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# Vietnam's Labor Issues Mar Bid For Market Economy Status

By **Jennifer Doherty**

Law360 (May 8, 2024, 8:47 PM EDT) -- Representatives from U.S. industry, organized labor, and human rights advocacy urged the U.S. Department of Commerce to reject Vietnam's bid for market economy status Wednesday, denouncing its track record on labor rights.

As part of its ongoing review of duties on raw honey from Vietnam, Commerce accepted a request Hanoi made last September to reevaluate its status as a nonmarket economy, a designation that requires Commerce to take a different approach to anti-dumping duty calculations, often resulting in higher tariffs. As part of its assessment, Commerce held a public hearing Wednesday afternoon.

Steptoe LLP attorneys representing the government of Vietnam called for the agency to narrowly focus its review on the six criteria for market economy status laid out in the Tariff Act of 1930. Meanwhile, a diverse batch of opponents argued that Directive 24, a top-down order issued by Vietnam's political bureau in July 2023, flew in the face of the statutory requirement that wage rates be determined by free bargaining between labor and management.

"Not only does the directive place arbitrary restrictions on the human rights of the Vietnamese people, which are protected by UN human rights treaties that Vietnam itself has signed and ratified, it also articulates a specific plan to not comply with these treaties," said former State Department official Kelley Currie, appearing on behalf of business consultancy Kilo Alpha Strategies.

"This includes instructions to the government to ensure that any new worker organizations ... that are created must be controlled by the party-state, and it uses language that frames independent trade unions as national security threats," she continued.

Representing Vietnam, Steptoe partner Eric Emerson stated in his opening remarks that wage negotiations in Vietnam were between the employer and employee, with only the minimum wage set by the government. He also pointed to an average wage rate increase of 16% between 2018 and 2021 as evidence that "Vietnam's labor market is highly responsive to market forces." He also cited the addition of 5 million new union members since 2018.

John Sifton, Asia Advocacy Director of Human Rights Watch, called those numbers "sophistry" in a call to Law360 following Wednesday's hearing, arguing that those 5 million Vietnamese workers are not receiving representation, but are only being made to sign up with the Vietnam General Confederation of Labour, the only government-aligned trade union organization operating in Vietnam today.

"That's like saying you're a member of the Communist Party in the Soviet Union. It doesn't mean you're a union member, it just means you signed a VGCL document," said Sifton.

Human Rights Watch issued a statement opposing Vietnam's graduation to market economy status following the hearing Wednesday. Sifton said the organization is planning additional action calling for additional federal authorities' involvement in the market economy assessment, including by Congress and the U.S. Department of Labor in the determination.

In her testimony, United Steel Workers counsel Megan Salrin said Vietnam has no explicit prohibition on forced labor and child labor has been reported across different sectors of its economy, which also create unfair conditions of competition with U.S. companies and workers.

Counsel representing the American Honey Producers Association, the petitioners in the anti-dumping probe, also cited Directive 24 in their testimony Wednesday.

"In it, the government of Vietnam among other things, reaffirmed its previously stated commitment to exert complete government and party control over labor unions, as well as to limit the influence of foreign investment on the economy and society," said Alan Lubberda of Kelley Drye & Warren LLP.

The "extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country," is another statutory factor for assessing market economy status. While Vietnam said Wednesday it had made progress in this domain since Commerce's last review in 2002, Lubberda pointed to 25 sectors in which Vietnam prohibits foreign investment and an additional 59 in which foreign investment is restricted.

What foreign investment does come to Vietnam often "ultimately benefits China," said Lubberda.

He and other U.S. industry representatives at Wednesday's hearing painted Vietnam as a stalking horse used to evade tariffs and obfuscate Chinese producers in trade.

"Whenever China looks to avoid anti-dumping and countervailing duties, the most likely place where many Chinese companies are likely to move to continue their unfair trade is Vietnam," said Wiley Rein LLP International Trade Practice co-chair Tim Brightbill, asserting that the relief provided by trade remedies would be jeopardized by granting Vietnam market economy status.

Emerson urged the Commerce Department not to be distracted by those arguments in his closing remarks.

"If I had a dollar for every time I heard the word 'China' in that discussion, I'd surely have a lot of dollars," he said. "We're not talking about China's effort to become a market economy, we're talking about Vietnam's."

--Editing by Vaqas Asghar.