SOEs accounted for 25.54 percent of total GDP. The aluminum industry is mostly comprised of private and foreign enterprises.
- Factor Five:

- The GOVN does not recognize private land ownership but offers real estate for industrial and residential purposes. Parties can freely negotiate land transfer, leasing and subleasing.
- Factor Six:
 - Producers have autonomy to decide on raw material purchases, production output and selling prices. Raw materials and finished products have no price controls.

3.15. *Ban Me Thout Honeybee Joint Stock Company (BMT)*

BMT supports granting Vietnam ME status.

- Factor One:
 - BMT can freely buy, sell, and borrow foreign currencies from any commercial bank. Additionally, BMT only needs to provide real purposes of transactions To demonstrate the real purposes of transactions without facing requirements as obstacles for completing transactions.
- Factor Two:
 - Wages are based on negotiations and employees' productivity.
- Factor Five:
 - In the industry, businesses have autonomy to make their own business decisions.

3.16. *Vietnam Beekeepers Association (VBA)*

The VBA represents honey export companies and professional beekeepers in Vietnam. VBA believes Commerce should grant Vietnam ME status.

- Factor One:
 - Currency exchange has procedural requirements to prevent tax evasion and illegal financial activity including providing real purpose , contract documents, and relevant sales documents. These are not to limit foreign currency outflows but help combat illegal financial activities and tax evasion. VBA has not faced foreign exchange restrictions for trade purposes.
- Factor Two:
 - Wages are freely negotiated between employers and employees.
 - Article 170 of the 2019 *Labor Code* stipulates that employees have the right to establish or participate in trade unions. Article 2.1c of the *Trade Union Charter* ensures union members have the right to self-nominate or elect a management board of a grassroots union, while Article 8.3 of the *Vietnam Trade Union Charter* states that the congress of a grassroots union may include all union members. Article 11 of the *Vietnam Trade Union Charter* regulates the executive committee of the trade union to represent the common union members at a level that shall be elected by the congress of that trade union.
 - There is no regulatory document stating the GOVN prohibits strikes. Workers are permitted to strike to defend their legitimate rights under Article 25 of the *Vietnam Constitution (2013)* and Article 5.1.e of the *Labor Code*.
- Factor Four:

- Vietnam's economy is dominated by FDI and non-state enterprises. Non-state enterprises make up the majority of businesses in Vietnam, including by number of enterprises, assets, net business revenue, labor and profit. SOEs have gradually reduced their share of the country's total GDP.
- Factor Five:
 - Since the *Law on Prices No. 11/2012/QH13* was enacted, Vietnam has deregulated its pricing policies, including removing eight commodities from the list of commodities that have price controls. The list of commodities with price controls under Article 15.2 of the 2012 *Law on Price* includes essential commodities such as specific types of medicine and infant formula. Raw honey and raw honey products are not included on the list.
- Factor Six:
 - The U.S. and Vietnam have strengthened their relationship under the Comprehensive Strategic Partnership. Graduating Vietnam to ME status would signal normalized and deepening ties.
 - Granting Vietnam ME status would not result in dumping practices. If Commerce finds production costs not appropriate for calculation of normal value due to the particular market situation, then it is not bound to use such production costs.

3.17. Vietnam Cotton and Spinning Association (VCOSA)

VCOSA claims there is strong evidence of checks and balances that help prevent forced and child labor within the textile industry.

- Factor One:
 - VCOSA conducts all transactions in USD. Vietnam imports one billion USD of cotton from the United States.
- Factor Two:
 - There are free negotiations of wages and work conditions according to the 2019 *Labor Code*. Employees negotiate wages with company management.
 - Grassroots trade union also exists in a majority of VCOSA member companies.
- Factor Three:
 - Foreign investment accounts for 30 to 35 percent of the 160 enterprises and 65 to 70 percent of the total output of the industry.
- Factor Four:
 - The GOVN does not control land transfer or lease prices between parties. Prices in the secondary market for land are negotiated freely.
 - The price list determined by the GOVN is only applicable to certain cases, including leasing land from the state, allocating land by the state, and calculating land-use taxes.
- Factor Five:
 - VCOSA has not faced any obstacles in accessing loans, markets, and land.

3.18. *Vietnam Timber and Forest Products Association (VIFOREST):*

VIFOREST's rebuttal comments are in favor of granting Vietnam ME status.

- Factor One:
 - The VND is easily convertible. Members can hold foreign currency in foreign bank accounts with no currency conversion requirements. Under the purpose of business operations, members can get loans and can easily utilize foreign exchange derivatives. Foreign companies do not have difficulty converting capital or repatriating profits.
 - There is high demand for converting currency as wood imports from the U.S. to Vietnam account for \$776 million (2021).
- Factor Two:
 - Employees can freely negotiate wages and benefits with no restrictions from the GOVN. The average wages within the industry are above the minimum wage.
 - Employees establish independent grassroot trade unions to protect workers' rights to negotiations, remuneration and benefits. The Binh Duong Furniture Association and 16 wood enterprises passed a collective labor agreement, providing employees with benefits and promoting trade union negotiations.
- Factor Three:
 - The U.S. Department of State's 2023 Investment Climate Statement recognized GOVN policies as conducive to FDI. The OECD ranks Vietnam's FDI regulatory restrictiveness higher than many ME countries, including Australia, Korea, Argentina, etc.
 - In the wood industry, there are no restrictions on foreign investment.
- Factor Four:
 - Vietnam has eased land prices with legal recognition of the rights to land use (*i.e.* transferring, leasing, subleasing, capital contribution, gift, and inheritance). Companies are entitled to lease land for business operations and receive certificates for land-use rights from the GOVN. Companies can freely negotiate land prices other than if the land is allocated or leased by the GOVN. Prices for state allocated or leased land are determined by the provincial governments' list of land prices.
 - The 2024 *Land Law* includes efforts to reform and liberalize the primary land market. Article 158.1 and Article 159 state that land prices should be based on market principles and price lists of land should be updated annually rather than every five years, as provided for in the 2013 *Land Law*.
- Factor Five:
 - The GOVN has eased price controls. Under Article 15.2 of the 2012 *Law on Price*, cement and steel products are no longer subjected to price stabilization.
 - Enterprises determine the prices of goods and services subject to price stabilization. The GOVN uses price stabilization measures only in cases of "irregular changes in prices" and price fluctuations that have a negative impact on socio-economic stability. These stabilization measures are rarely used.

- Factor Six:
 - VIFOREST members recognize the importance of complying with U.S. regulations, including country of origin requirements, not using forced and child labor, and environmental protections. U.S. customers already inspect wood products to ensure they comply with AD and CVD standards.

3.19. Vietnam Packaging Association (VINPAS)

The VINPAS asserts that Vietnam's economy meets the necessary criteria to be granted ME status and provides updated factual evidence to further support its argument.

- Factor One:
 - VINPAS members have never reported challenges in remitting and receiving payments in other currencies, including in USD. VINPAS members have no issues accessing foreign currency at commercial banks.
- Factor Two:
 - VINPAS argues that Vietnam does not impose wage ceilings and wages are determined through employee-employer negotiations.
 - Most enterprises have internal trade unions that operate to protect workers' rights. Strikes happen occasionally, especially in the textile, garments, and taxi sectors.
- Factor Three:
 - VINPAS asserts that Vietnam does not restrict investment and Department of State's 2023 Investment Climate Statement offers evidence that Vietnam's policies are conducive to FDI. Many global packaging companies operate in Vietnam.
- Factor Four:
 - SOEs are only in some essential industries. Based on the 2022 Statistic Yearbook, SOEs account for 20.54 percent of the total GDP. Private and foreign enterprises make up most of the packaging industry.
 - Land prices are determined by market demand. Land lending and leasing prices depend on mutual agreements. Companies in VINPAS have been able to build factories and offices on their own land or lease land in industrial zones.
- Factor Five:
 - Companies have full autonomy over material purchases, production output, and prices. Neither raw materials or finalized products face price restrictions.
- Factor Six:
 - Granting Vietnam ME status would not harm U.S. economic and national security interests. Vietnam has an important role in the economic partnerships.

3.20. Vietnam Printing Association (VPA)

Members of the VPA operate in the Vietnamese printing industry. The VPA states that Vietnam's NME status should be changed to represent a commitment of cooperation between the U.S. and Vietnam. It also argues that Vietnam adheres to the six statutory factors.

- Factor One:

- The VND has no conversion restrictions in international trade transactions. VPA members can easily conduct transactions in USD.
- Factor Two:
 - Labor unions and wage negotiations are legally protected. Labor strikes have occurred in several industries, and the GOVN does not prohibit labor strikes.
- Factor Three:
 - Department of State indicates that the Vietnamese market is conducive to FDI. The printing industry does not have investment restrictions.
- Factor Four:
 - The private sector dominates the printing industry and the presence of SOEs can be attributed to natural state monopolies. The 2022 Statistical Yearbook reports that SOE's account for 20.54 percent of total GDP.
 - The secondary real estate market is not controlled by the GOVN. Private parties independently negotiate the transfer and lease of land.
- Factor Five:
 - Vietnam has mostly liberalized the prices of goods and services. Constituents have full autonomy over sourcing materials, production output, and prices. Price controls do not restrict raw materials or finished printing products.

3.21. Vietnam Steel Association (VSA)

VSA is in favor of granting Vietnam ME status. VSA's rebuttal comment included updated information to provide evidence since its initial comments.

- Factor One:
 - VSA members can borrow USD and exchange currency at commercial banks and have benefitted from the availability of international payment methods, limited restrictions on foreign exchange, and have never faced intermittence due to liquidity of foreign currencies. Foreign companies have reported no challenges converting currency, repatriating earnings, and investing capital.
- Factor Two:
 - Wages are determined by negotiations and based on employees' productivity.
 - Grassroot trade unions are active and independent. The *Vietnam Constitution (2013)* and *Labor Law (2019)* grant employees the right to strike, and strikes do occur when employers fail to provide adequate benefits.
- Factor Three:
 - FDI is welcomed in Vietnam and foreign enterprises account for most of the market share in the production of certain steel products. VSA opposes using ratios of FDI per GDP and FDI per capita to measure FDI openness. In cases that Department of commerce uses such ratios to assess openness degree to FDI, Vietnam ranks higher than many ME countries such as the U.S., Australia, Thailand, and India. In terms of certain steel products, such as steel billet, hot-rolled coin and cold-rolled coil, foreign-invested enterprises already account for significant market share, at 42.2%, 56.8% and 40.4% respectively.

- Foreign investors can invest in publicly listed companies, including the HPG, HSG, and Nam Kim Steel Joint Stock Companies.
- Factor Four:
 - Vietnam's economy is dominated by foreign and private enterprises. Based on the 2022 Statistical Yearbook, foreign and private enterprises accounted for 70.9 percent of Vietnam's economy. Private and foreign companies make up more than 90 percent of total steel production.
 - The GOVN determines land prices when the state allocates or leases land and for land-use tax calculations. The GOVN has no control over the land prices in the secondary market. VSA land leasing occurs in the industrial parks where prices are freely negotiated between parties.
 - The *Land Law* (2024) intends for the primary market to be a market-based system.
- Factor Five:
 - The *Law on Prices* deregulated prices on steel and cement. Even in areas where the GOVN stabilizes prices, they are determined by market supply and demand.
- Factor Six
 - Vietnam's ME status would not prevent AD investigations. Rather, it would enable use of domestic production costs to examine dumping behavior.

3.22. American Chamber of Commerce (AmCham)

The rebuttal comment by AmCham asserts its position in support of granting Vietnam ME country status.

- U.S. companies and investors operate in many sectors in the economy. AmCham works with companies to address obstacles, including corruption, legal weaknesses, slow government decision making, etc. AmCham expects positive market outcomes, especially as U.S. companies push for a productive, safe, and clean business environment.
- Trade between the U.S. and Vietnam has created a positive investment relationship which enhances regional stability, creates jobs, and generates tax revenues. Vietnam has taken steps to reform its economy and is very different from the other eleven countries with NME status.

3.23. Vietnam Rubber Association (VRA)

The VRA supports granting Vietnam ME status and argues that Vietnam adheres to the six statutory factors.

- Factor One:
 - VRA members have not experienced any issues with converting VND or borrowing foreign currencies. Vietnam's legislation allows enterprises to keep foreign currencies in bank accounts.
- Factor Two:
 - Vietnam allows independent "grassroots" unions, and protects rights to free wage bargaining. Labor unions have secured higher wages and employee benefits.

- Factor Six:
 - Members introduced measures to combat child labor, forced labor, and informal labor. The industry strives to implement environmental protection efforts.

3.24. Southern Shrimp Alliance (SSA)

SSA argues that Vietnam should retain its NME status as it does not adhere to Commerce's statutory factors. SSA draws on AD investigations from 2003 to 2019 in which Vietnamese seafood exporters engaged in market-distorting dumping practices that harmed American workers.

- Factor One:
 - Although the VND is *effectively* convertible, it is not *fully* convertible.
 - All monetary transactions must occur in VND with few exceptions and Vietnam lacks an offshore currency market.
- Factor Two:
 - Despite claims of labor rights upheld since 2012, evidence shows that the GOVN intervenes in Vietnam's labor market beyond regulating the minimum wage.
 - Independent trade unions are not legalized.
- Factor Three:
 - There are 84 business categories that are prohibited or restricted for foreign investment. With FDI restrictions – including sectors without natural monopolies.
 - FDI inflows are not a measure of open investment policies. Increases in FDI are due to a surge of PRC investments in Southeast Asia.
- Factor Four:
 - Equal rights to land access and land use, as permitted in the secondary real estate market, is not the same as the right to own private property. The GOVN acknowledges this and agrees that all land belongs to the state.
- Factor Five:
 - Despite price liberalization and strong performance from the private sector, the banking sector operates as an arm of the GOVN.

3.25. Alliance of American Manufacturing (AAM)

The AAM opposes granting Vietnam ME status. The economy remains centrally controlled and progress since 2002 has not yet met ME standards as discrepancy exists between the *de facto* and *de jure* aspects of the economy.

- Factor One:
 - The VND cannot be easily converted. The SBV intervenes in the currency market and acts in favor of GOVN initiatives. Vietnam's focus on exports provides an incentive for currency manipulation.
 - The Treasury deemed Vietnam a currency manipulator over the last decade and Vietnam was added to Treasury's currency manipulation watchlist in 2023. Vietnam's adoption of Article VII of the Article of Agreement of the IMF should not be interpreted as it is abiding by ME principles.

- Factor Two:
 - Claims of Vietnam having a free labor market are not based on factual evidence. Workers face intimidation from employers and many strikes are unlawful. The workforce is dominated by the VGCL and “worker organizations” cannot be defined as labor unions. Labor violations include forced labor and almost two million involved in child labor.
- Factor Three:
 - The GOVN strictly limits FDI and restricts FDI to export-oriented markets. State control causes low FDI inflow. The business community has been negatively impacted by *de facto* GOVN interference and corruption.
 - FDI is used to leverage Vietnam's NME inputs of low labor costs and materials.
- Factor Four:
 - SOEs dominate key sectors and “equitization” data is misleading. Despite claims of structured public-private joint ventures, the GOVN remains in control through preserving state majority ownership and grants SOEs preferential treatment.
 - The GOVN owns all land. New laws preserve state control over land ownership and determine land prices. The GOVN exercises control through land seizures which negatively impact businesses and restrict private credit access.
- Factor Five:
 - Vietnam has yet to liberalize its price control system. Vietnam has extended the scope of price controls since 2002 and controls exceed that of other ME countries.
- Factor Six:
 - Vietnam has a poor human rights record, corruption, and weak environmental policies. Vietnam's ME status would harm U.S. industries and workers.
Premature upgrade of Vietnam's status will reduce reform incentives.

3.26. *United Steelworkers (USW)*

The USW opposes granting Vietnam ME status. Vietnam's one-party, communist government exercises total control over the economy and does not adhere to market principles. GOVN dominance creates an unfair playing field for U.S. industries and workers. Vietnam's ME status would remove legal remedies for parties faced with Vietnam's unfair export advantage.

3.27. *Northwest Horticultural Council (NHC)*

The NHC supports granting Vietnam ME status. Vietnam has become an important market for apple and cherry growers in the Pacific Northwest. A strong trade relationship between Vietnam and the U.S. is important to continued export success.

3.28. *Vietnam Association of Seafood Exporters and Producers (VASEP)*

The VASEP submits rebuttal comments in support of granting Vietnam ME country status.

- Factor Two:
 - The VGCL takes pro-labor positions and is active in assisting workers in dialogues and collective bargaining. The VGCL petitions for national measures

- and labor policies. Labor unions and GOVN relations are irrelevant in wage determination.
- Strikes are prevalent and solved through worker-management negotiations, demonstrating that the right to strike is respected and workers have freedom to negotiate wages.
 - Factor Three:
 - Using the OECD's Service Trade Restrictiveness Index (STRI) Index to compare Vietnam to top economies is not relevant and Commerce has granted ME status to countries not included in the analysis.
 - Increased FDI from the PRC reflects the GOVN's reduced control over the economy.
 - Entrepreneurial activity is restricted to the same extent as other ME countries. Based on the World Bank's Ease of Doing Business Index, Vietnam's protection of minority investors ranks higher than the East Asia and Pacific regional average.
 - Factor Four:
 - SOEs have declined since 2002. Slow equitization results from external and unintentional factors. Partial privatization can increase labor and output productivity. SOE minority equitization reveals SOEs' market-oriented capabilities.
 - Criticism of land ownership applies to other ME countries.
 - Factor Five:
 - The 2023 *Law on Price*, which replaced *Circular 122* and the 2012 *Law on Price*, and became effective on July 1, 2024, limits price controls on goods and services.
 - Factor Six:
 - Vietnam ranks 77 out of 180 countries in the latest Corruption Perceptions Index, which is higher than many ME countries.

3.29. *Nucor Corporation, Commercial Metals Company, Cleveland-Cliffs Inc., and Steel Dynamics, Inc. (Domestic Steel Producers (DSP))*

The DSP opposes granting Vietnam ME status due to lack of transparency in the steel industry.

- Factor One:
 - The VND is not easily convertible. Vietnam is a currency manipulator and was added to Treasury's currency manipulator Monitoring List in November 2023. Cross-border currency exchanges face regulatory requirements and restrictions.
 - The USTR found that Vietnam manages its exchange rate based on certain economic goals and blamed foreign currency market interventions for "persistent undervaluation" and "substantial current account and trade imbalances."
- Factor Two:

The GOVN restricts independent labor unions and strips workers of rights to organize and engage in free bargaining. The only union is the state-backed VGCL.

- Citizens seeking to establish a union outside of GOVN approval are often harassed by authorities.
- The Vietnamese steel industry does not offer employees basic rights or adequate standards of living. The GOVN fails to implement the 2019 *Labor Code*.
- Factor Three:
 - The *Law on Investment* regulates and equitizes foreign and domestic investors.
 - Decree 31 prohibits FDI in 25 industries and partially prohibits FDI from 59 sectors. Foreign investors, who want to participate in the restricted sectors, must form a joint venture with a Vietnamese entity.
 - Investments in steel come in large part from the PRC.
- Factor Four:
 - SOEs account for one-third of the economy and receive preferential access to land, capital, guarantees and loans. The GOVN controls major key industries. The Vietnamese steel industry is highly export oriented with support from subsidies, state ownership, price controls, etc.
 - All land is owned by the government.
- Factor Five:
 - Four state-owned banks account for nearly 50 percent of the mobilization and credit market share. Commercial lending banks use government-established interest rates based on instructions from the SBV.
- Factor Six:
 - Vietnam will exploit its ME treatment to increase exports to the United States. PRC companies will be able to reroute shipments through Vietnam.

4. Comments on Directive 24:

4.1 Wiley's Allegations:

- Wiley stated that its submissions of *Directive No. 24-CT/TW (Directive 24)* were accurate, but that the document remained confidential. Additionally, the reported information contradicts its approach to market reforms and international obligations.
- The directive was issued in July 2023, before the U.S. upgraded relations with Vietnam and the GOVN requested the changed circumstances review (CCR).
- *Directive 24* was issued in hopes of Vietnam gaining more global integration which allowed the CPV to benefit from Vietnam's international participation while insulating the CPV from making changes to its commitments.
- *Directive 24* affirms that Vietnam does not intend to comply with its labor or human right commitments.
- Despite the GOVN's claims of allowing for independent labor unions, *Directive 24* references the restrictions in establishing independent labor organizations as well as organizations of strikes.
- *Directive 24* also confirms the restrictions of labor organizations.

- Wiley concurs with Kilo Alpha Strategies and believes *Directive 24* provides sufficient evidence that Vietnam is not ready to be granted ME status.
- Project 88 provided translated versions of the leaked directive alongside 45 state media sources referring to it by name, 23 quoting it, and 18 official CPV GOVN documents providing the name and date of the directive.
- The CPV repeatedly instructs its members to implement and propagate the directive.
- Project 88's report was reported by many media outlets such as *NPR*, *BBC*, and *The Washington Post*. No source suggested the text was manipulated or fabricated.
- The directive is consistent with the CPV control in Vietnam, which has tightened its control in the economic sector.
- Wiley gives an exhibit showcasing the CPV's crackdown on freedom of expression under the guise of national security as well as a number of other exhibits pertaining to CPV's directives and security control.

4.2: Kelly Drye

- Vietnam does not allow for free bargaining or independent unions. Project 88 reporting on Directive 24 references the prohibition of independent labor unions in Vietnam and the requirement that all labor unions must be affiliated with the GOVN and CPV. The International Trade Union Confederation also identified this issue.
- In a Freedom House 2023 report, Vietnam is rated a 0 on a 0-4 scale regarding freedom for trade unions and labor organizations.
- There is also a recent HRW report that found Vietnam prohibitions on labor unions still exist and workers who try to create grassroot movements are often faced with discrimination.
- The GOVN admitted that *Resolution No. 02* on June 12, 2021 supports Project 88's findings which include: strengthening the CPV's leadership over unions, ensuring parties absolute leadership over the union organizations, managing organizations, etc.
- In 2019, Vietnam ratified ILO convention 98 on the right to organize and collective bargaining convention which establishes the international standard on free bargaining between employers and workers. In 2022, the ILO's committee of experts on the application of conventions and recommendations (CEACR) issued a direct request to the GOVN over concerns that Vietnam is not committing under Convention 98.
- In 2000, Vietnam ratified ILO convention 182 on child labor. However, the U.S. Department of Labor's list of goods produced by child labor or forced labor found 15 Vietnamese goods were produced by child labor in 2022.
- There is a disconnect between Vietnam's domestic labor practices and international labor commitments which gives contextual support for the orders of *Directive 24* as reported by Project 88.

4.2: Kilo Alpha Strategies

- Based on the work done by Project 88, Kilo Alpha finds their research credible.

- Based on personal experience reviewing the private and public sectors of Vietnam, Myanmar and other regional governments, the copy of *Directive 24* is true and authentic of the official government directive.
- Project 88's translation process is comparable to the processes used in official U.S. governmental translation processes.
- In Exhibit 2, Kilo Alpha Strategies includes a Directive of the Political Bureau submitted by the GOVN on ensuring national security in the context of comprehensive and deep international integration. Exhibit 2 finds that:
 - Over the years, the CPV and GOVN have been working on national security to “protect the Party, the State, the People and the socialist regime” while promoting national interest, maintaining a stable environment, and enhancing Vietnam’s position in the international arena.
 - Security in the economy is not firm and there is a risk of foreign dependence and manipulation in certain areas. As a result, there has been social unrest.
 - Hostile and reactionary forces have taken advantage of international integration to halt political transformation which in turn impacts policymaking.
 - Civil society alliances and independent trade unions have emerged as a result.
 - Competitiveness in the economy is low due to state management not keeping up with developments and a lack of communication among some committees.
 - The management of foreign aid is not strictly regulated and does not focus on inspecting foreign projects.
 - Through this exhibit, it appears that the GOVN is calling for stronger internal political stability to prevent national security threats which can weaken the regime.

5. Rebuttal Comments Regarding Directive 24:

5.1 Ministry of Industry and Trade (MOIT)

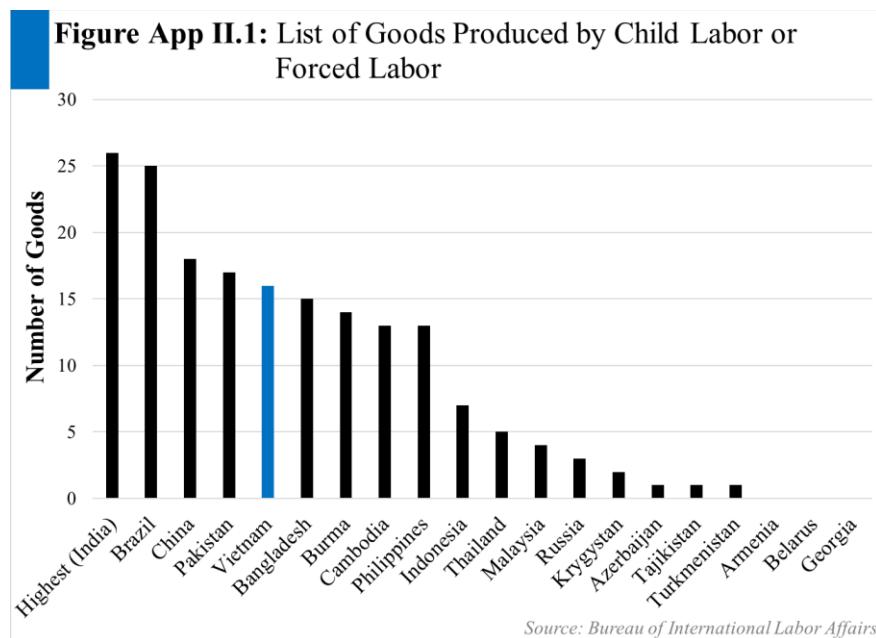
- On March 8, 2024, Wiley submitted a report produced by advocacy group Project 88 which analyzed an unofficial translated version of a directive issued on July 13, 2023, *Directive 24*.
- Commerce requested information on *Directive 24*. However, under Vietnam's 2018 *Law on State Secrets Protection*, this information is currently unavailable.
- The GOVN notes national security reasons, and Article XXI of the General Agreement on Tariffs and Trade (GATT 1994), which allows the GOVN not to disclose any information due to security reasons.
- Under Article 4 of *Law 80/2015/QH13 on the Promulgation of Legislative Documents*, the system's legally binding effects only include the constitution, laws, ordinances, decrees, circulars and other resolutions.
- Project 88 identified a list of noteworthy provisions concerning why Vietnam does not qualify as a market economy. MOIT questions whether these provisions are relevant to Vietnam's ME status.

APPENDIX II: CHILD LABOR AND FORCED LABOR

A. Child Labor in Vietnam

Child labor and forced labor significantly impact wage determination by distorting market forces, creating unfair competition, suppressing wages, and perpetuating economic inequality. These practices allow employers to maintain lower operational costs, undercut the negotiating power of legal workers, and raise the relative operational costs of labor-compliant companies, thereby keeping overall wage levels artificially low. As noted in Factor Two, it is not clear whether child or forced labor are more prevalent in Vietnam than in market economy countries. However, to be comprehensive, these issues are described in this section.

According to a 2019 ILO report, the vast majority (67 percent) of child labor in Vietnam is in the agriculture and fisheries sector, but child labor is also prevalent in manufacturing, services, and construction.¹⁰³¹ According to the Department of Labor Bureau of International Labor Affairs, Vietnam has the third highest number of goods produced using child labor or forced labor (Figure App II.1) among Asian countries, behind only India and China, and the sixth highest number of goods produced using child or forced labor globally. Of the 16 goods produced using child or forced labor in Vietnam, 10 are in the agriculture, forestry, and fishing sector, with the remaining in manufacturing.



¹⁰³¹ International Labor Organization, *Project: Technical Support for Enhancing National Capacity to Prevent and Reduce Child Labour in Viet Nam*, (August 2019), 2.

Industries and Abuse in Child Labor. The U.S. Department of State's Trafficking in Persons Report (TIP) placed Vietnam on the “Tier 2 Watch List” in 2023, the second-worst designation in the TIP report.¹⁰³² Though the TIP report recently removed Vietnam from the watch list based on “significant efforts” being made to eliminate trafficking, the State Department also noted that “a lack of capacity, personnel, and resources” still hinders the GOVN’s consistent and proactive enforcement of effective countermeasures.¹⁰³³ In 2011, Human Rights Watch also reported that individuals are forced into government-operated drug dependency “rehabilitation” centers, where they are required to work under hazardous conditions against their will.¹⁰³⁴ According to the U.S. Department of Labor’s 2022 List of Goods Produced by Child Labor or Forced Labor (TVPRA List), child labor in Vietnam spans a wide range of company types and industries, including SOEs and sectors producing common goods such as bricks, coffee, fish, cashews, footwear, furniture, leather, pepper, rice, rubber, sugarcane, tea, textiles, timber, and tobacco.¹⁰³⁵

However, the Department of Labor also states that Vietnam is among the “countries with relatively large numbers of goods on the TVPRA List {that} may not have the most serious problems with child labor or forced labor.”¹⁰³⁶ The Department of Labor further explains that, “{o}ften, these are countries that have more openly acknowledged the problems, have better research, and have allowed information on these issues to be disseminated.”¹⁰³⁷ Therefore, while child labor is certainly a concern in Vietnam, it remains unclear how the extent of it compares to other countries.

B. Forced Labor Concerns

In 2011, Vietnam was reported to host a number of CPV-controlled institutions labeled as drug “rehabilitation” centers, where an estimated 30,000 individuals, including children, are subjected to forced labor under severe conditions.¹⁰³⁸ Research from the International Labor Rights Forum and Human Rights Watch describes these centers as places where detainees face forced labor in addition to other harsh punishments including food deprivation, solitary confinement, and

¹⁰³² U.S. Department of State, *2023 Trafficking in Persons Report: Vietnam*, (June 2023).

¹⁰³³ U.S. Department of State, *2024 Trafficking in Persons Report: Vietnam*, (June 2024).

¹⁰³⁴ Human Rights Watch, *The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam*, (September 7, 2011).

¹⁰³⁵ U.S. Department of Labor, *2022 List of Goods Produced by Child Labor or Forced Labor*, (September 2022), 28.

¹⁰³⁶ U.S. Department of Labor, *2022 List of Goods Produced by Child Labor or Forced Labor*, (September 2022), 91.

¹⁰³⁷ U.S. Department of Labor, *2022 List of Goods Produced by Child Labor or Forced Labor*, (September 2022), 91.

¹⁰³⁸ International Labor Rights Forum, *Vietnam’s Forced Labor Centers*, (January 2014); and Human Rights Watch, *The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam*, (September 7, 2011).

physical abuse for not meeting production quotas.¹⁰³⁹ The existence and operation of these centers are in direct violation of international labor laws, including the International Labor Organization's Forced Labor Convention and the International Covenant on Civil and Political Rights.¹⁰⁴⁰

Prevalence in the Apparel Industry. Forced labor is common in Vietnam's apparel industry. A 2021 study by the Global Fund to End Modern Slavery surveying workers in Vietnam's apparel industry estimated that about 6 percent of workers in the apparel industry could be considered victims of forced labor.¹⁰⁴¹ Domestic interested parties argue that such practices distort the true cost of production, allowing Vietnamese industries to benefit from lower costs and competitive pricing that prevents markets from operating under fair labor standards.¹⁰⁴²

¹⁰³⁹ International Labor Rights Forum, "Forced Labor in Vietnam," available at <https://laborrights.org/our-work/forced-labor-vietnam>, accessed November 3, 2023; and Human Rights Watch, *The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam*, (September 7, 2011).

¹⁰⁴⁰ ILO, *C029 - Forced Labor Convention*, available at https://normlex.ilo.org/dyn/normlex/en/f?p=1000:12100:0::no::p12100_ilode:c029, accessed June 7, 2024.

¹⁰⁴¹ Global Fund to End Modern Slavery, *Prevalence of Forced Labor Among Apparel Workers in Vietnam*, (September 2021), 6.

¹⁰⁴² Domestic Interested Parties' Comments, 19-22.

APPENDIX III: OWNERSHIP AND CHARTER CAPITAL OF JSBS IN VIETNAM

Name of Bank	State Ownership	Direct or Indirect Ownership	Form of Ownership	Charter Capital (in Billion VND) ¹⁰⁴³
Vietnam Joint Stock Commercial Bank of Industry and Trade (VietinBank)	Yes (Majority)	Direct ownership	GOVN (72.03%), VietinBank (22.04%), Investment Advisor (5.34%), Sovereign Wealth Fund (0.34%), Holding Company (0.13%) ¹⁰⁴⁴	48,057
Joint Stock Commercial Bank for Investment and Development of Vietnam (BIDV)	Yes (Majority)	Direct ownership	GOVN (83.41%), Bank (15.45%), Investment Advisor (1.06%), Sovereign Wealth Fund (0.08%), Individual (0.01%) ¹⁰⁴⁵	50,585
Joint Stock Commercial Bank for Foreign Trade of Vietnam – (VietcomBank)	Yes (Majority)	Direct ownership	GOVN (80.2%), Bank (16.08%), Investment Advisor (3.3%), Sovereign Wealth Fund (0.31%), Trust (0.09%) ¹⁰⁴⁶	47,325
Asia Commercial Joint Stock Bank (ACB)	Unknown ¹⁰⁴⁷		Other (46.66%), Investment Advisor (28.7%), Individual (21.14%), Sovereign Wealth Fund (1.75%), Holding Company (0.85%) ¹⁰⁴⁸	38,841
An Binh Commercial Joint Stock Bank (ABB)	No		Individual (100%) ¹⁰⁴⁹	9,409

¹⁰⁴³ GOVN, SBV “Joint-Stock Commercial Banks (by December 31, 2023),” accessed by February 27, 2024.

¹⁰⁴⁴ Bloomberg, “Vietnam Joint Stock Commercial Bank of Industry and Trade,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁴⁵ Bloomberg, “Joint Stock Commercial Bank for Investment and Development Vietnam,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance. Table accessed May 4, 2022.

¹⁰⁴⁶ Bloomberg, “Joint Stock Commercial Bank for Foreign Trade of Vietnam,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁴⁷ Commerce characterizes the state ownership as “unknown” when shareholdings are listed as “others” due to the lack of publicly available information on ownership.

¹⁰⁴⁸ Bloomberg, “Asia Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁴⁹ Bloomberg, “An Binh Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

Bao Viet Joint Stock Commercial Bank (BaoViet Bank)	Yes (Majority)	Direct ownership	Ministry of Finance/ SEG Bao Viet Holdings, ¹⁰⁵⁰ (77.5%), HSBC (foreign bank) (10.3%), SCIC (Supervisory Board of State Capital Investment Corporation)(3.56%) ¹⁰⁵¹	3,150
Viet Capital Commercial Joint Stock Bank (Viet Capital Bank)	Unknown		Other (100%) ¹⁰⁵²	3,670
BAC A Commercial Joint Stock Bank (Bac A Bank)	Unknown		Individual (96.5%), Other (3.48%) ¹⁰⁵³	8,133
LienViet Commercial Joint Stock Bank (Lienviet Post Bank)	Yes (Majority)		SOE Vietnam Post Corporation (10.2%) (largest shareholder), ¹⁰⁵⁴ Other (89.8%) ¹⁰⁵⁵	17,291
Public Vietnam Bank (PvcomBank)	Yes (Majority)	Indirect ownership	Vietnam Oil and Gas Group (an SEG) (52%), Morgan Stanley (6.7%) ¹⁰⁵⁶	9,000
DONG A Commercial Joint Stock Bank (EAB)	Yes (unknown amount)	Indirect ownership	Ho Chi Minh City Committee of Party Office Phu Nhuan Jewelry Joint Stock Company (PNJ), An Binh Capital Joint Stock Company, Son Tra Dien Ngoc Joint Stock Company, Ky Hoa Trading and Tourism One Member Co., Ltd., Ninh Thinh Company Ltd., Phu Nhuan Housing Construction Trading One Member Co., Ltd. ¹⁰⁵⁷	5,000

¹⁰⁵⁰ Vietstock Finance, “Bao Viet Joint Stock Commercial Bank,” available at <https://finance.vietstock.vn/BVH/hoso-doanh-nghiep.htm?languageid=2>, accessed July 1, 2024; and GOVN, SBV “System of Credit Institutions: Joint-Stock Commercial Banks,” December 31, 2023.

¹⁰⁵¹ Bloomberg, “Bao Viet Joint Stock Commercial Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁵² Bloomberg, “Viet Capital Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁵³ Bloomberg, “BAC A Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁵⁴ Vietstock Finance, “LienViet Post Joint Stock Commercial Bank,” available at <https://finance.vietstock.vn/lpb/profile.htm?languageid=2>, accessed May 4, 2022.

¹⁰⁵⁵ Bloomberg, “LienViet Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁵⁶ Bloomberg, “Vietnam Public Joint Stock Commercial Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁵⁷ DongABank, “DongABank Overview,” available at www.dongabank.com.vn/en/service/10/overview, accessed September 15, 2023.

Southeast Asia Commercial Joint Stock Bank (Seabank)	Unknown		Other (81.94%), Individual (17.56%), Investment Advisor (0.5%) ¹⁰⁵⁸	20,402
The Maritime Commercial Joint Stock Bank (MSB)	Yes (unknown amount)	Direct ownership	Other (45.76%), GOVN (39.81%), Investment Advisor (8.8%), Individual (5.46%), Holding Company (0.17%) ¹⁰⁵⁹	20,000
Kien Long Commercial Joint Stock Bank (KLB)	Unknown		“Other” (93.56%), Individual (6.44%) ¹⁰⁶⁰	3,653
Viet Nam Technological and Commercial Joint Stock Bank (Techcombank)	Unknown		Other (56.98%), Investment Advisor (21.22%), Individual (20.82%), Sovereign Wealth Fund (0.57%), Trust (0.19%) ¹⁰⁶¹	35,172
Nam A Commercial Joint Stock Bank (Nam A Bank)	No		Individual (100%) ¹⁰⁶²	8,464
Orient Commercial Joint Stock Bank (OCB)	Unknown		Individual (49.46%), Bank (38.54%), Other (8.7%), Investment Advisor (3.3%) ¹⁰⁶³	13,698
Military Commercial Joint Stock Bank (MB)	Yes (Majority)	Indirect ownership	SCIC (32.47%), Investment Advisor (20.75%), “Other” (16.36%), Sovereign Wealth Fund (15.72%), Holding Company (12.91%) ¹⁰⁶⁴	45,339

¹⁰⁵⁸ Market Screener, “Southeast Asia Commercial Joint Stock Bank (SSB),” available at www.marketscreener.com/quote/stock/southeast-asia-commercial-120803179/company/, accessed September 15, 2023.

¹⁰⁵⁹ Bloomberg, “The Maritime Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁶⁰ Bloomberg, “Kien Long Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁶¹ Bloomberg, “Viet Nam Technological and Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁶² Bloomberg, “Nam A Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁶³ Bloomberg, “Orient Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁶⁴ Bloomberg, “Military Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

Vietnam International Commercial Joint Stock Bank (VIB)	Unknown		Individual (38.95%), VIB (35.06%), Other (25.22%), Investment Advisor (0.77%) ¹⁰⁶⁵	21,077
National Citizen bank (NCB)	Unknown		Individual (82.68%), Other (17.31%), Investment Advisor (0.01%) ¹⁰⁶⁶	5,602
Sai Gon Commercial Joint Stock Bank (SCB)	Unknown		Information not available	15,231
Saigon Bank for Industry & Trade (SGB)	No		Individual (100%) ¹⁰⁶⁷	3,080
Saigon-Hanoi Commercial Joint Stock Bank (SHB)	Unknown		Holding Company (54.8%), Individual (17.11%), Other (15.81%), “Corporation” (11.24%), Investment Advisor (1.05%) ¹⁰⁶⁸	30,674
Saigon Thuong TinCommercial Joint Stock Bank (Sacombank)	Unknown		Investment Advisor (58.84%), Individual (33.81%), Holding Company (3.75%), Other (3.53%), Venture Capital (0.06%) ¹⁰⁶⁹	18,852
TienPhong Commercial Joint Stock Bank (TPB)	Unknown		Other (44.28%), Individual (29.75%), Investment Advisor (9.95%), Holding Company (8.34%), Brokerage (7.68%) ¹⁰⁷⁰	15,818
Viet A Commercial JointStock Bank (VIETA Bank)	Information not available			5,400
Vietnam Prosperity Commercial Joint Stock Bank (VPBank)	Unknown		Individual (41%), Other (27.54%), Investment Advisor (15.58%),	67,434

¹⁰⁶⁵ Bloomberg, “Vietnam International Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁶⁶ Bloomberg, “National Citizen Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁶⁷ Bloomberg, “Saigon Bank for Industry & Trade,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁶⁸ Bloomberg, “Saigon-Hanoi Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁶⁹ Bloomberg, “Saigon Thuong Tin CommercialJoint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁷⁰ Bloomberg, “TienPhong Commercial Joint Stock Bank,” *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

			Hedge Fund Manager (11.53%), Venture Capital (1.92%) ¹⁰⁷¹	
Viet Nam Thuong Tin Commercial Joint Stock Bank (Vietbank)	Information not available			4,777
Petrolimex Group Commercial Joint Stock Bank (PGBank)	Unknown		Other (100%) ¹⁰⁷²	3,000
Viet Nam Export Import Commercial Joint Stock (Eximbank)	Unknown		Eximbank (Sumitomo Mitsui Banking Corp 15.07%) (90.96%), Individual (6.94%), Investment Advisor (2.04%), Other (0.06%) ¹⁰⁷³	14,814
Ho Chi Minh City Development Joint Stock Commercial Bank (HDBank)	Unknown		Holding Company (34.33%), Individual (33.8%), Investment Advisor (26.49%), Other (2.59%), HDBank (2.42%) ¹⁰⁷⁴	25,303
Total				618,251

¹⁰⁷¹ Bloomberg, "Vietnam Prosperity Commercial Joint Stock Bank," *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁷² Bloomberg, "Petrolimex Group Commercial Joint Stock Bank," *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁷³ Bloomberg, "Viet Nam Export Import Commercial Joint Stock Bank," *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

¹⁰⁷⁴ Bloomberg, "Ho Chi Minh City Development Joint Stock Commercial Bank," *Ownership Structure* (N.D.), data accessed via Bloomberg Finance.

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