

ORDINANCE ON ANTI-DUMPING OF IMPORTED PRODUCTS INTO VIETNAM

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

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

Pursuant to Resolution No. 21-2003-QH11 dated 26 November 2003 of Legislature XI of the National Assembly at its 4th Session on the program for formulation of laws and ordinances in year 2004;

This Ordinance regulates anti-dumping applicable to imported products into Vietnam.

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Ordinance regulates anti-dumping measures; procedures and contents of an investigation in order to apply such measures, and the applicability of such measures to products which are dumped [and] imported into Vietnam.

Article 2 *Interpretation of terms*

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

1. *Anti-dumping duty* means an additional import duty applicable to products which are dumped [and] imported into Vietnam causing, or threatening to cause, material injury to a domestic industry.
2. *Dumping margin* means the difference calculable between the normal value of products imported into Vietnam and the price of exporting such products to Vietnam.
3. *Insignificant dumping margin* means a dumping margin not exceeding 2% of the price of exporting products to Vietnam.
4. *Insignificant volume, quantity or value of imported products dumped and imported into Vietnam* means when the volume, quantity or value of products dumped and imported into in Vietnam satisfies the following conditions:
 - (a) The volume, quantity or value of products dumped from any one country does not exceed 3% of the total volume, quantity or value of like products imported into Vietnam;

- (b) The total volume, quantity or value of products dumped from a number of countries satisfying the condition stipulated in sub-clause (a) of this clause does not exceed 7% of the total volume, quantity or value of like products imported into Vietnam.
- 5. *A domestic industry* means an assembly of domestic manufacturers or their representatives with a volume, quantity or value of manufactured products which is a major ratio of the total volume, quantity or value of like products which are manufactured domestically on condition that such manufacturers do not import and do not have a direct relationship with any organization or individual exporting or importing the products subject to the request to apply anti-dumping measures.
- 6. Like *products* means products with all the same features as the products subject to the request to apply anti-dumping measures, or if there are no such former products then products which have many basic features the same as the products subject to the request to apply anti-dumping measures.
- 7. *Material injury to a domestic industry* means a situation of significant reduction or inhibition to growth in volume, prices, sales, profits, developmental speed of manufacturing, jobs for employees, investment and other indicators of a domestic industry, or means a situation leading to difficulty in the establishment of a domestic industry.
- 8. *Threat to cause a material injury to a domestic industry* means the imminent, clear and proven capacity that material injury will be caused to a domestic industry.

Article 3 *Determining whether products are dumped [and] imported into Vietnam*

- 1. Products originating from a country or territory shall be deemed to be dumped when they are imported into Vietnam (hereinafter referred to as *products dumped into Vietnam*) if such products are sold at a price lower than the normal price stipulated in clauses 2 and 3 of this article.
- 2. The normal price of products imported into Vietnam means the comparable price in normal commercial conditions of like products which are being sold on the local market of the country or territory which exported such products.
- 3. If there are no like products being sold on the local market of the exporting country or territory, or if there are like products being sold on the local market of the exporting country or territory but with an insignificant volume, quantity or value, then the normal price of products imported into Vietnam shall be determined pursuant to one of the following two methods:
 - (a) The comparable price of like products of the exporting country or territory which are being sold in normal commercial conditions on the market of a third country;
 - (b) The reasonable cost of products plus other reasonable expenses and profits at a reasonable level, considered pursuant to each phase from manufacture to circulation on the market of the exporting country or territory or of a third country.

Article 4 *Anti-dumping measures*

- 1. Application of anti-dumping duty.
- 2. An undertaking on measures to eliminate dumping by the organization or individual manufacturing or exporting products subject to the request to apply anti-dumping measures, [provided] to the State agency of Vietnam competent to apply anti-dumping measures, or [provided] to domestic manufacturers if the State agency of Vietnam competent to apply anti-dumping measures so agrees.

Article 5 *Principles of applicability of anti-dumping measures*

1. Anti-dumping measures shall only be applied at the necessary and appropriate level, aimed at preventing or restricting material injury to a domestic industry.
2. Anti-dumping measures shall only be applied after there has been an investigation, and application must be based on the conclusions of the investigation prescribed in Chapter II of this Ordinance.
3. Anti-dumping measures shall only be applied directly to products which are dumped into Vietnam as stipulated in this Ordinance.
4. Application of anti-dumping measures must not cause harm to domestic socio-economic interests.

Article 6 *Conditions for applicability of anti-dumping measures*

Anti-dumping measures shall only be applied to products dumped into Vietnam when the following two conditions are satisfied:

1. What products are dumped into Vietnam and the dumping margin must be specifically determined.
2. The dumping of products prescribed in clause 1 of this article must be the reason causing, or threatening to cause, material injury to a domestic industry.

Article 7 *Responsibility for State administration of anti-dumping*

1. The Government shall exercise uniform State administration of anti-dumping in respect of products imported into Vietnam.
2. The Government shall establish and regulate the specific organizational apparatus, functions, duties and powers of the anti-dumping agency under the Ministry of Trade, comprising:
 - (a) The agency for anti-dumping investigations (hereinafter referred to as the *investigating agency*) in order to conduct investigations, check anti-dumping cases and in necessary cases recommend that the Minister of Trade issue a decision applying provisional anti-dumping measures;
 - (b) The Council for dealing with anti-dumping cases comprising a number of standing members and a number of other members working on each particular case, in order to consider the conclusions of the investigating agency; to debate and make a majority decision on whether or not there is dumping of products into Vietnam causing, or threatening to cause, material injury to a domestic industry; and to recommend that the Minister of Trade issue a decision applying anti-dumping duty.
3. The Minister of Trade shall be responsible before the Government for the exercise of State administration of anti-dumping, for issuing decisions applying anti-dumping measures, and shall bear responsibility 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 exercising State administration of anti-dumping measures and in applying anti-dumping measures.

CHAPTER II

Investigations In Order To Apply Anti-Dumping Measures

Article 8 *Grounds for holding an investigation*

1. An investigation in order to apply anti-dumping measures shall be held when there is a file requesting the application of anti-dumping measures from an organization or individual representing a domestic industry.

An organization or individual lodging a file requesting the application of anti-dumping measures shall be deemed the representative of a domestic industry when it satisfies both the following conditions:

- (a) The volume, quantity or value of products they manufacture or represent accounts for at least twenty five (25) per cent of the total volume, quantity or value of like products of the domestic industry; [and]
 - (b) The volume, quantity or value of products stipulated in sub-clause (a) of this clause and of domestic manufacturers supporting the submission of the file requesting the application of anti-dumping measures is greater than the volume, quantity or value of like products of domestic manufacturers opposing the request for application of anti-dumping measures.
2. The Minister of Trade may issue a decision to hold an investigation when there is clear evidence that the dumping of products is causing, or threatening to cause, material injury to a domestic industry.

Article 9 *File requesting the application of anti-dumping measures*

A file requesting the application of anti-dumping measures shall be lodged with the investigating agency and shall comprise:

1. Request for application of anti-dumping measures containing the following particulars:
 - (a) Name, address and other necessary information about the organization or individual requesting the application of anti-dumping measures;
 - (b) Description of the imported products subject to the request for application of anti-dumping measures, including the name, basic features, main use purpose, current import tariff code number, currently applicable import duty rate, and country of origin of the imported products;
 - (c) Description of the volume, quantity or value of the imported products stipulated in sub-clause (b) of this clause within the period of twelve (12) months prior to the date of submission of the request for application of anti-dumping measures;
 - (d) Description of the volume, quantity or value of like products which were being domestically manufactured within the period of twelve (12) months prior to the date of submission of the request for application of anti-dumping measures;
 - (dd) Information about the normal price and the export price of the products described in sub-clause (b) of this clause at the time of their import into Vietnam within the period of twelve (12) months prior to the date of submission of the request for application of anti-dumping measures;
 - (e) Dumping margin of the imported products subject to the request for application of anti-dumping measures;
 - (g) Information, data and proof of the material injury to a domestic industry which the products dumped into Vietnam causes or threatens to cause;
 - (h) Name, address and other necessary information about the organization or individual manufacturing and exporting into Vietnam the products subject to the request for application of anti-dumping measures;

- (i) Request for application of specific anti-dumping measures, with duration and level of applicability.
2. Other data and information considered necessary by the organization or individual requesting the application of anti-dumping measures.

Article 10 *Decision to hold an investigation in order to apply anti-dumping measures*

1. Where a file requesting the application of anti-dumping measures is considered incomplete in terms of the provisions in article 9 of this Ordinance, then the investigating agency shall notify the applicant organization or individual to supplement the file within a time-limit of fifteen (15) days from the date of receipt of the file.
2. The investigating agency shall notify a time-limit for supplementing the file, which shall not be less than thirty (30) days from the date the applicant organization or individual who is required to supplement the file receives such notice.
3. Prior to the Minister of Trade issuing a decision to hold an investigation, the investigating agency shall notify the competent authorities of the country or territory exporting the products subject to the request for application of anti-dumping measures of the anti-dumping 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 to hold an investigation; in special circumstances the time-limit for issuing a decision to hold an investigation may be extended, but not beyond thirty (30) days.
5. Within a time-limit of fifteen (15) days from the date of issuance of a decision to hold an investigation into the application of anti-dumping measures, the investigating agency shall notify such decision to the applicant organization or individual, and to the manufacturers, exporters and competent authorities of the country or territory exporting the products subject to the request to apply anti-dumping measures, and shall also announce the decision to other parties concerned.
6. The Minister of Trade shall not issue a decision to hold an investigation if the organization or individual requesting the application of anti-dumping measures withdraws its application file, except in the case stipulated in article 8.2 of this Ordinance.

Article 11 *Parties concerned in an investigation process*

The parties concerned in an investigation process shall comprise:

1. The organization or individual lodging the file requesting application of anti-dumping measures.
2. Foreign organizations and individuals manufacturing or exporting the products subject to the request to apply anti-dumping measures.
3. Organizations and individuals importing the products subject to the request to apply anti-dumping measures.
4. Domestic organizations and individuals manufacturing like products.
5. The domestic industry association representing the majority of organizations and individuals manufacturing [and/or] importing like products.
6. The foreign industry association representing the majority of organizations and individuals manufacturing [and/or] exporting the products subject to the request to apply anti-dumping measures.

7. The labour union organization or other organizations representing the interests of employees in the domestic industry.
8. The consumer protection organization.
9. The competent State agency of Vietnam.
10. The competent agency of the country or territory exporting the products subject to the request to apply anti-dumping measures.
11. Other organizations and individuals with rights and interests effected by the investigation process.

Article 12 *Contents of an investigation into the application of anti-dumping measures*

1. Determination of what products are being dumped into Vietnam and the dumping margin.
2. Determination of what material injury is caused or is threatened to be caused to a domestic industry, on the basis of a consideration of the following matters:
 - (a) The volume, quantity or value of products dumped into Vietnam has increased, is increasing, or will increase significantly in an absolute or relative way compared to the volume, quantity or value of like products which are manufactured or sold domestically;
 - (b) The price impact of the products subject to the request to apply anti-dumping measures on the necessity to reduce prices of, or on inhibition to a reasonable price increase of similar domestic products.
 - (c) The adverse impact on a domestic industry or on the establishment of a domestic industry.
3. The relationship between the dumping of products into Vietnam and the material injury or threat to cause material injury to a domestic industry

Article 13 *Provision of information and data during the investigation process*

1. The parties concerned in an investigation process as stipulated in article 11 of this Ordinance shall be responsible to provide authentic information and essential data on request by the investigating agency.
2. If information and essential data are not correctly provided as requested, then the investigating agency may issue its decision based on whatever information and data is available.

Article 14 *Consultation*

1. The investigating agency shall organize consultation with the parties concerned in an investigation process as stipulated in article 11 of this Ordinance, in order to facilitate such parties to express their opinions and to provide essential information.
2. It shall not be mandatory for parties concerned in an investigation process to be present during a consultation session; if any party is not present during a consultation session, the interests of such party regarding the application of anti-dumping measures shall still be protected.
3. Holding a consultation session must not hinder the process of investigation and application of anti-dumping measures in accordance with the provisions of this Ordinance.

Article 15 *Retaining confidentiality of information*

1. The investigating agency shall be responsible to maintain confidentiality of information provided to it when it receives a proper request from parties concerned in an investigation

process [i.e. to maintain confidentiality], and [the investigating agency] requests such parties to provide a summary of information which needs to be kept confidential.

2. Parties concerned in an investigation process shall be permitted to access information provided to the investigating agency, except for information which needs to be kept confidential.

Article 16 *Duration of an investigation*

1. The duration of an investigation into the application of anti-dumping measures shall not exceed twelve (12) months as from the date of issuance of the decision to hold the investigation.
2. In special cases the Minister of Trade may issue a decision to extend an investigation, but not beyond six (6) months.

Article 17 *Preliminary conclusion*

1. Within a time-limit of ninety (90) days from the date of issuance of a decision to hold an investigation, the investigating agency shall announce its preliminary conclusion on the matters relative to the investigation process as stipulated in article 12 of this Ordinance; in special cases the time-limit for announcement of the preliminary conclusion may be extended, but not beyond sixty (60) days.
2. The preliminary conclusion and the main bases for the preliminary conclusion must be announced by an appropriate mode to the parties concerned in an investigation process.

Article 18 *Final conclusion*

1. At the conclusion of the investigation process, the investigating agency shall announce its final conclusion on the matters relative to the investigation process as stipulated in article 12 of this Ordinance.
2. The final conclusion and the main bases for the final conclusion must be announced by an appropriate mode to the parties concerned in an investigation process.

Article 19 *Termination of an investigation*

The Minister of Trade shall issue a decision on termination of an investigation in the following circumstances:

1. If the organization or individual who lodged the file requesting application of anti-dumping measures voluntarily withdraws such file.
2. If the preliminary conclusion prescribed in article 17 of this Ordinance contains at least one of the following items:
 - (a) There is no dumping as stipulated in article 3 of this Ordinance;
 - (b) The dumping margin is insignificant;
 - (c) The volume, quantity or value of products dumped into Vietnam is insignificant;
 - (d) There is no material injury or threat to cause material injury to a domestic industry.

CHAPTER III

Application of Anti-Dumping Measures

Article 20 *Application of interim anti-dumping duty*

1. After sixty (60) days from the date of issuance of a decision to hold an investigation, and based on the preliminary conclusion, the Minister of Trade may issue a decision applying interim anti-dumping duty.
2. The rate of interim anti-dumping duty shall not exceed the dumping margin set out in the preliminary conclusion.
3. Payment of interim anti-dumping duty may be secured by a cash deposit or by other means in accordance with law.
4. The duration of applicability of interim anti-dumping duty shall not exceed one hundred and twenty (120) days as from the date of issuance of the decision to apply this measure.
5. If there is a request from exporters of like products, the Minister of Trade may extend the applicability of interim anti-dumping duty, but not beyond sixty (60) days.

Article 21 *Application of the measure being an undertaking*

1. After there is a preliminary conclusion and prior to termination of the investigative phase, an organization or individual manufacturing or exporting the products subject to the investigation may provide an undertaking to the Minister of Trade made to domestic manufacturers with one or both of the following contents:
 - (a) Adjustment of the selling price;
 - (b) Voluntarily limitation of the volume, quantity or value of products dumped into Vietnam.
2. The Minister of Trade may agree to the undertaking, not agree to the undertaking, or propose an adjustment to the undertaking, but may not coerce the parties to provide an undertaking.
3. The investigating agency shall publicly announce the contents of the undertaking for the information of the parties concerned in the investigation process.
4. If the Minister of Trade does not agree to an undertaking from parties concerned, the Minister must notify its reasons therefor and permit the continuation of the investigation in order to apply anti-dumping measures.
5. The Minister of Trade shall issue a decision on suspension of the anti-dumping investigation and on application of the measure being an undertaking if it is considered that implementation of such undertaking will not cause, or threaten to cause, material injury to a domestic industry.

The parties providing an undertaking shall periodically provide the investigating agency with data and information relating to implementation of the undertaking, together with proof of the accuracy of such information in accordance with the decision of the Minister of Trade.

6. If the parties concerned fail to correctly implement their undertaking, causing or threatening to cause material injury to a domestic industry, the Minister of Trade shall issue a decision to continue the investigation into the application of anti-dumping measures or shall issue a decision applying interim anti-dumping measures pursuant to the provisions of this Ordinance.

Article 22 *Application of anti-dumping duty*

1. Where agreement cannot be reached on provision of an undertaking pursuant to article 21 of this Ordinance, then based on the final conclusion and the recommendation from the Council for dealing with anti-dumping cases, the Minister of Trade shall issue a decision to apply or not to apply anti-dumping duty.
2. The rate of anti-dumping duty shall not exceed the dumping margin set out in the final conclusion.

3. The duration of applicability of anti-dumping duty shall not exceed five years as from the date of issuance of the decision to apply anti-dumping measures.
4. The duration of applicability of anti-dumping duty may be extended if the Minister of Trade issues a decision on checking the application of anti-dumping duty pursuant to the provisions in Chapter IV of this Ordinance.
5. The investigating agency shall announce by an appropriate mode the decision applying or not applying anti-dumping duty to the parties concerned in the investigation process.

Article 23 *Retrospective application of anti-dumping duty*

1. Where a final conclusion confirms there is material injury or threat to cause material injury to a domestic industry and interim anti-dumping duty was applied in the period prior to the final conclusion, then anti-dumping duty may be retrospectively applied.
2. Anti-dumping duty may be retrospectively applied to imported products for a period of ninety (90) days prior to the date of application of interim anti-dumping duty when the following conditions are satisfied:
 - (a) Those imported products were dumped;
 - (b) The volume, quantity or value of products dumped into Vietnam increased suddenly causing loss difficult to remedy to a domestic industry.
3. On application of an anti-dumping duty rate in a final conclusion which is higher than the interim anti-dumping duty rate applied pursuant to article 20 of this Ordinance, the difference between the two duties shall not be collected.
4. On application of an anti-dumping duty rate in a final conclusion which is lower than the interim anti-dumping duty rate applied pursuant to article 20 of this Ordinance, the difference between the two duties shall be refunded.
5. If the Minister of Trade issues a decision not to apply anti-dumping duty, then the interim anti-dumping duty which has been collected or the items used to secure payment of interim anti-dumping duty applied pursuant to article 20 of this Ordinance shall be refunded.

CHAPTER IV

Check of Application of Anti-Dumping Measures

Article 24 *Check of application of anti-dumping measures*

1. After one year from the date of issuance of a decision applying anti-dumping measures, the Minister of Trade shall have the right to issue a decision to check the application of anti-dumping measures when there is a proposal from one or more of the parties concerned as prescribed in article 11 of this Ordinance and on the basis of a consideration of the evidence provided by such parties.
2. One year prior to the expiry of effectiveness of a decision applying anti-dumping measures, the Minister of Trade may issue a decision to check the application of anti-dumping measures.
3. The investigating agency shall conduct a check of the application of anti-dumping duty in accordance with the provisions in articles 9, 10, 11, 12, 13, 14 and 15 of this Ordinance.
4. The conduct of the procedures relative to the checking process must not hinder the current application of anti-dumping measures.

5. The duration of a check of the application of anti-dumping measures stipulated in clauses 1 and 2 of this article shall not exceed twelve (12) months as from the date of issuance of the decision to conduct the check.

Article 25 *Decision on the results of a check of application of anti-dumping measures*

At the end of a check of the application of anti-dumping measures, the Minister of Trade shall issue one of the following decisions:

1. A decision continuing the applicability of anti-dumping measures.
2. A decision adjusting the rate of anti-dumping duty commensurate with the result of the check.
3. A decision terminating the applicability of anti-dumping measures.

CHAPTER V

Complaints and Dealing with Breaches

Article 26 *Complaints and legal proceedings*

1. Any party concerned in an investigation process or concerned with the application of anti-dumping duty who disagrees with a decision of the Minister of Trade 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 issuance of the decision by the Minister applying anti-dumping duty.
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, but not beyond sixty (60) days and it must be notified by an appropriate mode to the complainant organization or individual.
3. If at the expiry of the time-limit prescribed in clause 2 of this article the Minister of Trade has not issued a decision resolving a complaint or if the complainant organization or individual disagrees with the decision of the Minister of Trade resolving the complaint, then the complainant shall have the right to institute court proceedings in accordance with the law of Vietnam.

Article 27 *Dispute resolution and dealing with breaches*

Dispute resolution and dealing with breaches of the laws on anti-dumping of products into Vietnam shall be implemented in accordance with the laws of Vietnam; and where an international treaty which Vietnam has signed or acceded to contains different provisions, [dispute resolution and dealing with breaches] shall be implemented in accordance with such treaty.

CHAPTER VI

Implementing Provisions

Article 28 *Effectiveness*

This Ordinance shall be of full force and effect as from 1 October 2004.

Article 29 *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.

On behalf of the Standing Committee of the National Assembly
Chairman

NGUYEN VAN AN