

ON MEASURES TO DEAL WITH PROTECTIONIST POLICIES

AGAINST VIETNAMESE EXPORTS

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1. On inevitability of struggle against protectionist measures against Vietnamese exports in the past few years

In recent years, along with the global trend of trade liberation, application of trade protectionist measures (anti dumping, countervailing duties and safeguards) becomes widespread. These measures have been overused as non-tariff barriers for protecting domestic industries.

As for Vietnam, during its economic reform, its exports are competitive due to cheap labor and natural resources, which puts domestic industries of importing countries at a disadvantage and forces them to take protectionist measures.

In recent years, when increasing their export, local companies have faced 41 lawsuits by countries taking trade protectionist measures. More importantly, the number of lawsuits tends to increase year after year. These data show that Vietnam has met with great difficulties during its international integration and expansion of export markets. After its accession to the WTO, lawsuits filed by importing countries tend to rise instead of reducing.

2. Effects of trade protectionist measures on exports from Vietnam

The lawsuits produce serious effects on the Vietnamese economy:

- Local companies have to suffer expenses on lobbying, lawyers' fees, court costs, legal procedures, etc. from the beginning of the lawsuit.

- Vietnam's export value falls remarkably. When an investigation is started, importers tend to cut imports from countries under investigation for fear of paying antidumping, countervailing duties and safeguards after import. In addition, Vietnam's exports become less competitive as compared with goods from countries that are free from antidumping and countervailing duties, or enjoy lower rates.

- These effects can spread to many industries causing a domino effect on industries employing exports under investigation as raw materials.

- Such lawsuits also have negative effects on flow of foreign investment to Vietnam because foreign-invested companies are reluctant to expand their operations and make new investment. Some others even think of closing their branches in Vietnam or moving them to other countries.

3. Protectionist measures in the world

a Antidumping lawsuits:

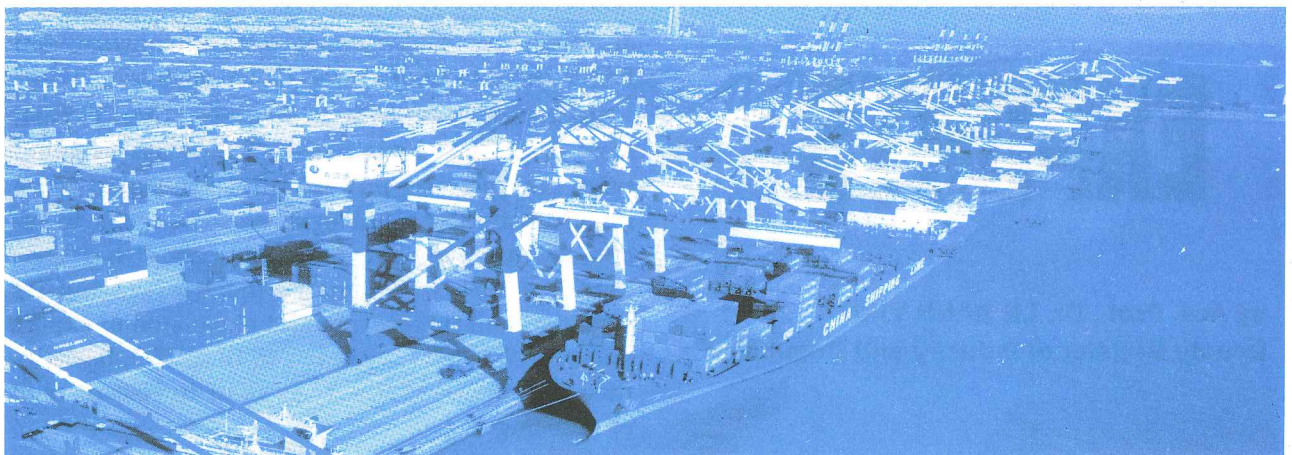
- According to latest data publicized by the WTO, from Jan. 1, 1995 to June 2008, WTO members carried out 3,307 antidumping investigations, 2,106 of which (or 64.48%) affirmed existence of dumping practices and appropriate duties were imposed. This fact shows that investigations didn't necessarily lead to imposition of antidumping duties. In the past three or four years, how-

ever, ratio of cases leading to such duties to total lawsuits tended to increase.

- Of defendants, China came first with 640 lawsuits, followed by South Korea (247), Taiwan (182), the U.S. (183), Japan (142), Indonesia (140), and Thailand (136). These data show that there are more developing countries and less developed ones in this group: except for Japan and the U.S., all defendants in the top 10 list are developing countries, and most of them are Asian countries or economies in transition.

- Of plaintiffs, India led the way with 520 investigations, followed by the U.S. (414) and the EU (382), and some others, such as Argentina, South Africa and Australia. Employment of antidumping measures is not limited to developed countries and more and more developing ones use them. Developing countries account for over 50% of lawsuits and they bring more actions than traditional ones (the U.S., the EU, and Canada) do in the said period.

- Numerical data show that of 21 lines of merchandises recorded by the WTO in the years 1995 – 2008, eight merchandises accounted for over 90% of charges. They are: chemicals; metal and metal products; machines, engineering and electricity appliances; clothing and footwear; plastic and rubber products; pulp and paper; farm products and food; and stone, plastic and products made from stone and plastic. The first two lines of products account for some 50% of disputes. These merchandises (ore, pulp, precious stones, glass, ceramics and metal) are usually from light industries where developing countries enjoy various advantages (cheap labor, abundant natural resources, and simple technologies, etc.).



In 2008, however, the most noticeable fact is the sudden increase in antidumping investigations against clothing and footwear, which accounted for 24% of cases investigated this year.

b. Countervailing lawsuits:

WTO data from 1995 to June 2008 show that there were countervailing investigations. The U.S. led the way with 85 investigations, followed by the EU (47), and Canada (22).

A slight difference between antidumping and countervailing cases is the fact that India is the leading defendant - 45 cases, much higher than the ones that followed it: China (19), and South Korea (16). According to the WTO, six out of ten countries charged of subsidies are Asian countries or NICs (such as South Korea and Taiwan) where government subsidies have played an important role in their economic growth and development of local industries.

It's worth noting that countervailing charges usually aim at a limited group of industries. Metal products alone accounted for 55% of cases leading to imposition of countervailing duties. Most merchandises on which countervailing duties are imposed are from industries employing low technologies and providing developing countries with some comparative advantages, such as farm products, clothing, or goods made from abundant natural resources. Sophisticated goods made with high technologies, although they are subsidized generously, are almost exempt from such duties.

c. Safeguards:

According to WTO reports, from 1995 to 2008, WTO members conducted 164 investigations for reasons for safeguards; and the biggest number of such cases is found in 2002 (34).

Most of countries taking safeguards are in the OECD. Of the 164 investigations, 87 (or 65%) are carried out by developing countries. This shows that such measures have become increasingly attractive in the eyes of developing countries, and in future, there may be changes in the use of measures to ensure fairness of international trade. Items under safeguard investigations in this period include chemicals, metals and metal products, food and farm products, glass, and tile.

4. Protectionist measures against exports from Vietnam

From 1994 to March 15, 2009, Vietnam have

faced 41 lawsuits comprising 33 antidumping, seven safeguard and one countervailing ones relating to such commodities as footwear, farm products, seafood and some manufactured goods. Thus, most of them are antidumping lawsuits.

Of seven safeguard cases, three cases are filed by the Philippines against stained and unstained glass, glazed and unglazed tiles, and sodium tripolyphosphates (STPP); four cases come from India and Canada relating to tapioca starch, steel in coil, footwear and bicycle. Two of these cases relating to STPP and bicycle parts have been closed because authorities concluded that the two imports caused no harm for domestic industries. One countervailing case is about PE bags used for retailers.

These numerical data show that Vietnam has had to deal with a lot of difficulties in integrating into the world economy and expanding its export market. After its accession to the WTO, lawsuits filed by countries employing protectionist measures tend to rise instead of reducing.

In the process of liberating the international trade, opening the markets and accelerating exchange of goods and services between countries, many governments get more ready to take protectionist measures to limit the trade; and antidumping, countervailing duties and safeguards are usually used in place of traditional barriers to market access.

5. Problems to governmental agencies, and companies and their associations in dealing with protectionist measures against Vietnamese exports

a. Enhancing the role of companies and their association in lawsuits: Companies and their associations had better cooperate in building a united front to defend their cases, and form an organization as counterbalance to the domestic industry of the import country in order to create a forum for arguments and opinions from Vietnam's side. This solidarity and cooperation in a common organization reflects ability of Vietnamese companies to respond quickly and effectively in a manner appropriate to common practices in antidumping lawsuits.

b. Enhancing awareness by companies, their associations and related governmental bodies of response to lawsuits: Companies and their associ-

ations had better take active part in lawsuits considering them as chances to gather information, knowledge of foreign laws, and international practices, and prove reasonability of export prices.

In addition, companies, associations and related governmental bodies should learn about legal procedures, proceedings, requirements, information, and documents, etc. of the antidumping lawsuits in order to build a strategy to defend their cases exactly and effectively according to international practices. Awareness by companies of accuracy and honesty of information supplied, cooperation with investigating bodies, and role of lawyers are very decisive and important. Thinking through, companies are the most important entities in such lawsuits.

c. Working out common measures to prevent safeguard lawsuits:

- Long-term export strategy for each industry must be studied and developed with a view to diversifying export market and exports in order to avoid and prevent trade lawsuits instead of exporting a limited number of products in large quantities to a single country. This could be a basis for foreign countries to initiate lawsuits.

- Trade associations should play well their roles in regulating output and trade between their members, avoiding surplus or shortage crises or price war, keeping the export business in order, and observing regulations passed by the associations. In addition, companies in the same industry should agree upon reasonable export prices and avoid unnecessary competition in order to cut losses to Vietnamese companies and prevent conditions

that lead to antidumping lawsuits.

- Export and market information must be gathered closely and regularly in order to work out measures to regulate export volumes by companies.

- Governmental bodies should struggle against commercial frauds to protect common prestige and interests of the Vietnamese business circles.

d. A strategy to promote the export and improve competitiveness of exports: Companies should pay full attention to development of a strategy to expand the export market, and prevent increases in markets where safeguard or antidumping lawsuits are likely, and try to move to other market if possible. This is no easy task because it requires companies to invest more money, human resource and other inputs.

In addition, it's necessary to understand that improvements in competitiveness and added value of Vietnam's exports may make the production cost higher but it helps reduce danger of antidumping lawsuits.

e. Responsibility of governmental bodies:

- Encouraging researches on WTO rules and laws in countries initiating the lawsuits.

- Cooperating with trade associations and local governments to disseminate among companies measures to ensure fairness in international trade, such as antidumping, countervailing measures and safeguards.

- Cooperating with related bodies to explain features of market economy in Vietnam.

- Beefing up researches on policies to promote



foreign trade, develop new products, and promote export to new markets, besides such traditional ones as the U.S., the EU, Japan, China, Australia and Taiwan, in order to avoid concentrating a limited number of staple exports in a few markets.

- Perfecting the Vietnamese accounting standards and making them appropriate to international standards.

- Researching methods of improving production modes, and applying technical advances to increase the output, reduce the production cost, enhance the product quality besides a strategy to promote the export and diversify export market to avoid lawsuits.

- Beefing up the task of supplying predictions of changes in market prices, and information about Vietnam's market shares in foreign economies; prices of similar products from other countries; and major markets for products from industries under management of individual ministries.

- Disseminating information about these lawsuits in order to inform companies of dangers of lawsuits and losses when losing a lawsuit.

- Enhancing supervision and inspection of execution of laws by export companies, especially Companies, Accounting, Auditing, Investment, and Land Laws.

f. Mechanism for providing early warnings:

Number of antidumping and countervailing lawsuits against Vietnamese exports tends to increase and get more complicated causing damage for Vietnam's public image in the world community and interests of local companies. Developing a mechanism for providing early warnings in order to help companies get prepared for such lawsuits is very necessary.

To achieve this aim, it's necessary to beef up and facilitate networks for supplying international market information, build and maintain a warning mechanism in Vietnamese representative agencies in major markets, such as the U.S., the EU, Japan, Australia, and Canada in order to create a network of market intelligence that provides information about changes in laws and regulations on foreign antidumping, countervailing practices and safeguards; along with predictions of possibility of lawsuits against Vietnam's exports. This network allows companies and governmental bod-

ies to offer estimates and measures to prevent such lawsuits.

g. Multilateral and bilateral negotiations:

- Governmental bodies should accelerate bilateral and multilateral negotiations with Vietnam's trading partners to prove that Vietnam's production and export operate according to market mechanism as required by these partners. At the same time, these bodies should work out and implement a multifarious defending program (official petitions, researches, lobbying, use of mass media, and bilateral agreements, etc.) in cooperation with trading partners.

- A bilateral cooperation mechanism between Vietnamese and foreign governments, especially with foreign agencies responsible for investigating dumping degree, subsidies, damage caused for the domestic industry, and assessing characteristics of the market economy, is necessary to exchange information and materials needed for settlement of disputes over the bilateral trade and reduce such disputes.

- Beefing up negotiations with trading partners to persuade them to recognize Vietnam as a market economy before 2018 with a view to avoiding losses in process of calculating fair values and dumping margin.

h. Developing the human resource:

Operation of a WTO-approved antidumping, countervailing and safeguard mechanism requires strong institutional capacity including a system of official legislation of antidumping, countervailing and safeguard measures, expertise and ability of bodies responsible for execute and supervise trade protectionist measures. This also requires presence of armies of experts in the government and business circles who can cope with increasingly demanding and urgent tasks of handling trading disputes according to WTO rules and regulations.

i. Taking part in dispute settling mechanism and international forum:

Vietnam's accession to the WTO allows it to take part in the WTO Dispute Settlement Body and make the best use of Vietnam's interests in this body. In addition, Vietnam should actively participate in regional and international forums, such as ASEAN and APEC, in order to present its opinions and win support from other countries for legitimate interests of Vietnamese companies■