

## **ORDINANCE No. 42/2002/PL-UBTVQH10 ON SAFEGUARDS IN THE IMPORT OF FOREIGN GOODS INTO VIETNAM**

In order to enhance the State management over the economy, create conditions for the Vietnamese economy to effectively integrate into the international economy, restrict unfavourable impacts causing serious harm to the domestic production due to abnormal increases in the import of goods into Vietnam;

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No 51/2001/QH10 of December 25, 2001 of the 10<sup>th</sup> National Assembly at its 10<sup>th</sup> session;

Pursuant to the Resolution of the 10<sup>th</sup> National Assembly, 10th session, on the 2002 law-making and ordinance-making programme;

This Ordinance provides for the safeguard measures in the import of foreign goods into Vietnam,

### ***Chapter 1***

#### **GENERAL PROVISIONS**

##### **Article 1.- Scope of regulation**

This Ordinance prescribes the safeguard measures, the conditions and procedures for the application of these measures in cases of excessive import of goods into Vietnam, which causes serious harm to the domestic production.

##### **Article 2.- Right to apply safeguard measures**

The Vietnamese government has the right to apply safeguard measures in cases where/ goods of a certain kind are excessively imported into Vietnam under the provisions of this Ordinance.

##### **Article 3.- Safeguard measures**

The safeguard measures in the import of foreign goods into Vietnam include:

1. Raising the import tariffs;
2. Imposing import quotas;
3. Other measures to be stipulated by the government.

##### **Article 4.- Interpretation of terms**

In this Ordinance, the following word phrases are construed as follows:

1. "Excessive import of goods" means the import of goods with a volume, quantity or value increasing, absolutely or relatively, as compared with the volume, quantity or value of similar or directly competitive home-made goods.
2. "Serious harm to the domestic manufacturing industry" means a state where such manufacturing industry declines considerably in its output, domestic consumption level, production profits, production growth rate, and has greater and greater amounts of unsold goods, badly affecting employment, salary level, investment and other norms of the domestic manufacturing industry which turns out such goods.
3. "Threat to cause serious harm to the domestic manufacturing industry" means the likely, obvious and provable possibility to cause serious harm to the domestic manufacturing industry.
4. "Domestic manufacturing industry" means all manufacturers of the similar or directly competitive goods within the territory of Vietnam or their lawful representatives, accounting for a major proportion in the total output of goods made by that industry in the country.
5. "Similar goods" are identical goods or goods with the same functions, utility, quality specifications, technical properties and other basic intrinsic features.
6. "Directly competitive goods" are goods likely to be accepted by buyers in replacement of the goods falling under the scope of application of safeguard measures, because of their competitive edges in terms of price and use purpose.

#### Article 5.- Principles for application of safeguard measures

1. Safeguard measures shall be applied within the necessary scope and to the necessary extent in order to prevent or limit serious harm to the domestic manufacturing industry and create conditions for that manufacturing industry to raise its competitiveness.
2. The application of safeguard measures must rely on the investigation results prescribed in Chapter II of this Ordinance, except for cases of application of temporary safeguard measures.
3. Safeguard measures shall apply on the basis of non-discrimination and non-dependence on goods origin.

#### Article 6.- Conditions for the application of safeguard measures

Safeguard measures shall apply to imported goods only when the following conditions are met:

1. The volume, quantity or value of imported goods suddenly increases, either absolutely or relatively, as compared with the volume, quantity or value of similar or directly competitive home-made goods.
2. The rapid increases in the volume, quantity or value of imported goods mentioned in Clause 1 of this Article cause or threaten to cause serious harm to the domestic industry producing similar or directly competitive domestic goods.

#### **Article 7.- Consultation.**

1. The Ministry of Trade may consult the concerned parties in the process of investigation and application of safeguard measures at their requests in order to create conditions for all the concerned parties to express their opinions and supply necessary information.
2. The concerned parties shall not be obliged to attend consultations; Any parties not present at consultations shall still have their interests related to safeguard measures preserved.

#### **Article 8.- Harm indemnification**

1. The indemnification and extent of indemnification of harm caused by the application of safeguard measures shall comply with the provisions of the Vietnamese laws and the international treaties which Vietnam has signed or acceded to.
2. The indemnification and degree of harm shall be determined on the basis of the results of consultation between the concerned parties.

### ***Chapter II***

#### **INVESTIGATION FOR THE APPLICATION OF SAFEGUARD MEASURES**

##### **Article 9.- Agency responsible for investigation**

The Ministry of Trade shall be responsible for conducting investigation before deciding to apply or not to apply safeguard measures.

##### **Article 10.- Bases for investigation**

1. The Ministry of Trade shall conduct investigation after receiving the dossiers requesting the application of safeguard measures from the organisations and/or individuals representing the domestic manufacturing industry on the condition that all goods made by these organisations and/or individuals accounting for at least 25% of the output of similar or directly competitive home-made goods. The organisations and/or individuals submitting such dossiers shall be accountable for the information in their dossiers.
2. The Ministry of Trade shall conduct investigation at its own initiative in cases where they have evidences proving the necessity to apply safeguard measures.

##### **Article 11.- Dossiers requesting the application of safeguard measures**

The dossiers requesting the application of safeguard measures addressed to the Ministry of Trade shall consist of:

1. The written request for the application of safeguard measures, made according to the form set by the Ministry of Trade;
2. Documents and information related to the kind of goods subject to investigation for the application of safeguard measures, and similar or directly competitive goods.

## Article 12.- Decisions to investigate for application of safeguard measures

1. In cases where a dossier requesting the application of safeguard measures lacks information, within 15 days after receiving such dossier, the Ministry of Trade must inform the dossier-submitting organization or individual thereof for addition of information. The time limit for information addition shall be at least 30 days as from the date the concerned organization or individual receives the request for information addition. The Ministry of Trade shall not issue investigation decisions if information is not supplied within the prescribed time limit.
2. Within 30 days after receiving the dossiers already added with full information, the Ministry of Trade must issue investigation decisions.
3. Pending the official investigation decisions, the Ministry of Trade must not disclose the contents of the dossiers requesting the application of safeguard measures.
4. Where it refuses to issue an investigation decision, the Ministry of Trade must notify the reasons therefore to the organisation or individual that has submitted the dossier requesting the application of safeguard measures.
5. The Ministry of Trade shall not issue investigation decisions if the organisations or individuals that have submitted the dossiers requesting the application of safeguard measures withdraw the dossiers, except for cases where it has evidences substantiating the necessity to continue the investigation.

## Article 13.- Parties related to the investigation process

The parties involved in the investigation process include:

1. Overseas organisations or individuals manufacturing and exporting the goods subject to investigation;
2. Organisations or individuals importing the goods subject to investigation;
3. The overseas commodity line association representing the majority of organisations and/or individuals manufacturing, exporting or importing the goods subject to investigation;
4. The government and competent agencies of the country exporting the goods subject to investigation;
5. Organisations and/or individuals submitting the dossier requesting the application of safeguard measures.
6. Domestic organisations and/or individuals manufacturing similar or directly competitive goods;
7. The domestic commodity line association representing the majority of organisations and individuals manufacturing similar or directly competitive goods;
8. The trade union organisations representing the interests of the labourers in the domestic

manufacturing industry;

9. Vietnam Peasants' Association;

10. The organization that protects the interests of Vietnamese consumers;

11. The competent Vietnamese State agencies;

12. Organisations and individuals having legitimate rights and interests related to the investigation process or being helpful for the investigation process.

#### Article 14.- Supply of information for the investigation process

1. The related State agencies, organisations and individuals shall have the responsibility to co-operate in and create favourable conditions for the investigation process as well as supply necessary information at the requests of the Ministry of Trade.

2. The Ministry of Trade shall have the responsibility to keep information confidential according the provisions of law.

#### Article 15.- Management of the import of goods subject to investigation

1. The process of investigation to consider the possibility to apply safeguard measures must not hinder the clearance of customs procedures for imported goods being subject to investigation.

2. From the issuance of the investigation decision to the end of the investigation process, the Ministry of Trade may apply the regime of granting import permits to the goods subject to investigation. Such permit granting shall serve the statistical purpose only but not limit the quantity, volume or value of the imported goods.

#### Article 16.- Investigation contents

The investigation must be conducted in an objective manner, taking into account the peculiarities of the domestic production situation and clarifying the following:

1. The sudden rapid increase in the volume, quantity or value of the imported goods subject to investigation;

2. Serious harm or threat to cause serious harm to the domestic manufacturing industry on the basis of evaluating:

a/ Changes in the situation of consumption of the goods subject to investigation in the domestic market;

b/ Changes in the goods production volume, labour productivity indexes, production capacity use co-efficient, profit and loss levels, percentage of the employed labourers in the industry producing the goods subject to investigation;

c/ The proportion of the imported goods subject to investigation in the aggregate volume of similar or directly competitive goods being consumed in the domestic market.

3. The relation between the rapidly increasing import of the goods and the serious harm or threat to cause serious harm to the domestic manufacturing industry.

#### Article 17.- Termination of investigation

The Ministry of Trade shall decide to stop investigation in the following cases:

1. The submitters of the dossiers requesting the application of safeguard measures withdraw such dossiers during the investigation process;
2. The related foreign parties commit themselves to precluding the serious harm or the threat to cause serious harm to the domestic manufacturing industry;
3. Other cases to be stipulated by the government.

#### Article 18.- Investigation duration and publication of investigation results

1. The investigation duration shall be no more than 6 months as from the date the Ministry of Trade issues the investigation decision; in cases of necessity, the investigation duration may be extended once for another 2 subsequent months.
2. After the investigation concludes, the Ministry of Trade shall make public the investigation results.

#### Article 19.- Decision to apply or not to apply safeguard measures

1. On the basis of the investigation results, the Ministry of Trade shall issue decisions to apply or not to apply safeguard measures after consulting the concerned ministries and ministerial-level agencies. Such decisions must be made public.
2. The safeguard measures prescribed in this Ordinance may not be applied if their application results in one of the following consequences:
  - a/ Causing domestic socio-economic harm;
  - b/ Causing harm to the interests of the majority of goods consumers;
  - c/ Other consequences to be determined by the government.

### ***Chapter III***

## **APPLICATION OF SAFEGUARD MEASURES**

#### Article 20.-Application of temporary safeguard measures

1. The Ministry of Trade may issue decisions to apply temporary safeguard measures before concluding the investigation if deeming that delayed application of safeguard measures would cause or threaten to cause serious harm to the domestic manufacturing industry, and such harm may be hard to overcome afterwards.
2. Temporary safeguard measures shall be only applied on the condition that the Ministry

of Trade continues the investigation.

3. The decisions to apply temporary safeguard measures must be publicly notified to the related parties.
4. Temporary safeguard measures shall be applied only in the form of import tariffs in accordance with the Export Tax and Import Tax Law.
5. The effective duration of temporary safeguard measures must not exceed the duration needed for eliminating the serious harm or for preventing the threat to cause serious harm to the domestic manufacturing industry and for the domestic manufacturing industry to adapt itself to the competitive circumstance. The effective duration of temporary safeguard measures shall end after the Ministry of Trade issues the decision to apply or not to apply the safeguard measures but, under any circumstances, must not exceed 200 days as from the date their application starts.
6. In cases of necessity the Ministry of Trade may issue decisions to terminate the application of temporary safeguard measures ahead of time.
7. Where the Trade Ministry's investigation results show that the application of temporary safeguard measures is unnecessary or the import tariff should be set at a rate lower than the one already imposed, the tax difference shall be refunded to the tax payers according to the provisions of law.

#### Article 21.- Application of safeguard measures

1. The application of safeguard measures shall be based on the effective decisions of the Ministry of Trade.
2. The safeguard measures may not be applied to goods originating from underdeveloped countries.

#### Article 22.- Duration of application of safeguard measures

1. The duration of application of safeguard measures, including the duration of application of temporary ones, shall not exceed four years.
2. The duration of application of safeguard measures may be extended once for another six subsequent years, provided that the serious harm or the threat to cause serious harm to the domestic manufacturing industry still lingers on and there are evidences proving that the affected manufacturing industry is adjusting itself to be more competitive.

#### Article 23.- Termination of application of safeguard measures

The Ministry of Trade shall issue decisions to terminate the application of safeguard measures in the following cases:

1. The conditions for application of safeguard measures no longer exist;
2. The continued application of safeguard measures cause serious harm to the domestic socio-economic situation.

## *Chapter IV*

### **SCRUTINY OF SAFEGUARD MEASURES**

Article 24.- Principles for scrutiny of safeguard measures

1. Where the duration of application of safeguard measures lasts for over three years, the Ministry of Trade shall have to scrutinize the safeguard measures before half of this duration passes so as to conclude whether to maintain, terminate, or mitigate the application of, the safeguard measures.
2. The scrutiny of safeguard measures must comply with the provisions in Chapter II of this Ordinance.

Article 25.- Decision on the results of scrutiny of safeguard measures

After scrutinizing the safeguard measures, the Ministry of Trade shall issue one of the following decisions:

1. To maintain the safeguard measures being applied;
2. To mitigate the application of these measures;
3. To terminate the safeguard measures being applied.

## *Chapter V*

### **EXTENSION AND RE-APPLICATION OF SAFEGUARD MEASURES**

Article 26.- Extension of the application of safeguard measures

1. The Ministry of Trade shall consider extending the application of safeguard measures on the basis of the dossiers requesting the extension thereof, which are submitted by the organisations or individuals representing the domestic manufacturing industry, in accordance with the provisions in Clause 1, Article 10 of this Ordinance.

The dossiers requesting the extension of the application of safeguard measures must include the evidences showing that the affected manufacturing industry has taken the necessary adjusting measures to raise its competitiveness, and must be sent to the Ministry of Trade at least six months before the date such safeguard measures cease to be effective.

2. The procedures for investigation, publicisation and notification prescribed in Chapter II of this Ordinance shall apply similarly to the extension of the application of safeguard measures.
3. The extent of application of safeguard measures during the extended time must not be higher than that in the preceding duration.

Article 27.- Regulations on the re-application of safeguard measures

A safeguard measure already applied to a certain kind of goods may be re-applied thereto

according to the following regulations:

1. Where a safeguard measure was applied to a certain kind of goods for over 4 years, it may be re-applied thereto only after a time equal to half of such duration has passed.
2. Where a safeguard measure was applied to a certain kind of goods for between six months and four years, it may be re-applied thereto only after two years have passed.
3. Where a safeguard measure was applied to a certain kind of goods for less than six months, it may be applied thereto only if the following conditions are fully met:
  - a/ At least one year has passed after the previous application of the safeguard measure;
  - b/ The safeguard measure has been applied to the goods twice at most within five years before the date of its reapplication.
4. The re-application of a safeguard to a certain kind of goods must comply with the procedures as for the first-time application.

### *Chapter VI*

#### **STATE MANAGEMENT OVER THE APPLICATION OF SAFEGUARD MEASURES**

Article 28.- Contents of State management over the application of safeguard measures

The contents of State management over the application of safeguard measures shall include:

1. To promulgate, and organize the implementation of, legal documents on the application of safeguard measures;
2. To organize the application of safeguard measures;
3. To propagate and disseminate the legislation and policies related to the application of safeguard measures;
4. To conduct investigation before applying safeguard measures;
5. To organize and conduct consultations with the related parties;
6. To decide to apply or not to apply safeguard measures;
7. To guide the application of safeguard measures;
8. To organize the gathering, processing and supply of information about the application of safeguard measures;
9. To inspect and supervise the observance of the legislation on the application of safeguard measures;
10. To settle complaints about and handle violations of the legislation on the application of

safeguard measures.

Article 29.-Agencies in charge of the State management over the application of safeguard measures

1. The government shall perform the unified State management over the application of safeguard measures.
2. The Ministry of Trade shall be responsible to the government for performing the unified State management over the application of safeguard measures; organize the application of safeguard measures after consulting the concerned ministries and ministerial-level agencies.
3. The ministries, the ministerial-level agencies and the People's Committees of the provinces and centrally-run cities shall, within the ambit of their respective tasks and powers, have to co-ordinate with the Ministry of Trade in managing the application of safeguard measures.

### *Chapter VII*

## **COMPLAINTS AND HANDLING OF VIOLATIONS**

Article 30.- Complaints

1. Complaints related to the process of investigation and application of safeguard measures must be addressed to the Ministry of Trade.
2. The Ministry of Trade shall have to settle complaints within 30 days after receiving the written complaints; in special cases, this time limit may be prolonged but must not exceed 60 days.
3. Where the time limit prescribed in Clause 2 of this Article has expired but the Ministry of Trade has not yet settled the complaints or the complaining organisations or individuals disagree with the complaint-settling decisions of the Ministry of Trade, these organisations or individuals may initiate lawsuits at court according to the provisions of law.

Article 31.- Settlement of disputes and handling of violations

The settlement of disputes and handling of violations shall comply with the provisions of the Vietnamese law and the international treaties which Vietnam has signed or acceded to.

### *Chapter VIII*

## **IMPLEMENTATION PROVISIONS**

Article 32.- Implementation effect

This Ordinance takes effect as from September 1, 2002.

Article 33.- Implementation guidance

The government shall specify and guide the implementation of this Ordinance.

*On behalf of the Standing Committee  
of the National Assembly*  
*Chairman*  
NGUYEN VAN AN

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