

Competition Distortions Dossier

September-November 2015

A. TRADE POLICY

1. Vietnam Steel Exporters Investigated

Domestic steel exporters are worrying about losing export markets in Association of Southeast Asian Nations (ASEAN) as more and more countries in the region have initiated dumping investigations on steel imports from Vietnam.

Thailand alone has launched three anti-dumping investigations on Vietnamese steel sheets and steel products in September 2015. In the past, other export markets in the region have also conducted probes into steel sheet imports from Vietnam.

Vietnam’s cold-rolled steel sheets and colour-coated steel sheets have been exported to many countries in ASEAN, mainly to Thailand, Malaysia, Indonesia, and Cambodia in the past three years. The Government of Indonesia also imposed an anti-dumping tax on imports of Vietnamese cold-rolled steel sheets from July 07, 2014 to July 07, 2017.

<http://www.vir.com.vn/vietnam-steel-exporters-investigated.html>



Food for Thought

The steel sector the world over is notorious for being a witness to several trade defence lawsuits. This is because steel is a major industrial product that all countries want to develop while protecting their domestic markets. The sector also consists of several sub-categories of products and requires significant investment. Furthermore, presence of applicable international standards, widespread availability of information and common manufacturing practices also make it easier to determine whether the products are being exported below cost. Because of these reasons, many countries are trying to protect their domestic steel markets by resorting to use non-tariff barriers, amongst which investigation and imposition of anti-dumping tax on imports is a pre-eminent method.

According to the Vietnam Competition Authority (Ministry of Industry and Trade), during the period from 1994 till 2014, anti-dumping investigations and lawsuits against steel imports made up about 29 percent of the total number of cases. In 2014 alone, Vietnamese steel products faced with four such lawsuits. Unfortunately, these lawsuits were not solely initiated by countries in the ASEAN. In five years from 2010 till 2015, in the US market, there have been five anti-dumping lawsuits against steel imports from Vietnam, amongst which only one case, related to carbon steel roll, got positive result.

Vietnamese steel exports are suffering, as a result. This is because Vietnamese steel producers are not fully aware of the legal framework, as well as management practices of the export markets, experts said. They did not examine contracts carefully in advance or consult trade lawyers/experts to defend their interests. Most of the times, Vietnamese enterprises only paid attention to such contractual provisions as order quantities, prices, etc. without looking at dispute settlement issues, applicable fines, or compensations.

The Vietnamese steel industry has been posting a high growth rate, but with little value addition. The only competitive advantage possessed is in terms of production costs, making an ever-easy target. The total designed capacity currently stands at 10mn tons per year, but most of Vietnam’s steel producers are small and medium-sized, with low managerial capabilities and outdated technologies.

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According to the Vietnam Steel Association (VSA), to be able to face competition and effectively join the global market, Vietnamese enterprises need to familiarise themselves with international trade rules and boost the competitiveness of their products. Besides, it is also necessary to expand all distribution channels and improve managerial skills.

2. Vietnam Enters New Playground after TPP Negotiation Ends

After five years of negotiations with countless disagreements and obstacles, trade ministers of 12 Member States of the Trans-Pacific Partnership (TPP) agreement



reached final consensus on the world's largest free trade deal on October 05, 2015. After the agreement is officially signed, the TPP must be approved by the heads and parliaments of the 12 member countries, to come into effect.

Vietnam's economy is expected to benefit most from the TPP as it will help the country reach markets that are currently still closed for the country.

Although facing greater competition, Vietnam will have the opportunity to reach a huge market that accounts for about 40 percent of the world economy and 30 percent of global trade value. Notably, all 12 TPP member countries are also members of the Asia Pacific Economic Cooperation (APEC) with a population of 650mn and a total Gross Domestic Product (GDP) of US\$20tn.

<http://english.vietnamnet.vn/fms/special-reports/143286/vietnam-enters-new-playground-after-tpp-negotiation-ends.html>

Food for Thought

Vietnam is being touted by many as the biggest 'winner' of the TPP agreement. The opening of the US and Japanese markets presents enormous opportunities for the country's booming garment and apparel industry, which has the potential to act as a major magnet for foreign direct investment (FDI) into the economy. Most of this investment would likely be diverted from other countries, such as China and Cambodia.

Vietnam's fishing industry will also benefit from the elimination of import taxes on shrimp, squid and tuna. In fact, with 18,000 tariffs being slashed across the 12 TPP

participating countries, exports are expected to increase by 38 percent within a decade. The increased exports coming out of an overall low-wage economy will boost the country's GDP by 11 percent, or US\$36bn as more factories move to the country.

Meanwhile, the elimination of import taxes on pharmaceutical products could hurt local players. The current average import tax stands at 25 percent, and eliminating this would lead to stiffer competition between domestic and foreign pharmaceutical players. While this could hurt local players, it could also benefit local consumers. The agriculture and livestock industries could also struggle to compete against the TPP's industry behemoths, such as the US or Canada.

However, sentiments among the investors, both domestic and foreign, have been highly positive. After signing of the agreement, Vietnam's benchmark index increased by 3 percent, and foreign investors made moves to invest in logistics, industrial parks, fisheries and garments. For the government it is crucial that the agreement is ratified – not only will it increase exports, but it will also ease the country's dependence on trade with China.

3. Firms Urged to Take up Trade Defence Measures

Vietnamese firms have been urged to learn more about trade defence instruments allowed under the World Trade Organisation (WTO) and cooperate in the use of trade defence instruments to protect domestic production.

On one hand, a series of free trade agreements (FTAs) would offer huge opportunities for Vietnamese firms to boost exports. On the other hand, under these FTAs, the country will have to open its markets to imports, which can create challenges. Many countries have applied trade defence measures, including anti-dumping, anti-subsidy and safeguards against Vietnam's exports.

Statistics from the Vietnam Competition Authority (VCA) show that Vietnamese export products faced 98 lawsuits



related to trade defence between 1994 and October 2015 in foreign markets.

Trade defence lawsuits affect export companies' competitiveness and exports, often causing them to lose markets. In addition, companies have to spend huge amounts of money on lawsuits and can be hit with high import tariffs for five years or more.

<http://vietnamnews.vn/economy/278212/firms-urged-to-take-up-trade-defence-measures.html>

Food for Thought

Vietnam's international economic integration is increasingly deepened through the negotiation and conclusion of several FTAs with major trading partners. Most notably, Vietnam is a member of the ASEAN Economic Community (AEC), which would be formed in late 2015, and has completed negotiating the TPP Agreement with 11 other countries. With these FTAs, Vietnam is opening its door for foreign products and foreign investors to enter into the Vietnam market, especially through reducing and eliminating tariffs after 2015. This could be considered as both i.e. opportunity and challenge to the Vietnamese business community.

According to the results of a survey undertaken by the Vietnam Chamber of Commerce and Industry (VCCI) in late 2014 with more than 1,000 enterprises, about 60-70 percent of the enterprises were aware of the trade defence instruments. They knew that the trade defence instruments are not only barriers abroad, but also tools, which can be used at home to protect themselves. However, they only heard about but have no deep knowledge about these tools. It seems that Vietnam enterprises do not have any material preparation for using trade defence instruments when needed.

Trade defence instruments are collective tools given to the domestic industry in order to protect themselves against unfair competition acts, massive imports as well as collective imports from other countries. Therefore, a single enterprise cannot be a plaintiff and use those tools, except when the enterprise is representative of the whole sector. As a result, business associations play a very important role in strengthening the linkages between enterprises involved and could directly help these enterprises to use trade defence instruments.

The government should publicise information and provide support with regard to undertake research, collect official data, which is under the control of State agencies. At the same time, the government should employ other legitimate mechanisms to support the enterprises, such as through simplifying and improving administrative procedures, helping domestic enterprises to initiate trade defence lawsuits, and effectively and timely coordinating with investigating authorities in providing information for the investigations. Most importantly, the government needs to improve the legal framework regarding trade defence instruments.

B. INVESTMENT POLICY

4. Vietnam Signals Strong Commitment in Selling Biggest State Firms

Vietnam Prime Minister Nguyen Tan Dung has recently asked the State Capital Investment Corporation (SCIC) to report on what time and how to divest State capital from ten State-owned enterprises (SOEs) for consideration and approval.

Notable amongst the SOEs, which the government is selling shares is Vietnam's largest dairy producer Vinamilk, where the State currently owns a 45 stake. The others include the Bao Minh Insurance Corporation (the State



owns 50.7 percent of its capital); the Vietnam National Reinsurance Corporation (40.4 percent); the Ha Giang Engineering and Mineral Resource Joint Stock Company (46.6 percent); the Tien Phong Plastic Joint Stock Company (37.1 percent); the Vietnam Infrastructure and Real Estates Joint Stock Company (47.6 percent); the Sa Giang Import – Export Joint Stock Company (49.9 percent); the FPT Joint Stock Company (6 percent) and the FPT Telecom Joint Stock Company (50.2 percent).

<http://www.vietnambreakingnews.com/2015/10/ten-soes-considered-to-have-state-capital-divested/>

Food for Thought

This move by the Government of Vietnam seems to signify a strong determination to accelerate the privatisation of State Owned Enterprises (SOEs), considering that Vinamilk is one of the best performing companies in the country, which has consistently brought huge dividends to SCIC over the past years.

At the end of previous year, the dairy producer had a market capitalisation of US\$5bn, the second biggest in Vietnam. With an annual growth of 22 percent, its revenue was estimated at over \$34.9tn VND (US\$1.58bn) in 2014, including more than US\$200mn from exports.

Dung was quoted to say at a recent meeting that the State needs to divest faster from SOEs and use its financial resources on more important areas. He stressed that these businesses could be operated well by the private sector, and that the private sector should be considered as a key driver of economic growth, while the job of the government is to introduce favourable policies and upgrade the infrastructure.

This business-friendly rhetoric has been appreciated by economists nation-wide, who for years have been criticised big SOEs for using their advantages to compete against private companies, limiting the expansion of the private sector, and investing in various non-core and risky sectors. Some even said that Vietnam would only have a genuine market economy when all enterprises are totally privatised, thus levelling the overall playing field to the end goal of increased economic efficiency and consumer welfare.

Experts have also pointed out that the privatisation process in Vietnam still has a long way to go. Despite the government's determination, a majority of SOEs have failed to divest from non-core business in the current year as ordered. Only 61 SOEs have finished selling shares to private investors in the first six months, accounting for a mere 21.1 percent of the number of businesses scheduled for privatisation in 2015.

Vietnam is trying to quicken a sale programme that began in the 1990s as the government seeks to spur economic

growth to a four-year high of 6.2 percent in the current year. The complexities of the privatisation process have hindered plans to overhaul inefficient State companies, whose borrowings have burdened the banking system with bad debt and strained lending.

With the TPP agreement to have been concluded, soon taking effect, Vietnam would have to further reform its policies towards State-owned companies to ensure that they are operating in a competitively-neutral way.

C. SECTORAL POLICY

5. Mobile Phone Users Can Retain Numbers While Switching Networks

Mobile phone users in Vietnam will be able to switch to a different network without having to change their numbers from 2016, according to the Ministry of Information and Communications.



Major networks, namely Viettel, Mobifone and Vinaphone, will carry out a test run of the plan in December 2015, said Deputy Minister of Information and Communications Pham Hong Hai at a meeting in Hanoi on September 11, 2015.

While representatives of those service providers said that they are ready, Hanoi Telecom requested that the trial be delayed until 2017 for this company to complete technical preparations. Deputy Minister Hai, however, rejected the proposal.

<http://www.thanhniennews.com/tech/mobile-phone-users-in-vietnam-can-keep-number-when-switching-networks-from-2016-51257.html>

Food for Thought

So far, in the world, there are about 70 countries providing network switching service without changing number, developed countries, such as the US, Japan, the UK, and Australia, etc. are among them. In Vietnam, network carriers, such as Viettel and S-Fone have applied simpler form to encourage customers to use their service.

Proposal of network switching without changing number (in other words, number mobility) was mentioned since late 2006 by the Ministry of Information and Communications. However, it was only until September 2013 that deployment project was formally approved. This decision is expected to help to enhance the competitiveness of enterprises, promote the sustainable and stable development of the Vietnamese telecommunications market and improve resource efficiency.

However, the application of number mobility might mean losses to some network carriers, especially when other ones launch attractive promotions to draw more customers. In addition, number mobility might also disrupt, destabilise the market and waste number resources. In this regard, to ensure fair competition and protect the legitimate interests of all

network carriers, the Ministry of Information and Communication said that it would apply two policies to regulate number mobility, namely switching time and switching fees. If users want to switch network, they have to pay switching fees and wait for a certain period of time. The Ministry will test and adjust these two policies in accordance with market realities. Therefore, the telecommunications market and fair competition for networks carriers should not be affected. The Ministry will also ensure that customers will be facilitated if they want to switch network. But the situation where customers switch network only to enjoy promotions has to be avoided at all costs.

Vietnam has seven mobile network operators with more than 120mn of subscribers in total. Once the mobile phone market has reached saturation, it is necessary to give users the option of switching to another service provider to facilitate competition.

D. ANTICOMPETITIVE PRACTICES

6. Vietnam Province Asks Locals to Drink Saigon Beer

Ha Tinh authorities have recently issued many fiats requesting public servants, state offices, businesses and consumers to drink Saigon Beer made by the Saigon Beer-Ha Tinh brewery, while beverage shops in the province were also asked to persuade their patrons to only use domestically-made alcoholic drink.

In Ho Do Commune of Loc Ha District, locals are even reminded of the province-backed policy to drink Saigon Beer twice a week via speeches broadcasted through the commune-wide public loudspeaker system.

<http://tuoitrenews.vn/business/30601/vietnam-province-asks-locals-to-drink-saigon-beer-via-public-loudspeakers>



Food for Thought

In fact, this is not the first time Ha Tinh Province unfairly favoured Saigon Beer. In August 2014, Ky Anh District (now split into Ky Anh Commune and Ky Anh District) issued an official document asking local State agencies to give priorities to Saigon Beer when they had conferences or meetings. Saigon Beer has a factory in Ha Tinh Province and contributes about \$380bn VND (US\$16.96mn) each year as tax. The provincial leadership, therefore, seems to see the promotion of Saigon Beer as an effective way to increase budget revenue.

The Ministry of Industry and Trade (MOIT) has henceafter officially requested Ha Tinh province to report on the incidence.

According to Vice Minister Tran Tuan Anh, this is essentially against the spirit of the Competition Law 2004, which explicitly prohibits State management agencies from 'forcing enterprises, organisations or individuals to buy, sell goods, provide services to enterprises, which are designated by these agencies, except for goods and services in the State-monopolised domains or in emergency cases prescribed by law', or 'discriminating between enterprises' (See Article 6(1), (2) of the Competition Law 2004).

Recently, the People's Committee of Hai Phong City also signed an official document requiring civil servants to use the services of the Vietnam Technological and Commercial Joint Stock Bank. But this case was only mentioned in the news, without any reaction from relevant State agencies at the central-level.

These incidents show that the level of awareness on competition policy and law in Vietnam is not only low amongst the business community, but also not very high amongst State agencies, which poses huge challenges against effective implementation of the Competition Law, as well as the building of a genuine market economy in Vietnam.

7. Transport Companies Yet to Lower Fares Despite Fuel Price Cuts

Despite falling petrol prices, local road haulers, bus and taxi companies seemed happy to continue charging high prices for their services.

On September 03, 2015, the Ministry of Industry and Trade instructed petrol traders to lower the price of 92 octane petrol by \$1,198 VND per litre along with cutting prices for other types of fuel. Several experts said that it is necessary to tighten control over transportation fares, and even suggested fining those firms that delay cutting their charges.

<http://www.dtinews.vn/en/news/018/41684/transport-companies-yet-to-lower-fares-despite-fuel-price-cuts.html>



Food for Thought

In May 2015, when gasoline and diesel prices were increased, many taxi companies in Hanoi and Ho Chi Minh City simultaneously raised their rates by \$500 VND/km with the argument that if they do not increase their rates, they cannot cover their losses in the long term. Now, when gasoline and diesel prices have been decreased, transportation fares obviously should be lowered, especially gasoline-fueled and diesel-fueled vehicles. But the transportation fares of taxi companies and other types of transportation service providers are still unchanged.

Unlike petrol products, the prices of road transportation services in Vietnam do not fall under the surveillance and management by State agencies. Therefore, the Ministry of Finance cannot force transportation enterprises to cut their rates in accordance with the rise and fall of prices in the petrol industry. Most transport companies are private enterprises and thus retain autonomy in deciding their own rates and prices.

In the meantime, there were huge public/consumer outcries, while experts suspected the transport enterprises have been colluding in fixing their fares, or at least there has been some kind of price leadership-follower pattern. According to the Competition Law 2004 of Vietnam, price-fixing, which is considered a hard-core antitrust violation in many countries, is only prohibited when the parties have a combined market share of 30 percent or more on the relevant market.

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