



The Hon. Michael Moore
Senior Panel Member
Anti-Dumping Review Panel
c/- Legal Service Branch
Department of Industry
10 Binara Street
Canberra, ACT 2601

Hanoi, 24 February, 2015

Subject: Australian decision to impose dumping duties on imports of power transformers from Viet Nam

Dear Sir,

On behalf of the Vietnam Competition Authority (“VCA”) of Ministry of Industry and Trade of the Socialist Republic of Vietnam, I would like to present my compliments to you and your colleagues. I am writing you with regard to the anti-dumping investigation of the Australian Government’s Anti-Dumping Commission (“Commission”) into the importation of power transformers from a range of countries, including Vietnam, particularly, the review you initiated on 30 January of the decision of the former Parliamentary Secretary to the Minister for Industry (“Parliamentary Secretary”) to impose anti-dumping measures on imports of power transformers from Viet Nam (“the Reviewable Decision”).

It is my understanding that, as a government of a country of export and of origin of the goods subject to the review, Viet Nam is an interested party within the definition of that term under Section 269ZX of your *Customs Act 1901* (“the Act”), and therefore may make an interested party submission to the review, in accordance with Subsection 269ZZJ(a) of the same Act.

I have reviewed the report prepared by the Anti-Dumping Commission (“Commission”) which formed the basis for the Reviewable Decision, as well as the applications for review available on the website of the Anti-Dumping Review Panel (“ADRP”) and, in particular, the application for review lodged by ABB Limited of Viet Nam (“ABB”). It is my concern that the Commission considers there was a sufficient legal basis to impose anti-dumping duties on power transformers imported from Viet Nam. Specifically, we are really concerned with the Commission’s adoption of the practice known as “zeroing” in the calculation of the dumping margin for exports from Viet Nam. I would like to note that the finding that such power transformers had been dumped was a consequence only of the fact that the occasions on which the power transformers were not dumped were ignored for the purpose of calculating the margin of dumping.



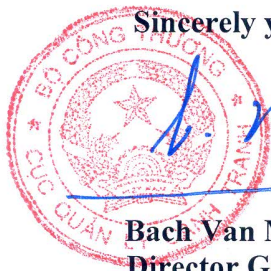
It is clear that the practice of zeroing in any form is not supported by WTO jurisprudence and is inconsistent with WTO obligations. Such a practice infringes on the obligations established by Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the General Agreement on Tariffs and Trade 1994 (“GATT”). The articles provide for the level of anti-dumping duties that can be imposed by a Member of the WTO on products imported into its territory from another Member. That level is limited to the “margin of dumping”. The interpretation of the term “margin of dumping” is settled – it relates to the dumped product as a whole, not to individual transactions. This was most recently reaffirmed by the Panel in *United States – Anti-Dumping Measures on Certain Frozen Warm-water Shrimp from Viet Nam*.

Furthermore, the requirements of Article VI:2 of GATT and Article 9.3 of the Anti-Dumping Agreement stand, irrespective of the methodology used to calculate the margins of dumping. By adopting zeroing, the Commission has failed to calculate a margin of dumping for the product as a whole. As per the application of ABB, the margin of dumping for the product as a whole was negative 7.9%. The anti-dumping measures imposed by the Parliamentary Secretary of positive 3.8% are in excess of the margin of dumping of the product as a whole. The imposition of anti-dumping measures on imports of power transformers from Vietnam is thus inconsistent with Australia’s WTO obligations.

Again, I would like to emphasize that under Australian law, just as under WTO jurisprudence, zeroing is not permissible because it prevents the calculation of a margin of dumping for the product as a whole, does not comply with the requirements of a fair comparison between the export price and the normal value, and results in the imposition of anti-dumping measures at a level in excess of that which is permitted. Therefore, I respectfully submit that the Reviewable Decision only be correct when it was based on a margin of dumping for the product as a whole. On that basis, there was no dumping of power transformers from Viet Nam.

By the aforesaid reasons, I respectfully submit that the ADRP recommend to the Minister for Industry and Science to revoke the Reviewable Decision and substitute it with the correct decision in a fair manner which is compliant with both Australian regulations and WTO law.

Sincerely yours,



Bach Van Mung
Director General