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Free Translation

May 29th, 2004

The Honorable Donald L. Evans
Secretary of Commerce
U.S. Department of Commerce
Washington, D.C. 20230

Re: Comments on Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries

Dear Mr. Secretary,

I am writing to you regarding the Department's recent request for comments on potential changes to its methodology for calculating "separate rates" for respondents in non-market economy antidumping investigations. We are afraid that the Department's proposed changes to its separate rates, practice would unfairly penalize producers from NME countries, including Vietnam. For the following reasons, we respectfully urge the Department not to change its current separate rates practice.

As you know, since 1991, the Department has assumed that enterprises from non-market economies are part of a single, countrywide entity and has applied the highest possible antidumping margins (known as the "countrywide rate") against the exports from this entity. The Department has always permitted, however, enterprises to demonstrate their independence from the government in order to receive a more fairly calculated rate, either individually or collectively (called an "all-others rate"). The Department now appears to be proposing a number of changes that would seriously impair the ability of independent enterprises to receive this all-others rate. As I understand it, the Department has pointed to its need to save resources and its desire to improve the accuracy of non-market economy antidumping determinations in justifying these proposals.

The Ministry of Trade of Vietnam understands the Department's position. May I suggest, however, that the Department's proposals would not only frustrate the Department's objectives, they would cause significant and undeserved harm to the large and growing number of independent enterprises in Vietnam. Instead, I believe the Department would be better served by its non-discrimination policy toward economies as Vietnam.

As you know, there has been much progress in the trade relations between our countries. Since the entry into force of the Bilateral Trade Agreement, our joint trade has increased tremendously. As you also realize, Vietnam has implemented very significant and far-reaching economic reforms. Even the Department recognizes that the Government of Vietnam no longer legally controls private or even state-owned enterprises. Market forces determine businesses and wages in Vietnam. Small and medium-sized businesses are flourishing.

It is difficult for me to understand, why, in this generally positive and improving environment, the Department would propose to worsen its treatment of independent companies from Vietnam in antidumping investigations. Indeed, the Department already treats private Vietnamese companies worse than the Department treated state-owned enterprises from true non-market economies during the Cold War. It would be regrettable if the Department not only ignored the positive economic reforms Vietnam has undertaken, but penalized Vietnamese companies for them. After all, these very economic reforms led to the rise of independent businesses in Vietnam, which is now resulting in these Department proposals. I hope that the Department chooses to encourage Vietnam's economic reforms, rather than convey the message that Vietnam's economic liberalization has been counterproductive in terms of U.S. antidumping proceedings. Rather than penalize Vietnamese exporters, I think, the Department should reconsider its dated assumptions and treat Vietnam in a way that recognizes and promotes market reform. The Department's own experience with recent antidumping investigations demonstrates the need for such a reconsideration. The Department must realize that the number of independent companies in Vietnam will only grow, which means the number of companies seeking a "separate rate" will only continue to grow. Clearly, the Department's assumption of a monopolistic and monolithic state-controlled enterprise no longer holds. The Department should welcome, not discourage, this development.

I therefore ask the Department to leave behind its old assumptions, and its countrywide rate policy, and return to the basically fair approach that marked its pre-1991 investigations involving non-market economies, where investigated companies received independent rates and non-investigated companies received

an “all-others” rate. Surely, the reforms Vietnam has implemented support treating it as fairly in antidumping. This would also allow the Department to accomplish its objectives. The Department would realize significant resource relief because it would no longer need to review and verify lengthy section A questionnaires from non-investigated companies. It would also improve the accuracy of antidumping determinations by acknowledging the significant economic reforms Vietnam has undertaken.

In my opinion, this approach represents the most constructive way forward. If the Department does not put aside its countrywide-rate assumption, however, I would like to call your attention to three new alternative proposals (Options 2 through 4) contained in the Willkie Farr & Gallagher submission to the Department on behalf of the Shrimp Committee of the Vietnam Association of Seafood Exporters and Producers (“VASEP Shrimp Committee”) (attached). Each of these alternatives would achieve the Department’s objectives better than the Department’s proposal. These alternatives range from reversing the presumption of government control for all enterprises in Vietnam to presuming the independence of voluntary respondents that request a “separate rate” to reducing the section A questionnaire for voluntary respondents. At the very least, the Department should do no harm by continuing current policy, as suggested by Option 5 of the VASEP Shrimp Committee submission.

If the Department takes the regrettable decision to change its non-market economy policy in a way similar to the Department’s proposal, I suggest in the spirit of good faith and fairness that the Department desist from applying the new policy to the ongoing shrimp dumping investigation. As you may know, 33 independent Vietnamese shrimp companies, which the Department will not fully investigate, have cooperated in good faith with the Department’s investigation based on their legitimate understanding of the Department’s long-standing policy of awarding an “all-others” rate to such companies. Companies in Vietnam have much more limited resources than companies in the United States. But, these 33 independent companies have already expended very significant resources to provide the information the Department has requested to qualify for an “all-others” rate. I trust that you recognize how unfair it would be to these companies to change your rules after all of their time, effort, and expense and deny them the “all-others” rate independent non-investigated companies are entitled to under current Department policy. Indeed, as the VASEP Shrimp Committee submission points out, denying the “all-others” rate to these companies would be contrary to U.S. law.

Mr. Secretary,

I am sure that you appreciate the economic progress Vietnam has made and understand just how unfair and inaccurate it would be to overlook this progress by penalizing independent Vietnamese companies as the Department proposal suggests. Instead, in the spirit of cooperative relations and to further promote bilateral trade between our countries, I ask for your full consideration for moving Department policy forward rather than backward by leaving behind the countrywide-rate assumption. If not, I hope you will see the wisdom in the other three new alternatives contained in the VASEP Shrimp Committee submission, each of which would advance Department policy, while not harming independent Vietnamese enterprises.

At a minimum, I hope that you will retain current Department “separate rates” policy and thereby not send Department policy in the wrong direction altogether.

We are looking forward to receiving your positive response.

Respectfully,

(Signed)

Truong Dinh Tuyen
Minister
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