

No. 22-2004-PL-UBTVQH11

ORDINANCE ON MEASURES AGAINST SUBSIDIZED PRODUCTS IMPORTED INTO VIETNAM

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10 of Legislature X of the National Assembly at its 10th session on 25 December 2001;

Pursuant to the *Law on Export and Import Duties* dated 26 December 1991 as amended 5 July 1993 and 20 May 1998;

Pursuant to Resolution 21-2003-QH11 of Legislature XI of the National Assembly at its 4th session on 26 November 2003 on the program for formulation of laws and ordinances during year 2004;

This Ordinance provides for measures against subsidized products imported into Vietnam.

Chapter 1

General Provisions

Article 1 *Governing scope*

This Ordinance provides for measures against subsidies, and procedures for and contents of investigations to consider imposition of countervailing measures against subsidized products imported into Vietnam.

Article 2 *Interpretation of terms*

In this Ordinance, the following terms shall be construed as follows:

1. *Subsidy* means financial contribution by a Government or Governmental body provided to an organization or individual when manufacturing and exporting products into Vietnam, which subsidy carries a benefit for such organization or individual.
2. *A domestic industry* means a collection of domestic manufacturers or their representatives with the volume, quantity or value of products manufactured domestically which accounts for the major proportion of the volume, quantity or value of like products manufactured domestically on condition that such manufacturers do not import, and do not have any direct association with organizations or individuals manufacturing, exporting or importing the products the subject of the request for imposition of countervailing measures.
3. *Countervailing tax* means an additional import duty applicable in cases where subsidized products imported into Vietnam cause or threaten to cause material injury to a domestic industry.
4. *Material injury to a domestic industry* means a situation of significant reduction or restraint on growth of quantities, price, or consumption levels of products; of profits from manufacturing, or of rate of development of production or of work for employees, of investment and other indicators of a domestic industry; or a situation leading to difficulty for the formation of a domestic industry.
5. *A threat to cause material injury to a domestic industry* means a foreseeable, clear and proven possibility of material injury being caused to a domestic industry.

6. *Like products* means products which have the same special characteristics as the products the subject of the request for application of countervailing measures, or if there are no such products then products which have many fundamental characteristics which are the same as those of the products the subject of the request for application of countervailing measures.
7. *Insignificant subsidized level* means a subsidy at less than one per cent (1%) of the value of the product.
8. *A specific subsidy* means a subsidy which is only applied to a specified organization, individual or industry, or a subsidy which is only applied to an organization, individual or industry in a specified geographical area in the country or territory which is the subject of an investigation for imposition of countervailing measures.

Article 3 *Forms of subsidy*

1. A Government or a Governmental body transfers capital to an organization or individual in the form of issuance of capital, transfer of shares, provision of a loan with preferential interest rate, or provision of a guarantee of a loan with an interest rate less than it would be for a loan not so guaranteed.
2. A Government or a Governmental body overlooks or does not collect items which are collectible from the organization or individual under an obligation to pay such items.
3. A Government or a Governmental body provides products or services other than common infrastructure or purchases products or services at a high price and then re-sells them to an organization or individual at less than market price.
4. A Government or a Governmental body contributes money to a subsidy regime, or assigns to a private organization for implementation, or orders a private organization to implement one of more of the forms stipulated in clauses 1, 2 and 3 of this article.
5. Other forms of subsidy outside the categories stipulated in clauses 1, 2 and 3 of this article which shall be determined in a way which is fair, reasonable and not contrary to international practice.

Article 4 *Countervailing measures*

1. Imposition of countervailing tax.
2. Approval of an undertaking from an organization or individual or from the Government of the manufacturing or exporting country or territory given to the competent State body of Vietnam to voluntarily terminate a subsidy, to reduce the level of a subsidy, to adjust an export price or to apply some other appropriate measure.

Article 5 *Principles for applicability of countervailing measures*

1. Countervailing measures shall only be applied at the necessary and appropriate level aimed at preventing or restricting material injury to a domestic industry.
2. Countervailing measures shall only be applied after an investigation has been conducted and must be based on the conclusions of the investigation prescribed in articles 19 and 20 of this Ordinance.
3. Countervailing measures shall only be directly applied to products which are subsidized and imported into Vietnam in accordance with the provisions in this Ordinance.
4. The application of countervailing measures must not cause loss and damage to domestic socio-economic interests.

Article 6 *Conditions for imposition of countervailing measures*

Countervailing measures shall only be imposed on products which are subsidized and imported into Vietnam, satisfying both of the following conditions:

1. The imported products are verified as having been subsidized within the meaning of article 3 of this Ordinance.
2. The imported products prescribed in clause 1 of this article are the factor causing or threatening to cause material injury to a domestic industry.

Article 7 *Responsibilities for State administration of countervailing measures*

1. The Government shall uniformly exercise State administration of countervailing measures applicable to products imported into Vietnam.
2. The Government shall establish an Countervailing Commission under the Ministry of Trade and provide regulations on the specific staffing apparatus, functions and duties of the Countervailing Commission which shall comprise:
 - (a) An agency for countervailing investigations (hereinafter referred to as the *investigative agency*) which shall conduct investigations, check countervailing cases and where necessary recommend that the Minister of Trade issue a decision on temporary imposition of countervailing tax;
 - (b) A council dealing with an countervailing case comprising a number of permanent members plus some other members working on each case in order to consider the conclusions of the investigative agency, debate and reach a majority conclusion on whether or not subsidized products have been imported into Vietnam causing or threatening to cause material injury to a domestic industry, and make a recommendation that the Minister of Trade impose countervailing measures.
3. The Minister of Trade shall be responsible before the Government to carry out State administration of countervailing matters and to make decisions imposing countervailing measures, and the Minister shall be liable for such decisions.
4. Ministries, ministerial equivalent bodies and people's committees of provinces and cities under central authority shall, within the scope of their respective duties and powers, be responsible to co-ordinate with the Ministry of Trade in State administration of countervailing matters and imposition of countervailing measures.

Chapter II

Investigation Into the Imposition of Countervailing Measures

Article 8 *Grounds for conducting investigations*

1. An investigation to consider imposition of countervailing measures shall be held upon receipt of a file requesting application of countervailing measures from any organization or individual representing a domestic industry.

Any organization or individual filing a request for imposition of countervailing measures shall be deemed to represent a domestic industry when it satisfies both of the following conditions:

- (a) The volume, quantity or value of products manufactured or represented by such organization or individual accounts for at least twenty five (25) per cent of the total volume, quantity or value of like products of a domestic industry;
 - (b) The volume, quantity or value of products stipulated in clause 1 of this article and of domestic manufacturers supporting the filing of a request for application of countervailing measures is greater than the volume, quantity or value of like products of domestic manufacturers opposing the filing of a request for application of countervailing measures.
2. The Minister of Trade may issue a decision to hold an investigation when there is clear evidence proving that subsidized products have been imported into Vietnam causing or threatening to cause material injury to a domestic industry.

Article 9 *Application file for imposition of countervailing measures*

A file requesting imposition of countervailing measures to be submitted to the investigative agency shall comprise:

1. Request for imposition of countervailing measures with the following particulars:
 - (a) Name, address and other essential information about the organization or individual requesting imposition of countervailing measures;
 - (b) Description of the imported products which are the subject of the request including their name, basic characteristics, main use purpose, code number on the current import tariff list and current import duty rate, and the country of origin of such imported products;
 - (c) Description of the volume, quantity, unit price and value of the imported products stipulated in clause 1 of this article for the period of twelve (12) months prior to the date of filing the request;
 - (d) Description of the volume, quantity, unit price and value of like products manufactured domestically in the period of twelve (12) months prior to the date of filing the request;
 - (dd) Information about the policy on subsidies of the foreign Government, and on the status and form of subsidies;
 - (e) Information, figures and proof of material injury or of the threat to cause material injury to a domestic industry by the importation of subsidized products into Vietnam;
 - (g) Name, address and other essential information about the organization or individual manufacturing or exporting products to Vietnam and against which it is requested to impose countervailing measures;
 - (h) Specific requests for imposition of countervailing measures, the duration of application and the level of the countervailing measures.
2. Any other information and data considered necessary by the applicant.

Article 10 *Decision to conduct investigation to consider imposition of countervailing measures*

1. If the investigative agency considers a file is insufficient in terms of the provisions in article 9 of this Ordinance, then within a time-limit of fifteen (15) days from the date of receipt of the file the investigative agency shall notify the applicant to submit supplementary information.
2. The time-limit for submitting supplementary information shall be decided by the investigative agency but shall not be less than thirty (30) days from the date on which the applicant receives the request for supplementary information.
3. Prior to the Minister of Trade issuing a decision to conduct an investigation, the investigative agency shall notify the competent body of the country or territory manufacturing or exporting the products the subject of the request for imposition of countervailing measures about the countervailing regulations of Vietnam.
4. Within a time-limit of sixty (60) days from the date of receipt of a file which is complete in terms of the provisions in article 9 of this Ordinance, the Minister of Trade shall issue a decision on conducting an investigation; in special cases this time-limit may be extended but only by a maximum of thirty (30) days.
5. Within a time-limit of fifteen (15) days from the date of a decision to conduct an investigation, the investigative agency shall notify the decision to the applicant and also to the organization or individual and the competent body of the country or territory manufacturing or exporting the products the subject of the request for imposition of countervailing measures.
6. The Minister of Trade shall not issue a decision to conduct an investigation if the applicant withdraws the application, except in the circumstances stipulated in article 8.2 of this Ordinance.

Article 11 *Parties concerned with investigative process*

The following shall be deemed to be parties concerned with the investigative process:

1. The organization or individual filing the request for imposition of countervailing measures.
2. Overseas organizations or individuals manufacturing or exporting the products the subject of the request.
3. Organizations or individuals importing the products the subject of the request.
4. Domestic organizations or individuals manufacturing like products.
5. A domestic industry or products association which represents the majority of organizations and individuals manufacturing or exporting like products.
6. A foreign industry or products association which represents the majority of organizations and individuals manufacturing or exporting the products the subject of the request.
7. A union or other organization representing the interests of employees in a domestic industry.
8. Consumer protection organizations.
9. The competent body of Vietnam.
10. The competent body of the country or territory manufacturing or exporting the products the subject of the request.
11. Any other organizations or individuals with rights and interests involved in the investigative process.

Article 12 *Provision of information and data for the investigative process*

1. All parties concerned with the investigative process as stipulated in article 11 of this Ordinance shall be responsible to provide authentic information and necessary data on request by the investigative agency.

2. If the necessary information and data is not provided on request, the investigative agency may make its decision in reliance on available information and data.

Article 13 *Matters to be investigated in order to consider imposition of countervailing measures*

The following matters shall be investigated when considering imposition of countervailing measures:

1. Determination of the subsidy.
2. Determination of injury and threat to cause injury to a domestic industry.

Article 14 *Determination of subsidy*

The determination of the subsidy shall be conducted in accordance with the following provisions:

1. Determination that subsidized products have been imported into Vietnam, determination of a specific subsidy or subsidies, and determination of the level at which products are subsidized.
2. Determination of the total amount of the subsidy, to be calculated as follows:
 - (a) If the subsidy is non-refundable, then the amount of the subsidy shall be the amount of the actual subsidy provided to the relevant organization or individual;
 - (b) If the subsidy is in the form of a loan, then the amount of the subsidy shall be the difference between the loan interest rate under normal commercial conditions and the actual interest rate payable by the relevant organization or individual;
 - (c) If the subsidy is in the form of a guarantee of a loan, then the amount of the subsidy shall be the difference between the interest rate on a non-guaranteed loan and the actual interest rate payable on the guaranteed loan;
 - (d) If the subsidy is in the form of a transfer of shares, then the amount of the subsidy shall be verified on the basis of the amount of capital actually received by the enterprise;
 - (dd) If the subsidy takes the form of a Government or Governmental body purchasing products or services at a higher than market price and then re-selling them at a lower than market price or at market price to an organization or individual, then the amount of the subsidy shall be verified on the basis of the difference between the market price and the actual price paid by the Government or Governmental body for such products or services, or the difference between the price at which the Government or Governmental body purchased the products or services and the price for which they were then sold to the organization or individual.
3. The amount of a subsidy in any other form shall be calculated in a way which is fair, reasonable and not contrary to international practice.

Article 15 *Determination of injury and threat of injury to a domestic industry*

The determination of injury and threat of injury to a domestic industry shall be conducted in accordance with the following provisions:

1. Determination of material injury and threat of injury to a domestic industry must be based on specific evidence.
2. Determination of the level of injury or threat of material injury to a domestic industry shall be based on a consideration of the following matters:
 - (a) The volume, quantity or value of imported products which are subsidized has significantly increased or is significantly increasing due to a low selling price which is reducing the domestic market share, changing the structure of consumption, and reducing the productivity of the domestic industry;

- (b) The price of imported products is low due to their being subsidized, and this leads to a follow-on reduction of the price of products manufactured by the domestic industry;
 - (c) The impact of the imported products which are subsidized on other factors relative to economic indicators, and on productivity and profit of the domestic industry;
 - (d) The correlation between the imported products which are subsidized and the quantity of like products manufactured domestically. If such correlation cannot be ascertained, this item shall be assessed by looking at the quantity of a specified group of products or of one product within the narrowest scope of the like product manufactured domestically.
3. If products imported from two or more countries or territories are the joint subject of an investigation for imposition of countervailing measures, then the investigative agency may assess the impact of importation from two or more countries or territories after it has ascertained:
- (a) That the total amount of subsidies provided on the products imported from each country or territory is significant and that the volume of products imported from each country or territory is significant;
 - (b) The competitive conditions between imported products with each other, and the competitive conditions between imported products and products manufactured by the domestic industry, in order to provide an appropriate basis for assessing impact.

Article 16 *Consultation*

1. The investigative agency may, both before and during the investigative process, consult the parties concerned with the investigative process as stipulated in article 11 of this Ordinance in order to facilitate the parties to express their opinions and to provide essential information.
2. It shall not be compulsory for parties concerned to be present at consultative meetings, but the interests of any absent party in relation to imposition of countervailing measures shall still be ensured.
3. The holding of consultative meetings must not hinder the investigative process or the imposition of countervailing measures in accordance with the provisions in this Ordinance.

Article 17 *Confidentiality of information*

1. When the investigative agency requests parties concerned with the investigative process to provide a summary of information and where such information needs to be kept confidential, the investigative agency shall be responsible to maintain the confidentiality of the information so provided.
2. Parties concerned with the investigative process shall be permitted to access all information provided to the investigative agency, except for information which needs to be kept confidential.

Article 18 *Duration of investigation*

1. An investigation to consider imposition of countervailing measures shall not last more than twelve (12) months as from the date of the decision to hold an investigation.
2. In special cases, the Minister of Trade may make a decision extending this time-limit but only by a maximum of six (6) months.

Article 19 *Preliminary conclusion*

1. Within a time-limit of ninety (90) days from the date of the decision to hold an investigation, the investigative agency shall announce its preliminary conclusion on the matters relative to the

investigative process as stipulated in articles 13, 14 and 15 of this Ordinance. In special cases this time-limit may be extended but only by a maximum of sixty (60) days.

2. The preliminary conclusion together with the main grounds on which it is based shall be notified by appropriate means to the parties concerned with the investigative process.

Article 20 *Final conclusion*

1. When it completes the investigative process, the investigative agency shall announce its final conclusion on the matters relative to the investigative process as stipulated in articles 13, 14 and 15 of this Ordinance.
2. The final conclusion together with the main grounds on which it is based shall be notified by appropriate means to the parties concerned with the investigative process.

Article 21 *Termination of investigation*

The Minister of Trade shall issue a decision to terminate an investigation in the following circumstances:

1. The applicant which filed the request for imposition of countervailing measures voluntarily withdraws the application;
2. The preliminary conclusion as stipulated in article 19 of this Ordinance contains one of the following particulars:
 - (a) There are no subsidized products imported into Vietnam;
 - (b) The volume, quantity or value of subsidized products imported into Vietnam is insignificant;
 - (c) The subsidized level is insignificant;
 - (d) There is no material injury or threat to cause material injury to a domestic industry.

Chapter III

Imposition of Countervailing Measures

Article 22 *Temporary imposition of countervailing tax*

1. Within sixty (60) days from the date of a decision to conduct an investigation, and based on the preliminary conclusion, the Minister of Trade may issue a decision temporarily imposing countervailing tax.
2. The rate of any countervailing tax which is temporarily imposed shall not exceed the level of subsidy verified in the preliminary conclusion.
3. Payment of temporary countervailing tax may be guaranteed by payment of a deposit or by some other form of guarantee in accordance with law.
4. The duration of imposition of temporary countervailing tax shall not exceed one hundred and twenty (120) days from the date of the decision to impose such tax.
5. The Minister of Trade may extend the duration of imposition of temporary countervailing tax but only by a maximum of sixty (60) days.

Article 23 *Imposition of the measure being an undertaking*

1. After a preliminary conclusion but before completion of the investigative stage, an organization or individual manufacturing or exporting products the subject of the investigation or the Government of a country or territory may provide an undertaking to the Minister of Trade to voluntarily

terminate a subsidy, to reduce the level of the subsidy, to adjust an export price, or to apply some other appropriate measure.

2. The Minister of Trade may agree or not agree to an undertaking, or may propose amendment to the contents of an undertaking, but may not compel parties to provide an undertaking.
3. The investigative agency shall publicly announce the contents of an undertaking to the parties concerned with the investigative process for their information.
4. If the Minister of Trade does not agree the contents of an undertaking offered by a party concerned, the Minister shall notify his reasons therefor and shall arrange continuation of the investigative process to consider imposition of countervailing measures in accordance with the provisions in this Ordinance.
5. The Minister of Trade shall issue a decision suspending an investigation into subsidized products and shall apply the measure of an undertaking if he considers that fulfilment of such undertaking will result in no material injury or threat of material injury to a domestic industry.

The parties providing the undertaking shall periodically provide to the investigative agency information and data regarding fulfilment of the undertaking together with proof of the accuracy of such information and data pursuant to a decision of the Minister of Trade.

6. If the parties concerned fail to correctly fulfil their undertaking, causing or threatening to cause material injury to a domestic industry, then the Minister of Trade shall issue a decision on continuation of the investigative process to consider imposition of countervailing measures or shall issue a decision imposing countervailing measures in accordance with the provisions in this Ordinance.

Article 24 *Imposition of countervailing tax*

1. If no undertaking as stipulated in article 23 of this Ordinance is provided, then based on the final conclusion and the recommendation of the council dealing with the countervailing case, the Minister of Trade shall issue a decision imposing or not imposing countervailing tax.
2. The rate of any countervailing tax shall not exceed the level of subsidy verified in the final conclusion.
3. The duration of imposition of countervailing tax shall not exceed five years from the date of the decision to impose such tax.
4. The Minister of Trade may extend the duration of imposition of countervailing tax when the Minister issues a decision to review the imposition of countervailing tax pursuant to the provisions in Chapter IV of this Ordinance.
5. The investigative agency shall notify the decision imposing or not imposing countervailing tax to the parties concerned with the investigative process by appropriate means.

Article 25 *Imposition of countervailing tax with retrospective effect*

1. If the final conclusion verifies material injury or threat to cause material injury to a domestic industry, and if countervailing tax was temporarily imposed before the final conclusion was reached, then countervailing tax with retrospective effect shall be imposed.
2. Countervailing tax with retrospective effect shall apply to products imported within the period of ninety (90) days prior to imposition of temporary measures if both of the following conditions are satisfied:
 - (a) Such imported products were subsidized by a foreign Government or Governmental body;
 - (b) The volume, quantity or value of products subsidized and imported into Vietnam increased quickly and suddenly causing injury to a domestic industry difficult to overcome.

3. The difference in taxes shall not be collected when a final conclusion imposes a level of countervailing tax higher than the level of the countervailing tax temporarily imposed pursuant to article 22 of this Ordinance.
4. The difference in taxes shall be refunded when a final conclusion imposes a level of countervailing tax lower than the level of the countervailing tax temporarily imposed pursuant to article 22 of this Ordinance.
5. If the Minister of Trade issues a decision not to impose countervailing tax, then the temporarily imposed countervailing tax which has been collected and any guarantee of payment of temporarily imposed countervailing tax which has been paid pursuant to article 22 of this Ordinance shall be refunded.

Chapter IV

Review of Imposition of Countervailing Measures

Article 26 *Review of imposition of countervailing measures*

1. After twelve (12) months from the date of a decision imposing countervailing measures, the Minister of Trade may issue a decision to review the imposition of countervailing measures on the proposal of one or more of the parties concerned stipulated in article 11 of this Ordinance and on the basis of a consideration of the evidence provided by such applicant parties.
2. Twelve months prior to expiry of effectiveness of a decision imposing countervailing measures, the Minister of Trade may issue a decision to review the imposition of countervailing measures.
3. The investigative agency shall conduct the review of the imposition of countervailing measures in accordance with the provisions in articles 9 to 17 inclusive of this Ordinance.
4. The conduct of procedures relating to the review process must not hinder the imposition of countervailing measures.
5. The time-limit for the review of the imposition of countervailing measures stipulated in clauses 1 and 2 of this article shall not exceed twelve (12) months from the date of the decision to conduct a review.

Article 27 *Decision on conclusions of review of imposition of countervailing measures*

After completing the review of imposition of countervailing measures, the Minister of Trade shall issue one of the following decisions:

1. Decision to maintain or extend the currently applicable countervailing measures.
2. Decision to amend the level of countervailing tax or decision to agree to an undertaking which corresponds to the results of the review.
3. Decision to terminate imposition of countervailing measures.

Chapter VII

Complaints and Dealing with Breaches

Article 28 *Complaints and institution of legal proceedings*

1. Any party concerned with the investigative process and the imposition of countervailing measures which disagrees with a decision of the Minister of Trade imposing countervailing measures, shall have the right to lodge a complaint with the Minister of Trade within a time-limit of sixty (60) days from the date of such decision.
2. The Minister of Trade shall be responsible to resolve a complaint within a time-limit of sixty (60) days from the date of its receipt; in special circumstances this time-limit may be extended by a

maximum of sixty (60) days, and the extension must be notified by appropriate means to the complainant.

3. If, upon expiry of the time-limit stipulated in clause 2 above, the Minister of Trade has failed to resolve a complaint, or if the complainant disagrees with the decision of the Minister of Trade, the complainant shall have the right to institute court proceedings in accordance with the laws of Vietnam.

Article 29 *Dispute resolution and dealing with breaches*

Dispute resolution and dealing with breaches of the law on measures against subsidized products imported into Vietnam shall be implemented in accordance with the laws of Vietnam. If an international treaty which Vietnam has signed or to which Vietnam has acceded contains different provisions, such international treaty shall apply.

Chapter VI

Implementing Provisions

Article 30 *Effectiveness*

This Ordinance shall be of full force and effect as of 1 January 2005.

Article 31 *Implementing guidelines*

The Government and the Supreme People's Court shall, within the scope of their respective duties and powers, provide detailed regulations and guidelines for implementation of this Ordinance.

Hanoi, 20 August 2004

On behalf of the Standing Committee of the National Assembly

Chairman

NGUYEN VAN AN