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Barbara E. Tillman, Director
AD/CVD Operations, Office 6
Import Administration, Room 1870
U.S. Department of Commerce
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Re: *Application of Countervailing Duty Law to Imports from Vietnam:*
Request for Comments on the Polyethylene Retail Carrier Bags from Vietnam

Dear Ms. Tillman:

On behalf of the Vietnam Plastics Association, enclosed please find our response to the U.S. Department of Commerce's invitation to submit comments on the Department's initiation of a countervailing duty case against Vietnam while the Department's continues to designate of Vietnam as a non-market economy.¹ The Vietnam Plastics Association appreciates the opportunity to submit comments on this critical issue.

¹ *Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation and Request for Public Comment on the Application of the Countervailing Duty Law to Imports From the Socialist Republic of Vietnam*, 74 Fed. Reg. 19064, (April 27, 2009).

Barbara E. Tillman, Director
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In accordance with the Departments request for comments, we are filing an original and 8 copies of this submission with the Department, as well as a copy of the submission on CD-ROM. Please contact the undersigned if you have any questions regarding this submission.

Sincerely,



William H. Barringer
Daniel L. Porter
Valerie Ellis

Counsel on behalf of Vietnam Plastics Association

PUBLIC CERTIFICATE OF SERVICE

I hereby certify that a complete copy of the foregoing public submission has been served this day, by hand, upon the following persons:

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Dated: May 27, 2009

**Before the United States Department of Commerce
International Trade Administration**

**Comments of the Vietnam Plastics Association
On the Applicability of the Countervailing Duty Law to Vietnam**

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INTRODUCTION AND SUMMARY

On behalf of the Vietnam Plastics Association, we submit these comments on the applicability of the countervailing duty ("CVD") laws to the Socialist Republic of Vietnam ("Vietnam"). This submission is in response to the Department's invitation for public comment included in the initiation notice for the CVD investigation of polyethylene retail carrier bags from Vietnam. *Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation and Request for Public Comment on the Application of the Countervailing Duty Law to Imports From the Socialist Republic of Vietnam*, 74 Fed. Reg. 19064, (April 27, 2009). The Vietnam Plastics Association appreciates this opportunity to comment on the Department of Commerce's (the Department) next steps in deciding whether it is appropriate to apply the CVD laws to Vietnam.

I. VIETNAM'S ECONOMY AND POLITICAL STATUS IS MARKEDLY DIFFERENT FROM CHINA AND CALLS FOR DIFFERENT TREATMENT BY THE DEPARTMENT

When the Department was first asked to apply the CVD laws to China, it was facing a situation that is readily distinguishable from the situation presented by the CVD petition against imports from Vietnam. When the first CVD case against China was filed in 2006, the United States had just completed an exhaustive review of China's economy and had determined that, despite some evidence of reform, the economy was not sufficiently market-oriented to warrant its graduation from non-market economy ("NME") status. Additionally, political pressure had been intensifying in 2006, the year the petition was filed, to address perceived unfairness in the Chinese trading system, including allegations that China manipulated its currency and erected significant import barriers to protect its domestic industries from competition. See e.g., Report to Congress on International Economic and Exchange Rate Policies, *U.S. Department of Treasury*, May 2006. None of these same conditions are in any way applicable to Vietnam.

The United States has not conducted a comprehensive review of the market reforms in Vietnam since 2002. This fact is revealed in the petition, which repeatedly cites to the Department's 2002 determination (effective July 2001) that articulated the Department's reasons for treating the country as an NME. Yet, even a cursory review of the principal findings of that determination reveal that times have changed. Specifically, the Department stated that in 2002, "the Vietnamese currency, the dong, is not fully convertible. . ." whereas today, the Department itself has nearly nine years of published exchange rate data for the Vietnamese dong available on its web site – data which in turn are sourced from the Dow Jones Reuters Business Interactive LLC (trading as Factiva) (a fee-based service).. See <http://ia.ita.doc.gov/exchange/index.html>. Additionally, the Department cited to the lack of private land ownership in 2002, but since then, land management has undergone substantial reformation. The Department also cited at that time to extensive government control of industry, a fact belied by the Department's own experience administering cases against Vietnam, where it regularly finds a multitude of companies qualifying for separate rates under the NME antidumping (AD) methodology. See e.g., *Certain Frozen Warmwater Shrimp from Vietnam*, 73 Fed. Reg. 52273 (final results) (September 9, 2008). While these facts alone may not be sufficient evidence alone to graduate Vietnam to market economy status, they do serve to highlight that the Department's approach to U.S.-Vietnam trade is woefully out of date.

Vietnam trade has maintained a steady, sustainable level of trade with the United States, and has worked closely with the United States in moving its economy forward to a market-based system. Although U.S.-Vietnam trade has expanded in the past decade, this expansion has been due to the methodological removal by both countries of any significant trade barriers, and has not come as the result of unreasonably cheap or unfairly traded imports. Indeed, even under the

Department of Commerce's NME methodology, it is rare to find an instance of Vietnamese exporters dumping merchandise in the U.S. market. See *id.* Recently, the two countries continued to strengthen their economic ties by engaging in the first round of bilateral investment treaty negotiations. Now is simply not the time for the United States to turn away from the strong economic alliance it has forged with Vietnam.

Given the unique situation presented by Vietnam, the Department should immediately rescind the initiation of the CVD investigation, and conduct a full inquiry into the market-orientation of Vietnamese economy.

II. IF IT CONTINUES TO TREAT VIETNAM AS A NON-MARKET ECONOMY FOR ANTIDUMPING PURPOSES, THE DEPARTMENT HAS NO LEGAL AUTHORITY TO IMPOSE CVD DUTIES AGAINST VIETNAM

Under the current statutory scheme, the Department may not apply the CVD law to a country designated as a non-market economy for purposes of a companion antidumping investigation. If the Department continues to adhere to its finding in 2002 that Vietnam has not sufficiently made the transition to a market economy, then it may not proceed with this countervailing duty investigation. Although the Department has elected to apply the CVD law to China notwithstanding the serious questions about legality that remain unresolved, it should take this opportunity to re-evaluate and reverse this decision with respect to Vietnam and elect instead to adhere to a logical and legally defensible practice that is consistent with the governing statutes and case law.

A. In *Georgetown Steel* the CAFC Definitely Ruled That, Under the Statutory Scheme, the CVD Law Was Not Intended To Be Applied Against Countries
