

Vietnamese Exports at Risk of Antidumping Lawsuits- How to Reduce Loss

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The increasing trend of trade liberalization forces countries to pledge not to use protectionism by non-tariff measures in quantity limitation. Nevertheless, temporary protectionist measures are widely implemented. Accordingly, antidumping tools are overused and become important in international trade.

1. The WTO antidumping agreement

According to the WTO agreement, if a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be "dumping" the product. An investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry. It shall include evidence of (a) dumping, (b) material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry (c) a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this provision. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the applica-

tion is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing member;

(iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry.

An investigation shall not be initiated unless the authorities have determined, on the basis of an examination of the degree of

support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25% of total production of the like product produced by the domestic industry.

Also according to WTO agreement, an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be de minimis if this margin is less than 2%, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3% of imports of the like product in the importing member, unless countries which

individually account for less than 3% of the imports of the like product in the importing Member collectively account for more than 7% of imports of the like product in the importing member. As a result, in antidumping lawsuits, the determination of the dumping margin is extremely significant.

The existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices

on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

In the case where products are not imported directly from the

country of origin but are exported to the importing member from an intermediate country, the price at which the products are sold from the country of export to the importing member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export. [1]

List of Vietnam's export items in facing anti-dumping lawsuits from 1994 to July 2007

No.	Year of initiation	Prosecutor	Product	Temporary decision (antidumping duty)	Final decision (antidumping duty)
1	1994	Colombia	Rice		No anti-dumping tax was levied.
2	1998	EU	Seasoning		16.8%
3	1998	EU	Footwear		No anti-dumping tax was levied.
4	2000	Poland	Gas lighter		0.09 euro/unit
5	2001	Canada	Garlic		1.48 AD/kg
6	2002	Canada	Shoes and non-absorbent soles		No antidumping duty
7		South Korea	Gas lighter		The prosecutor withdrew its complaint.
8		EU	Gas lighter		The prosecutor withdrew its complaint.
9		The US	Basa and Tra fishes (cat-fish)		36.84 – 63.88%
10	2003	EU	Oxyde zinc		28%
11		The US	Shrimp	12.11 – 93.13%	4.13 – 25.76%
12	2004	EU	Ring binders		51.2- 78.8%
13		Turkey	Bicycle and motorbike tires and inner tubes		29 – 49%
14		EU	Bicycles		15.5 – 34.5%
15		EU	Pipes, steel tubes		No antidumping duty
adjust right16		EU	Stainless steel door fasteners		7.7%
17		EU	Florescent lamps (CFL-i)		66.1%
18		Peru	Surfboards		\$5.2/unit
19	2005	EU	Shoes with leather uppers	14.2 – 16.8%	10%
20		Argentina	Bicycle, motorbike spokes	81% (in four months)	Under investigation
21		Egypt	Florescent lamps (CFL-i)	\$0.36 - \$0.43/unit	\$0.32/unit
22	2006	Turkey	Belt		\$4.55/kg
23		Peru	Shoes with fabric uppers		-
24	2007	Turkey	Gas lighter		-

Source: Department of Competition – Ministry of Industry and Commerce

2. Situation of Vietnam's export items facing antidumping lawsuits

From 1994 until mid 2007, Vietnam faced 24 antidumping lawsuits of foreign nations against some of its exported goods.

The above table shows:

- Regarding prosecutors: Out of 24 lawsuits, there are 10 from the EU, 3 from Turkey, 2 from the US, 2 from Canada, 2 from Peru, and the rest from Poland, Egypt, Colombia, Argentina, and South Korea, one for each. As such, the number of lawsuits from the EU and the US is 12, accounting for 50% of total lawsuits; and most of prosecutors for antidumping against Vietnam's export items have much higher potentials of economics, trading and politics than Vietnam.

- In terms of lawsuit results: Out of 24 lawsuits there are 2 cases of terminated investigation due to the prosecutor's drawing complaint; 3 under investigation; 19 with final decisions, including 15 levying antidumping duties, accounting for 78.94% of total surveys. This is a rather high proportion (the world proportion of lawsuits resulting in antidumping duty was 57% in the 1995 – 2001 period [2]).

- As for allegedly dumped products: The products which are allegedly dumped include mainly common consumer goods. It is noteworthy that two antidumping lawsuits against Vietnamese exported catfish (Tra and Basa fishes) into the US because they are Vietnam's major export items. Various antidumping duties were levied on them, causing a lot of injuries to Vietnam's domestic production.

3. Difficulties arising from antidumping lawsuits against Vietnam's products

When Vietnam's export items are sued for dumping in foreign

markets, manufacturers and exporters will face a lot of difficulties as follows:

1. First, many countries are yet to recognize Vietnam as a market economy. The report of the Working Party on the accession of Vietnam also said that several members noted that Vietnam was continuing the process of transition towards a full market economy. Those members noted that under those circumstances, in the case of imports of Vietnamese origin into a WTO member, special difficulties could exist in determining cost and price comparability in the context of anti-dumping investigations and countervailing duty investigations. Those members stated that in such cases, the importing WTO member might find it necessary to take into account the possibility that a strict comparison with domestic costs and prices in Viet Nam might not always be appropriate [3]. As a result, Vietnam's businesses will encounter a lot of troubles and adversities in their verification of non-dumping or low margin of dumping.

Second, Vietnam businesses' knowledge about international law on dumping and experience to cope with antidumping lawsuits are very poor. At the same time, government staff in charge of antidumping lawsuits also lacks economic and legal awareness in this area [4]. Therefore, when antidumping lawsuits are initiated, Vietnam's businesses and government agencies feel puzzled and embarrassed in dealing with these problems.

Third, Vietnam's economic potentials and political status remain low as compared to many countries in the world, especially for those which often initiate antidumping lawsuits against Vietnam's export items such as: the EU, Turkey, the US, Canada. As a result, when there are law-

suits, Vietnam's political pressure not enough strong, so it always deliberates on implementing retaliatory measures (Vietnam has never taken retaliatory measures before) to struggle for domestic businesses' benefits.

Fourth, to cope with antidumping lawsuits, businesses have to send representatives to the prosecuting country to provide information, create lobbies, associate with the groups of the same interests, hire lawyers, etc. The undertaking costs a lot of funds. Meanwhile, financial strengths of Vietnam manufacturers and exporters are still modest, the cooperation of the businesses producing similar products loose and there are not yet business associations for some products. This is also a big obstacle to local enterprises when a dispute over antidumping occurs.

Fifth, another trouble cannot be ignored, that is, the result of the antidumping investigation is greatly affected by powers of the interest groups of the importing country in relation to allegedly dumped goods. As a result, in some cases, although Vietnamese businesses strived to form lobbies and verify their non-dumping behaviors, they were finally still subject to antidumping duties.

4. Measures to reduce injuries to Vietnam's caused by antidumping lawsuits

First, the Government is required to speed up legal and institutional reformation in accordance with the nation's commitments when joining the WTO and international common standards so that the country is soon recognized as a market economy. This will benefit domestic businesses because in antidumping investigations, the normal value of goods for deter-

mination of the margin of dumping will be figured out in Vietnam's market rather than in the third country. It also creates favorable conditions for domestic enterprises to positively deal with antidumping lawsuits.

Second, international trade policies are greatly impacted by political relations between partners, and antidumping measures cannot stay out of this rule. Therefore, the Government has to promote economic and diplomatic relationships with nations, territories, regional and international organizations in order to strengthen its political power and influence in the international arena. Based on these advantages, the Government may use economic and political strengths to force other countries to recognize Vietnam as a market economy. At the same time, when antidumping lawsuits are initiated, the Government may bring political pressure to bear upon the prosecuting country so that its authorities make decisions which are beneficial to Vietnam's businesses.

Third, the Government should help open training and refresher courses for company managers and government officials in international economic integration, the WTO's antidumping regulations and antidumping laws of several nations having a lot of lawsuits against Vietnam's goods such as the US, the EU. This will help them feel confident to settle disputes and cope with antidumping lawsuits because they understand the legal procedures, processes and requirements in antidumping investigations. In addition, it also facilitates businesses' pursuit of antidumping lawsuits in foreign countries.

Fourth, to reduce losses in case of antidumping lawsuits, businesses of the same interest should cooperate closely with

each other in pursuit of the lawsuits. In this process, business associations and relevant government agencies, for example Ministry of Industry and Commerce, are required to act as agents to coordinate closely parties related to interests and obligations with the aim to struggle for their benefits in lawsuits.

Fifth, Vietnam's manufacturers and exporters should spur trade promotion and market surveys to plan appropriate export strategies and curtail losses caused by lawsuits. In the meantime, businesses should enhance their competitiveness in product prices, quality, package and design, method of distribution, payment, and so on. This is not only significant to reduction of losses but also an essential requirement to sustainable development of domestic businesses under the present conditions of Vietnam's WTO membership.

REFERENCES

1. Ministry of Industry and Commerce, Basics of International Economic Integration, Hà Nội 2004.

2. Ministry of Foreign Affairs – Department of Multilateral Coop-

eration, Vietnam's Economic Integration in the Trend of Globalization – Problems and Solutions, Chính Trị Quốc Gia Publisher, Hà Nội 2002.

3. Ass. Prof. Dr. Nguyễn Thị Mùi & Lê Thị Thuỷ Vân, Vietnam and the Problem of Antidumping, the summary record of the workshop "Effects of the WTO Membership on Vietnam's Economy" held by the HCMC University of Economics, Tổng Hợp Publisher, p. 214-225.

4. The WTO, Report of the Working Party On the Accession of Vietnam, WT/ ACC/VNM/48 (06-5205)

5. The WTO Antidumping Agreement.

Notes:

[1] The WTO Antidumping Agreement

[2] Ministry of Industry and Commerce, Basics of International Economic Integration, p.187

[3] The WTO, Report of the Working Party on the Accession of Vietnam, WT/ ACC/VNM/48 (06-5205), p.95-96

[4] Ministry of Industry and Commerce, Basics of International Economic Integration, p.203.

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