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AD/CVD Operations, Office 6

PUBLIC DOCUMENT

Barbara E. Tillman
Director, AD/CVD Operations, Office 6
U.S. Department of Commerce
Attention: Import Administration
APO/Dockets Unit, Room 1870
1401 Constitution Avenue, N.W.
Washington, DC 20230

Attn: Jun Jack Zhao; Gene Calvert; Andrew Lee Beller (electronic copy, by email)

Re: Application of the Countervailing Duty Law to Imports from the Socialist Republic of Vietnam: Request for Comment

Dear Ms. Tillman:

On behalf of Fotai Vietnam Enterprise Corp. (“Fotai Vietnam”) and Fotai Enterprise Corporation (collectively “Fotai”), we respond to the Department’s polyethylene retail carrier bags (“PRCBs”) countervailing duty investigation initiation notice and request for public comment on whether the CVD law should be applied to imports from Vietnam.¹

In its PRCBs initiation notice and request for public comment, the Department cited petitioners’ claim that “Vietnam’s accession to the World Trade Organization (WTO)” and

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) (“PRCBs Initiation Notice and Invitation for Public Comment”).

“{t}he WTO Subsidies and Countervailing Measures Agreement (SCM Agreement)” might permit the application of countervailing duties to imports from Vietnam.² If the Department concludes that it is appropriate to apply the CVD law to Vietnam, and that Vietnam’s WTO membership and the WTO’s SCM Agreement clear the way for the application of countervailing duties to imports from Vietnam, including imports of PRCBs, the Department should establish a date no earlier than January 11, 2007, the date on which Vietnam’s WTO membership took effect, as the “uniform date from which the Department will identify and measure subsidies” related to imports of PRCBs from Vietnam.³

In countervailing duty investigations involving imports from China—a country that, like Vietnam, is treated as a non-market economy for purposes of the antidumping duty law—the Department has found “that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies.”⁴ In the final CVD

² PRCBs Initiation Notice and Invitation for Public Comment, at 19067.

³ See, e.g., Memorandum from John M. Andersen, Acting Deputy Assistant Secretary, to Ronald K. Lorentzen, Acting Assistant Secretary: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Citric Acid and Certain Citrate Salts from the People’s Republic of China, (April 6, 2009), Comment 4, (“Citric Acid”).

⁴ Id.; see also Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China (“Welded Pipe”) (May 29, 2008), Comment 2; Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration—Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Laminated Woven Sacks from the People’s Republic of China (“Woven Sacks”) (June 16, 2008), Comment 2; Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration—Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Certain Pneumatic Off-the-Road Tires from the People’s Republic of China (“OTR Tires”) (July 7, 2008), Comment A.4; Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import

determinations involving imports of welded pipe, woven sacks, OTR tires, and thermal paper from China, the Department held in each case that December 11, 2001, the effective date of China's WTO accession, was the most appropriate uniform date for identifying and measuring subsidies in China. In all of these cases, the Department pointed to China's WTO accession date as an appropriate and uniform "cut-off" date for identifying and measuring subsidies in China resulting from (1) the significant economic reforms that occurred in China prior to China's accession to the WTO, and (2) the fact that "{t}he changes in (China's) economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers."⁵

In highlighting specific economic reforms that occurred in China in the years leading up to China's accession to the WTO, the Department has pointed to the elimination of price controls in the Chinese economy, the opening of a private industrial sector, and the abolition of a "mandatory credit plan."⁶ In establishing China's WTO accession date as the bright-line "cut-off" for identifying and measuring subsidies in China, the Department has acknowledged that "there was not a single moment or single reform law that suddenly permitted us to find subsidies in the PRC," that "reforms may take hold in some sectors of the economy or areas of the country before others," and that a bright-line cut-off date for identifying and measuring subsidies in China "provides certainty to the parties concerned."⁷ In the original petition for the imposition

Administration, to David M. Spooner, Assistant Secretary for Import Administration: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Lightweight Thermal Paper from the People's Republic of China ("Thermal Paper") (September 25, 2008), Comment 2.

⁵ See Citric Acid, page 46.

⁶ Id.

⁷ See Thermal Paper, page 41.

of antidumping and countervailing duties against imports of PRCBs from Vietnam, petitioners argue for the application of the countervailing duty law to Vietnam based largely on a comparison of Vietnam's economic reforms in the lead-up to WTO accession to similar reforms in China that, in part, cleared the way for the Department's application of the countervailing duty law to China. In spelling out the comparison, petitioners note that "{t}he changes (in China) cited by the Department were the elimination of price controls on most products, permitting the development of a private industrial sector since the 1990s, and abolishing the mandatory credit plan in 1997" and that "{t}hese are all reforms that the Department has found Vietnam to have enacted."⁸ More importantly, petitioners note that "{t}he Report on the Working Party on the Accession of Vietnam also discusses many of the reforms that Vietnam enacted prior to its accession, with the representative of Vietnam stating that 'Viet Nam was shifting from a system of central planning to a market-based economy.'"⁹ Thus, petitioners themselves have demonstrated that, as in China, the very reforms in Vietnam that might justify the application of countervailing duties to imports of PRCBs from Vietnam were driven by, and are closely linked to, Vietnam's accession to the WTO. Accordingly, the Department should only identify and measure subsidies in Vietnam no earlier than January 11, 2007, the effective date of Vietnam's accession to the WTO.

If the Department concludes that it is appropriate to apply the CVD law to imports from Vietnam, including imports of PRCBs, Fotai requests that the Department—well in advance of the June 24, 2009 deadline for the submission of initial CVD questionnaire responses in the

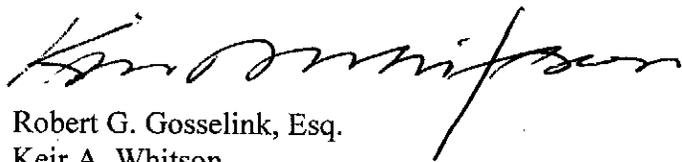
⁸ See Letter from King & Spalding to the Honorable Gary Locke, Secretary of Commerce: Petition for the Imposition of Antidumping Duties Against Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam and Countervailing Duties Against Polyethylene Retail Carrier Bags from Vietnam, (March 31, 2009), page 50.

⁹ Id.

PRCBs proceeding—establish a date no earlier than January 11, 2007 as the “uniform date from which the Department will identify and measure subsidies” in Vietnam. The Department’s expedited establishment of this uniform date, in advance of the June 24, 2009 initial CVD questionnaire response deadline, will provide certainty and transparency to Fotai, the Government of Vietnam, and other respondents, and will help all Vietnam-based interested parties determine the scope of the documentation and information required to respond fully to the Department’s initial CVD questionnaire response.

Please let us know if you have any questions regarding this submission.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert G. Gosselink", written over a printed name.

Robert G. Gosselink, Esq.
Keir A. Whitson

CERTIFICATE OF SERVICE

I, Keir A. Whitson, hereby certify that a copy of the foregoing document submitted on behalf of Fotai Vietnam Enterprise Corp. ("Fotai Vietnam") and Fotai Enterprise Corporation (collectively "Fotai"), dated May 27, 2009, was served by hand delivery or first-class mail on the following parties:

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