

WINSTON & STRAWN LLP

214 NORTH TRYON STREET
CHARLOTTE, NORTH CAROLINA 28202-1078

35 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60601-9703

43 RUE DU RHONE
1204 GENEVA, SWITZERLAND

99 GRESHAM STREET
LONDON EC2V 7NG3

333 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-1543

1700 K STREET, N.W.
WASHINGTON, D.C. 20006-3817

(202) 282-5000

FACSIMILE (202) 282-5100

www.winston.com

4 STASOVOY ULITSA
119071 MOSCOW, RUSSIAN FEDERATION

200 PARK AVENUE
NEW YORK, NEW YORK 10166-4193

ONE RIVERFRONT PLAZA
NEWARK, NEW JERSEY 07102-5401

25, AVENUE MARCEAU
CS 31621
75773 PARIS CEDEX 16

101 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94111-5802

May 27, 2009

PUBLIC DOCUMENT

Case No.: C-522-805

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This document contains no confidential business
proprietary information.

Barbara E. Tillman, Director
AD/CVD Operations, Office 6
Import Administration, Room 1870
U.S. Department of Commerce
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Re: *Application of Countervailing Duty Law to Imports from Vietnam:*
Request for Comments on the Polyethylene Retail Carrier Bags from Vietnam

Dear Ms. Tillman:

On behalf of the Vietnam Competition Administration Department, Ministry of Industry and Trade (MOIT), Socialist Republic of Vietnam, enclosed is a copy of the letter prepared by MOIT in response to the U.S. Department of Commerce's invitation to submit comments on the application of the countervailing duty laws to Vietnam.¹

¹ *Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation and Request for Public Comment on the Application of the Countervailing Duty Law to Imports From the Socialist Republic of Vietnam*, 74 Fed. Reg. 19064, (April 27, 2009).

Barbara E. Tillman, Director
May 27, 2009
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In accordance with the request for comments, we are filing an original and eight copies of this submission. Please contact the undersigned if you have any questions regarding this submission.

Sincerely,



William H. Barringer
Daniel L. Porter
Valerie Ellis

*Vietnam Competition Administration
Department, Ministry of Industry and Trade
(MOIT), Socialist Republic of Vietnam*

PUBLIC CERTIFICATE OF SERVICE

I hereby certify that a complete copy of the foregoing public submission has been served this day, by hand, upon the following persons:

<p><u>On behalf of Petitioners Hilex Poly Co., LLC and Superbag Corporation:</u> Joseph W. Dorn, Esq. KING & SPALDING LLP 1700 Pennsylvania Avenue, N.W. Washington, D.C. 20006-4706</p>	<p><u>On Behalf of Advance Polybag Co., Ltd.</u> Arthur J. Lafave III, Esq. LAFAVE ASSOCIATES 1725 I Street, NW Suite 300 Washington, DC 20006</p>
<p>Mr. Thoan Ngo Commercial Counselor Embassy of the Socialist Republic of Vietnam Vietnam Trade Office 1730 M Street, NW Suite 501 Washington, DC 20036</p>	<p><u>On behalf of Kinsplastic and VN Plastic Industries</u> Edmund W. Sim, Esq. HUNTON & WILLIAMS 1900 K Street, NW Washington, DC 20006-1109</p>
<p><u>On Behalf Of Ampac Packaging (Vietnam), Ltd.</u> Ronald M. Wisla, Esq. GARVEY SCHUBERT BARER 5th Floor Flour Mill Building 1000 Potomac Street, NW Washington, DC 20007-3501</p>	<p><u>On behalf of Ampac Packaging (Vietnam) Ltd. and Alpha Plastic (Vietnam) Co., Ltd.</u> Peter Koenig, Esq. SQUIRE, SANDERS & DEMPSEY LLP 1201 Pennsylvania Avenue, NW Suite 500 Washington, DC 20004</p>
<p><u>On behalf of of Fotai</u> Robert G. Gosselink, Esq. TRADE PACIFIC PLLC 719 A Street, NW Washington, DC 20002</p>	



Valerie Ellis, Esq.
Winston & Strawn
1700 K Street, NW
Washington, DC 20006

Dated: May 27, 2009



FREE TRANSLATION

MINISTRY OF INDUSTRY AND TRADE
THE SOCIALIST REPUBLIC OF VIETNAM

May 27, 2009

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U.S. Department of Commerce
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Cc.: Barbara E. Tillman, Director
AD/CVD Operations, Office 6
Import Administration, Room 1870
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Re: *Application of Countervailing Duty Law to Imports from Vietnam: Request for Comments*

The Ministry of Industry and Trade (MOIT) of the Socialist Republic of Vietnam would like to express its compliments to United States's Department of Commerce (Commerce) and hereby submit this letter in response to the Commerce's Notice initiating the countervailing duty investigation of *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam* and its *Request for Public Comment on the Application of the Countervailing Duty Law to Imports from the Socialist Republic of Vietnam*. MOIT's objection to the initiation of this investigation and application of countervailing duties was previously presented in consultations held on April 15, 2009 in Washington D.C and in a written submission presented in connection with the consultations

On October 17, 2007, Commerce made a final decision to reverse its traditional policy of refusing to apply the countervailing duty ("CVD") laws to non market economies ("NME"), and

for the first time allowed the CVD laws to be applied against an NME, the People's Republic of China. In defending its decision to apply these laws to China, Commerce explained that while China's economy had changed significantly enough to allow Commerce to identify whether a subsidy had been conferred by the government, it had not transitioned sufficiently so that it should not be treated as an NME. Commerce's findings in this regard were quite specific and were limited to the application of the CVD laws to China, not to the combined use of CVD and AD-NME trade remedies generally. Nevertheless, having made these findings only with respect to China, Commerce has decided to initiate a CVD and NME-AD case against another NME country, namely Vietnam, apparently based on the petitioning U.S. industry's allegation that Vietnam is "not unlike" China. MOIT believes that the application of both types of trade remedy against Vietnam to be unfair and lack both factual and legal basis, and asks that Commerce maintain its traditional approach of non-application of CVD law to Vietnam as long as the United States still treats Vietnam as an NME, immediately abandon this action against Vietnam and rescind the investigation initiation against Polyethylene Retail Carrier Bags from Vietnam.

First, MOIT would note that Commerce had undertaken several recent examination of the China's economy and its status as an NME before determining that China was sufficiently market oriented to allow Commerce to conduct a countervailing duty investigation. This is simply not the situation with respect to Vietnam. The only such examination that has taken place with respect to Vietnam was in 2002 and Commerce determined at that time that Vietnam was not a market economy. In contrast, had undertaken several recent examinations of China's economy in the period leading up to its acceptance of a countervailing duty petition against China. The proper course of action for Commerce would be to undertake such a study before making any determination as to whether or not Vietnam is sufficiently market oriented to be subject to CVD's. Undertaking such a study in the course of the investigation is impractical given the time limits. In addition, the mere initiation of an investigation is unfair and will disrupt Vietnamese exports during the period any such determination on Vietnam's market orientation extent is pending. Unless and until Commerce has determined that the factual predicate in terms of Vietnam being sufficiently market oriented to apply countervailing duties exists, the investigation and application of such measures is without an adequate factual support. Therefore, MOIT considers that the proper course of action for Commerce would be to undertake such a study before making any determination as to whether or not Vietnam is sufficiently market oriented to be subject to CVD's.

Second, the actions taken by Commerce are inconsistent with both U.S. law and the U.S. obligations under the WTO. As regards to U.S. law, the decision by the U.S. Court of Appeals for the Federal Circuit, followed by the failure of Congress to overturn that decision and by the maintenance of not applying CVD law against NMEs for 20 years by Commerce clearly establish that application of CVD law to NME's is inconsistent with U.S. law. In addition, Commerce has taken no steps to modify its NME antidumping methodology to avoid the double application of remedies for the same alleged unfair trading behavior. In essence, the AD and CVD petitions are asking that Commerce adopt logically inconsistent positions. At the same point in time, the AD and CVD petitions ask Commerce to conclude on the one hand that the Vietnamese economy is not sufficiently market-based, thereby justifying the application of the NME AD methodology, and that on the other hand, the Vietnamese economy is sufficiently market-based to permit the application of the CVD law. This absurd result itself reveals the error

in Commerce's interpretation of its own "broad discretion". Even the broadest agency discretion should not be understood to allow Commerce to treat the United States' trading partners inconsistently during simultaneous proceedings, solely to achieve the most punitive outcome possible. This, of course, is inconsistent with U.S. obligations under the WTO Agreement on Subsidies and Countervailing Measures.

Third, the petition on which Commerce has initiated this investigation is more notable for its omissions than it is for its factual support of its allegations. It has taken broad policy statements in various Government of Vietnam's documents and ignored the absence of any implementing measures with respect to these broad policy goals. It has failed to even superficially research whether or not export subsidies have been terminated as a result of Vietnam's accession to the WTO. And it has characterized Vietnam's banking system in a manner which would allow Vietnam's banks to operate inconsistently with the requirements imposed by banking and credit laws and regulations. Details were provided during the consultations and are on the record of this investigation. Ironically, the measures which were at the heart of the old "command and control" economy which Commerce historically has used as the basis for not applying countervailing duties to NME's are now at the heart of the petitioners' allegations of subsidies. Thus, these measures are being used both as the basis of continuing Vietnam's NME status and as the basis for determining the existence of subsidies. If economic development plans and the Government of Vietnam's perceived control over the economy are the rationale for continuing to classify Vietnam as an NME, it is difficult to see how these same plans can also be the basis for the determination of subsidies. In short, as demonstrated during the consultation process, there is ample publicly available information to contradict virtually every subsidy allegation and, in turn, to raise the question as to why Vietnam is still considered an NME.

Moreover, the action taken by Commerce is particularly unfair and harmful, insofar as it goes against the spirit of cooperation and equality that have previously established in U.S.-Vietnam trade relations. First of all, the United States and Vietnam have had a comprehensive bilateral trade agreement for almost nine years. Secondly, Vietnam has committed to a detailed and comprehensive phase out of all illegal subsidies pursuant to its WTO commitments, and it has honored and implemented each and every one of these commitments. Notably, neither the United States nor any other WTO member has found it necessary to bring an action against Vietnam in the WTO. Finally, the U.S. and Vietnam continue to forge close economic ties under the rubric of the U.S.-Vietnam Trade and Investment Framework Agreement (TIFA), which itself resulted in the first round of Bilateral Investment Treaty (BIT) negotiations in December 2008 in Washington, DC. Put simply, Commerce's ill-advised application of double remedies unfairly and absently of factual as well as legal basis against Vietnam can do nothing but stifle the robust multilateral economic cooperation that the two countries have established with much effort for over a decade. Although MOIT disagrees with Commerce's reading of U.S. law as allowing it to impose countervailing duties on an NME, even under Commerce's reading it retains the discretion to not apply such measures. Commerce should have exercised that discretion in this case.

Finally, in a time of global economic crisis, the United States' President has warned all Americans time and again not to turn inward and retreat behind a wall of protectionism. Indeed,

the United States has joined other countries in calling on the global community to forego protectionist measures so as not to worsen the crisis. Broadening the protectionist weapons against Vietnam's exports at such a time is clearly inconsistent with the United States' policy foregoing protectionist measures during a time of global economic crisis.

Once again, MOIT requests DOC to consider thoroughly the comments and evidence mentioned above as well as in the official written submission sent to DOC by MOIT on April 15, 2009 and to determine not to apply CVD law against Vietnam as long as the United States still treats Vietnam as an NME.

Sincerely,

(Signed)

Le Danh Vinh
Vice Minister of Industry and Trade



BỘ CÔNG THƯƠNG
CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM

Ngày 27 tháng 5, 2009

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Total No. of Pages: 4

Bộ Thương mại Hoa Kỳ
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Bà Barbara E. Tillman, Giám đốc
Chương trình AD/CVD, Ban 6
Phòng Quản lý Nhập Khẩu, Phòng 1870
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Vv: Áp Dụng Luật Thuế Chống Trợ Cấp Đối Với Hàng Nhập Khẩu Từ Việt Nam
Yêu Cầu Đưa Ra Bình luận.

Bộ Công Thương (MOIT) của nước CHXHCN Việt Nam gửi lời chào trân trọng đến Bộ Thương mại Hoa Kỳ (DOC) và, qua thư này, có các ý kiến phản hồi lại *Thông báo của Bộ Thương mại Hoa Kỳ (DOC) về việc khởi xướng vụ điều tra chống trợ cấp Tài PE đưng hàng hóa bán lẻ từ nước CHXHCN Việt Nam* và *Yêu cầu các Bình luận công khai về việc áp dụng luật chống trợ cấp đối với hàng nhập khẩu từ nước CHXHCN Việt Nam*. MOIT đã đưa ra các phản đối về việc khởi xướng điều tra và việc áp dụng thuế chống trợ cấp tại phiên tham vấn với DOC ngày 15 tháng 4 năm 2009 và trong văn bản tham vấn chính thức.

Ngày 17 tháng 10 năm 2007, DOC đã đưa ra quyết định thay đổi chính sách truyền thống của mình là không áp dụng luật thuế chống trợ cấp ("CVD") đối với các nước có nền kinh tế phi thị trường ("NME"), và lần đầu tiên DOC áp dụng luật CVD đối với một nước NME, đó là nước Cộng Hoà Nhân Dân Trung Hoa. Để chứng minh quyết