



Mr Dale Seymour
Commissioner
ANTI-DUMPING COMMISSION
Australian Department of Industry, Innovation and Science
Operations 3
GPO Box 1632
Melbourne VIC 3001
Australia

Hanoi, 05 September 2016

Dear Mr Commissioner,

Following my correspondence with you dated 22 August 2016, I refer to my previous communications between my Viet Nam Competition Authority (VCA) and your officials relating to the absence of consultations with the Government of Viet Nam (GOV) under the *WTO Subsidies and Countervailing Measures Agreement* prior to the initiation of the anti-dumping and countervailing investigation concerning aluminium extrusions exported from Viet Nam (and from Malaysia) to Australia, and to the failure to provide the GOV with a copy of the relevant application (Application) upon its acceptance by your Anti-Dumping Commission as required by the *WTO Anti-Dumping Agreement*.

To recap, my officials have established that your officials (i) did not send a hard copy of any invitation to consult or of the Application to the GOV or any specific GOV official/s; and (ii) did not make inquiries to satisfy themselves that the GOV or any specific GOV official/s had properly been invited to consult or were aware of the Application.

What appears to have occurred, on the advice of your officials, is that your Commission attempted to invite the GOV to consult on the matters raised by the Application, and to provide a copy of same to the GOV, by sending an email to an email address that was found on the English version of the website of the Embassy. That email address is out-of-date. When it was in use, and as its name attests, it was a “general” address for the “Chancery” that could be used by any member of the public for any manner of thing. Even if it had been in use, its name and the website in which it was found gives every indication that it is not the kind of “specific” email address to which one would expect a matter of such importance – an invitation to consult under an international treaty – to be sent.

In the respectful opinion of the GOV, the transmission of an email to a “general” email address found on a website, without an effort to bring the matter to the attention of the GOV in a more direct and informative way, does not constitute an invitation to consult in the sense of the obligation under Article 13.2 and its importance. The lack of any response, confirmation or acknowledgement, of any kind whatsoever, from the GOV in reply to the email that was sent should have alerted your officials to the fact that the invitation had not been made in an appropriate way, or at least that there was uncertainty as to whether it had.

The GOV is a committed and participative WTO Member. It would be completely out-of-character for the GOV not to engage in the processes stipulated under Article 13.2 by

responding in some way. Your colleagues in other areas of the Australian Government will attest to the GOV’s interest in and responsiveness to WTO matters.

responding in some way. Your colleagues in other areas of the Australian Government will attest to the GOV's interest in and responsiveness to WTO matters.


The GOV does not consider that it was invited to consult on the countervailing aspects of the Application. An invitation to consult must be *bona fide*.¹ The procedural rights of WTO Members are important.² The failure properly to invite the GOV for consultations is not a harmless error, even if such an exculpatory principle was to be accepted as a customary rule of public international law.³

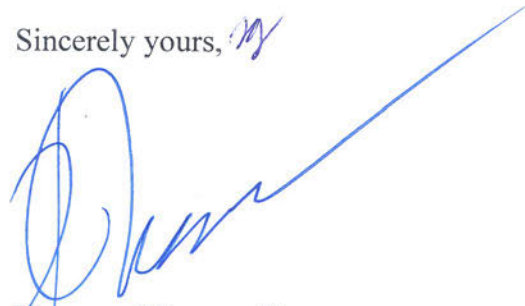
Accordingly, the GOV's maintains that its WTO rights in this matter have been nullified and impaired. The GOV seeks the acceptance of this proposition by the Australian side and a cooperative approach towards rectifying the omission which has occurred.

To that end, the GOV requests that the investigation be terminated forthwith.

As a compromise position, but without detracting from the GOV's position that the investigation be terminated, the GOV proposes that the Commission seek an extension or extensions of time from your relevant Minister for the publication of the statement of essential facts and the making of the final report, of a sufficient enough period for consultations to be invited and held for the purposes of clarifying the situation and arriving at a mutually agreed solution.

I request your sincere consideration and earliest response.

Sincerely yours, 



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

¹ *Mexico – Definitive Countervailing Measures on Olive Oil from the European Communities* (WT/DS341/R, 4 September 2008) at para 7.35, where the Panel held that while consultations do not need to be held, the invitation must at least be a *bona fide* one.

² *Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico* (WT/DS156/R, 24 October 2000) at para 9.6, where the Panel held that procedural irregularities in the initiation of an anti-dumping investigation relating to the timeliness and the sufficiency of notification, amongst other examples of non-compliance with the WTO Anti-Dumping Agreement, were of such a “*nature and extent*” that Guatemala could not properly implement the Panel’s recommendation without revoking the anti-dumping measure at issue.

³ *Ibid.* at para 6.1363.