



Anti-Dumping
Commission 26 AUG 2016

Embassy of the Socialist Republic of Viet Nam
No. 79/08/2016/ĐSQ-CH

Canberra, 79 August 2016

The Embassy of the Socialist Republic of Viet Nam in Australia presents its compliments to the Anti-Dumping Commission, Australian Department of Industry, Innovation and Science and has the honour to convey to the Latter the attached Letter of Mr. Nguyen Phuong Nam, Deputy Director General of Viet Nam Competition Authority, Ministry of Industry and Trade of Viet Nam addressed to Mr. Dale Seymour, Commissioner of the Anti-Dumping Commission related to an anti-dumping and countervailing investigation concerning aluminium extrusions exported from Viet Nam to Australia.

The Embassy of the Socialist Republic of Viet Nam in Australia highly appreciates if the Latter could acknowledge the receipt of this Note and looks forward to receiving the Latter's early response on the matter.

The Embassy avails itself of this opportunity to renew to Anti-Dumping Commission, Australian Department of Industry, Innovation and Science the assurances of its highest consideration.



To: Anti-Dumping Commission
Australian Department of Industry, Innovation and Science
Canberra



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THE ANTI-DUMPING COMMISSION
Australian Department of Industry, Innovation and Science
Operation 3, GPO Box 1632, Melbourne VIC 3001, Australia

Attn: Mr. Dale Seymour
Commissioner

Hanoi, 22 August 2016

Dear Mr. Commissioner,

My communication with you pertains to a matter which is of great significance and concern to our Government.

On 16 August 2016, your Anti-Dumping Commission initiated an anti-dumping and countervailing investigation concerning aluminium extrusions exported from Viet Nam (and Malaysia) to Australia.

The Viet Nam Competition Authority (VCA) under Ministry of Industry and Trade is the responsible agency within the Government of Viet Nam (GOV) for trade remedies. On behalf of the GOV, in this submission, VCA wishes to express some of its concerns about the Application to request for the initiation of the investigation as well as the procedures before the initiation of this investigation.

1. Procedures before the initiation

VCA was unaware of the receipt or acceptance of any application for such an investigation before it was initiated.

To confirm whether your officials informed some other department or agency of our Government, I requested inquiries to be made within our Embassy in Canberra, the Consulate General in Sydney, and the Viet Nam Trade Office in Sydney. None of these instrumentalities were able to verify that they had received any documentation from your Government before the investigation was initiated.

Under Article 13.1 of the WTO Subsidies and Countervailing Measures Agreement, your authorities are obliged to invite my Government, as a Member whose products are the subject of an application for a countervailing investigation, for consultations with the aim of clarifying the situation and arriving at a mutually agreed

solution. This is required to be done as soon as possible after an application is accepted and before the initiation of any such investigation.

Under Article 5.5 of the WTO Anti-Dumping Agreement, your authorities are obliged to notify our Government of the receipt of a properly documented application for an anti-dumping investigation before proceeding to initiate any such investigation.

I understand that each of these obligations have been expressly implemented under your domestic law.

In view of the clear obligations in the Agreements about notification and consultation, their domestic law implementation, and the probability that your Government has duly complied with them on other occasions in which it has initiated such investigations, it would come as a great surprise and disappointment to our Government to find that these requirements were not met on this occasion.

In case there was no notification and neither an invitation nor an opportunity afforded to our Government for consultation, then the initiation of the investigation is improper. An absolute failure to notify and to invite a Member to consult is a matter which deprives your investigating authority of jurisdiction to conduct the investigation. This puts our Government in a difficult situation when it should not be under obligation to take part in the investigations which was improperly conducted at the beginning.

As a result, I respectfully request that you direct your officials to review the procedures that were followed in the initiation of this investigation. If it is discovered that notification was given or was attempted, please inform me of those details. If not, I hope that the Anti-Dumping Commission would find a satisfactory solution to this matter so that Viet Nam can ensure its rights, as confirmed by the WTO Agreements, in this investigation.

2. The alleged subsidy programs

The GOV believes that the Application does not provide adequate evidence for the Commission to initiate the investigation. The programs claimed by the Petitioner lack the basis to identify the existence of countervailing subsidy.

The application just *presumes* that some Viet Nam enterprises are eligible for or receive the subsidy from the alleged programs. For example, the Petitioner assumes that Mien Hua and its sister companies are the largest aluminium extruders in Viet Nam so it would also be eligible for benefits under subsidy programs 2 and 3 (Corporative tax incentives and Incentives on non-agricultural land tax); or since the sharp rise in EAA's (East Asia Aluminium Co.) annual turnover indicates that the company has recently expanded its operations and is now able to sell increased volumes of aluminium extrusions, the Petitioner suggests that the company receive benefits under Program 1 (Preferential import tariffs); or since EAA is located in an industrial park, the Petitioner anticipates that EAA would also be eligible for land-use

tax exemptions under alleged subsidy Program 3 (Incentives on non-agricultural land tax)... This assumption is not an evidence to show that Viet Nam enterprises actually receive the alleged subsidy. The Application merely states the legal documents of the Government that set out preferential programs/policies and supposes that some Viet Nam enterprises receive the benefit. Therefore, these allegations do not provide sufficient basis for the Commission to initiate an investigation.

Besides, as recognized in the Commission's Consideration report¹, the Application cannot provide the specific amount of subsidy received but only assume that the amount is above negligible levels. The GOV notes that according to Article 11.2 (iii) of the Subsidy and Countervailing duty Agreement (SCM), the Application is required to provide evidence on the amount of subsidy in question, not just based on prediction. This prediction demonstrates that the benefits seem not to exist for the Petitioner to determine.

Based on the above contents, the Application does not provide adequate basis for the Commission to initiate the investigation.

Regarding the nature of each alleged program, the GOV reserves its comments and clarification in the next stage of the investigation.

3. Injury

Article 15.4 of the SCM Agreement provides that the examination of the impact of the subsidized imports on the domestic industry shall include an evaluation of *all* relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. However, some of the indices as required by Article 15.4 were not provided by the Application. Specifically, the Application does not demonstrate that the imported product cause injury in terms of decrease in sales volume, market share of the domestic industry (as indicated in the Commission's Consideration report²). Among the others, these are two significant indices to prove the injury caused to the domestic industry. Moreover, some indices in the Application specify that the domestic industry does not really suffer the injury since the data are quite positive. Specifically:

(i) The production volume during the recent period from 2012/13 to 2015/16 has increased stably³. Although the Petitioner thinks that this production volume continues to remain up to 10 per cent below levels of 2009 and 2010, in fact, the imports from Viet Nam stated to increase from 2013/14, thus the injury should only

¹ Page 23, Commission's Consideration report number 362

² Page 25, Commission's Consideration report number 362

³ Page 23, the Application

determined since this period. Moreover, the data for injury in the Application are made for the period from 2012/13 only.

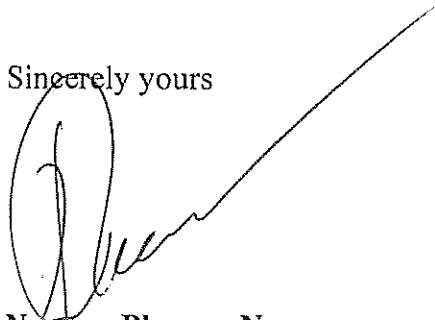
(ii) Profit of the domestic industry has increased significantly from 2012/13 to 2015/16, with the surge in 2014/15⁴. Although the Petitioner claims that the profit in 2015/16 deteriorated from the level achieved in 2014/15 to a loss position, this level is still higher than that of 2012/13 and quite equivalent to that of 2013/14.

To sum up, the injury caused to the domestic industry is not clear and does not serve as the basis for the Commission to initiate and apply the countervailing duty.

On the basis of the stated contents, the GOV respectfully requests that the Commission consider terminating the investigation because of the deficiency of the Application. Through this submission, the GOV hopes that the Commission will carefully consider the arguments of Vietnam to make a fair decision in this investigation.

I look forward to your earliest and positive response.

Sincerely yours



Nguyen Phuong Nam
Deputy Director General
Viet Nam Competition Authority
Ministry of Industry and Trade of Viet Nam

⁴ Page 23, the Application