282. Entre os documentos apresentados, há menção a 15 medidas governamentais relativas à indústria da borracha, com destaque para (a) Vietnam's rubber industry master plan, em fevereiro de 1996 e (b) Rubber development planning to 2015, with a vision to 2020, em junho de 2009 [67], sendo este último um plano quinquenal setorial, análogo àquele que observado para a cadeia automotiva.

283. Na mesma toada, a Organização para a Cooperação e Desenvolvimento Econômico (OCDE) aponta que a borracha é um dos treze produtos agrícolas e florestais elegíveis a medidas de fomento preferencial:

"In December 2018, the Ministry of Agriculture and Rural Development (MARD) issued a list of 13 key national products, which includes rice, coffee, *rubber*, cashews, pepper, tea, vegetables and fruits, cassava and products thereof, pig meat, poultry meat and eggs. *The 13 products are eligible for preferential support measures, including exemptions from or reductions in land or water surface rents; preferential credit; support for the transfer and the application of high-technology in agriculture, human resources training, and market development and promotion activities; and support for investments in facilities and equipment for processing or preserving agricultural products*". (grifo nosso)

284. No mesmo documento, há indicação ainda que os preços recebidos pelos produtores de borracha natural são implicitamente taxados: "Producers of export commodities such as natural rubber, coffee, cashew nuts and tea are implicitly taxed, in that they receive prices for their outputs that are lower than world prices".

285. Ainda sobre o setor de borracha, cabe ressaltar que o Vietnã pode produzir anualmente 1,3 milhão de t de látex, mas os processadores domésticos de borracha só necessitam de cerca de 300 mil t.

286. Ademais, registra-se que a Vietnam Rubber Group (VRG) é a maior produtora de borracha do Vietnã [70], em que o Governo do Vietnã tem participação de 96,7%.

287. Cabe também destacar que a VRG fez parceria com a Casumina em 2017 e manifestou interesse em aumentar o envolvimento na indústria de pneus:

"Specifically, *Vietnam Rubber Group says its plans include expanding tyre and tube*. *The company entered the tyre manufacturing business in 2017 through a partnership with the Southern Rubber Industry Joint Stock Co. to produce the VRG brand of tyres*. Currently the company is mostly focused on growing rubber trees and processing latex, and rubber wood, making industrial products from rubber, operating industrial parks amid rubber plantations, and high-tech agriculture.

In the natural rubber segment, Vietnam Rubber Group manages more than 400,000 ha of rubber trees, but this business has been on a downward trend in recent years due to low rubber prices." (grifo nosso)

288. O relatório do USDoC destaca que:

"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. *The largest agriculture and agri-food companies under the control of the Commission for the Management of State Capital 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). Most of these companies have many companies under them. Many of these companies are export-oriented, and together they pursue government objectives of revenue generation, employment, and other economic, socioeconomic, 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. grifo nosso

289. Em outro trecho, o mesmo relatório ressalta que:

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.' 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 [Socio-Economic Development Plan]. An article 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'. grifo nosso

290. Com base nos elementos apresentados, observa-se que a VRG atende prioritariamente aos objetivos governamentais, que não necessariamente são aqueles que tipicamente regem uma economia de mercado.

291. A PetroVietnam (PVN) seria uma empresa 100% estatal, verticalizada, que opera não só na exploração, produção e refino de petróleo, gás, petroquímica, fertilizantes, mas também atua na cadeia de borracha sintética. Registra-se que a borracha sintética é utilizada para a produção de pneus de moto, sendo derivada de produtos petroquímicos, como o eritreno e estireno (vinilbenzeno).

292. Assim, a VRG e a PVN, ambas estatais, possuem participação relevante na fabricação de borracha natural e nos insumos para a produção de borracha sintética no Vietnã.

293. O relatório do USDoC abordou ainda as restrições ao investimento estrangeiro direto no setor petrolífero no Vietnã:

"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. *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 restrictions on certain operational activities. 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*". (grifo nosso)

294. Na mesma direção, USDoC no mesmo documento menciona que:

"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 'policyoriented 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*". (grifo nosso)

295. No caso específico de exploração de petróleo e gás natural, a Table 4.1 indicada no excerto, cita quais as atividades econômicas sujeitas a 100% de propriedade estatal. Cabe também mencionar que o preço do petróleo e do gás são alguns dos produtos cujos preços são determinados pelo governo. Ainda sobre a PetroVietnam, o USDoC no mesmo documento afirma que

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.

PetroVietnam's board of directors is made up of high-ranking CPV [Communist Party of Vietnam] members. 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 of PetroVietnam to 2025, with orientations to 2030 to pursue digital transformation objectives. 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.' 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. (grifo nosso)

296. O relatório do USDoC também aponta distorções na formação dos preços no mercado de gás natural. O órgão explica que existem bens e serviços sujeitos à "valoração de preços", o que, muito embora não signifique necessariamente definição de preços direta por parte do Estado, implica sujeição a políticas governamentais de controle de preços diante de "flutuações anormais durante um dado período de tempo", conforme definição da Vietnam's Law on Prices 2023 .

297. No relatório da autoridade estadunidense, há tabela de nove produtos que podem sofrer intervenção do governo. Na referida tabela, estão listados os produtos acabados de gás ou gasolina e o gás liquefeito de petróleo (GLP). Entre as intervenções do governo pode-se mencionar controle da oferta e demanda, incluindo a produção, importação ou exportação do bem ou serviço, bem como a compra e venda da reserva nacional, quando aplicável; b) medidas de caráter financeiro ou monetário; estabelecimento de preços específicos, tetos, pisos ou faixas de preço, com base nas características inerentes do bem ou serviço; d) medidas de apoio de preço; e) sujeição do bem ou serviço a fundos de valoração de preços, etc.

298. No caso da eletricidade, o USDoC aponta que há elementos que indicariam que o controle de preços é mais frequente no Vietnã do que em outros países asiáticos:

"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 compared to other Asian and Australasian countries".

299. Quanto aos preços praticados de eletricidade no Vietnã, o USDoC constata que:

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.' The controlled electricity prices are at levels that have caused EVN [Vietnam Eletricity], the SOE that supplies the majority of electricity in Vietnam, to consistently lose large amounts of money. Although the GOVN has gradually increased electricity prices in Vietnam, the price has not always kept up with inflation. 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. grifo nosso

300. Ainda no mesmo documento do USDoC:

The GOVN accounts for at least 87 percent of the electricity market. 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. 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. 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. grifo nosso

301. Outro elemento de prova apresentado nos autos do processo a respeito da presente análise diz respeito ao controle ou exercício de propriedade sobre os meios de produção no setor de pneus de moto. A esse respeito, registra-se que a empresa Casumina, fabricante de pneus para automóveis, caminhões, máquinas agrícolas e motocicletas, conforme já destacado, ocupava o 61º lugar no ranking das maiores produtoras mundiais de pneus em 2023, sendo a maior produtora no Vietnã. De acordo com MarketScreener, em 2023, o governo vietnamita controlava 51% das ações da empresa por meio de sua subsidiária integral Vietnam National Chemical Group (Vinachem).

302. Já a empresa Danang, já mencionada e também fabricante de pneus para automóveis, caminhões, motocicletas e bicicletas, aparecia na 65ª posição do ranking mundial, sendo a segunda maior entre as fabricantes de pneus sediadas no Vietnã[83]. A exemplo da Casumina, o Governo do Vietnã controla a empresa por meio da Vinachem, detentora de 50% das ações da Danang.

303. Já a empresa Sao Vang Rubber Company, também produtora de pneus de automóveis, caminhões, máquinas agrícolas e motocicletas, teria 36% de suas ações de posse da Vinachem, enquanto a empresa Inoue Rubber Vietnam, igualmente produtora de pneus para motocicletas e bicicletas, seria uma *joint-venture* entre a companhia japonesa Inoue Rubber e a Vinachem (detentora de 24% das ações).

304. Quanto à participação de empresas estatais na economia vietnamita, o USDoC constatou que:

"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.

These SEGs [State Economic Groups] have been characterized as being the 'iron fists of the state' and representing the 'commanding heights' of the economy. They typically have monopoly or near-monopoly status in the industries in which they operate, thereby inhibiting competition. Dominating entire industries allows the GOVN to target them with industrial policies that are ostensibly intended to support an entire sector. This allows SEGs to be granted preferential access to resources. Their monopoly positions also allow them and their government owners to set the rules in those industries. In many cases, SEGs and the government bodies that own them are tasked with drafting the development plan and strategy for the entire industry. 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." (grifo nosso)

305. Em seguida, no mesmo documento o USDoC ressaltou que:

"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. Wholesale and retail trade of manufactured products also have high levels of state ownership with 292 SOEs operating in this sector. Notably, SOEs in the manufacturing sector make up the majority of the SOEs under the management portfolio of the SCIC [Supervisory Board of State Capital Investment Corporation] (i.e., 75 out of the total 145 enterprises managed by the SCIC as of 2022). As noted, the SCIC is tasked with 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. grifo nosso

306. O estudo o USDoC abordou ainda a extensão da propriedade ou o controle do governo sobre os meios de produção:

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, 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 disproportionally 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.