

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

No. 150-2003-ND-CP

Hanoi, 8 December 2003

**DECREE
ON
SELF-PROTECTION IN IMPORT
OF FOREIGN GOODS INTO VIETNAM**

**Providing detailed regulations for implementation of
Ordinance on Self-Protection in Import of
Foreign Goods into Vietnam**

The Government

Pursuant to the *Law on the Organization of the Government* dated 25 December 2001;

Pursuant to Ordinance 42-2002-PL-UBTVQH10 on Self-Protection in Import of Foreign Goods into Vietnam dated 25 May 2002;

On the proposal of the Minister of Trade;

Decrees:

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Decree provides detailed regulations for implementation of the *Ordinance on Self-Protection in Import of Foreign Goods into Vietnam*; and provides regulations on self-protective measures and procedures for investigation and application of self-protective measures in the case of import of goods into Vietnam beyond the levels thereby causing serious loss to a domestic manufacturing industry.

Article 2 *Self-protective measures*

Self-protective measures in relation to the import of foreign goods into Vietnam shall comprise:

1. Increasing the level of import duty compared to the current level;
2. Imposing import quotas;
3. Imposing customs quotas;
4. Applying absolute duties;
5. Granting import permits to control import;
6. Imposing surcharges on imported goods;
7. Other measures.

Article 3 *Determining what is a domestic manufacturing industry*

A domestic manufacturing industry means all manufacturers of similar goods or goods directly competing within the territory of Vietnam being manufactured domestically, or their legal representatives, which account for at least fifty (50) per cent of the total production of goods of that industry.

Article 4 *Interpretation of terms*

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

1. *Import of goods beyond the levels* means the import of goods in a volume, quantity or at a value which increases in an absolute or relative way in comparison to the volume, quantity or value of similar goods or directly competing goods which are manufactured domestically.
2. *Serious loss to a domestic manufacturing industry* means a situation where the domestic quantities, or consumption levels, or profits from manufacturing, or rate of production development of a manufacturing industry diminish significantly; or there is an increase in the levels of stockpiled goods; thereby adversely impacting on work, salary levels, investment and other indicators of the domestic manufacturing industry which produces such goods.
3. *A threat causing serious loss to a domestic manufacturing industry* means the certain, clear and proven capacity for serious loss being caused to a domestic manufacturing industry.

4. *Similar goods* means goods which are identical or which are similar in terms of function, use, quality indicators and technical properties and belong to the same group with the same fundamental characteristics.
5. *Directly competing goods* means goods with the capacity for a purchaser to agree that they may replace goods in the category of applicability of self-protective measures due to an advantage in price or use purpose.

CHAPTER II

Investigation into Application of Self-Protective Measures

Article 5 *Procedures for investigation*

1. The Ministry of Trade shall be the body responsible to conduct an investigation prior to making any decision to apply or not to apply self-protective measures.
2. An investigation shall be conducted when:
 - (a) There is a file requesting application of self-protective measures from an organization or individual representing a domestic manufacturing industry in accordance with article 10 of the *Ordinance on Self-Protection in Import of Foreign Goods into Vietnam*;
 - (b) There is evidence proving it is essential that self-protective measures be applied.
3. Based on the file requesting application of self-protective measures or the evidence as evaluated, the Ministry of Trade shall issue a decision to conduct an investigation or not to conduct an investigation in accordance with the principles stipulated in article 12 of the *Ordinance on Self-Protection in Import of Foreign Goods into Vietnam*.
4. During the course of an investigation, the relevant State bodies and the organizations and individuals concerned shall be responsible to co-ordinate with and provide necessary information as requested by the Ministry of Trade.
5. Upon conclusion of an investigation (within the time-limit stipulated in article 18 of the *Ordinance on Self-Protection in Import of Foreign Goods into Vietnam*), the Ministry of Trade shall announce publicly the results of the investigation.
6. On the basis of the results of the investigation, and after consulting the parties concerned and, where necessary, the ministries and branches

concerned on the forms of application of self-protective measures (if applicable) and the consequences of such application, the Ministry of Trade shall issue a decision to apply or not to apply self-protective measures. Any such decision must be announced publicly.

Article 6 *Contents of file requesting application of self-protective measures*

The Ministry of Trade shall regulate files requesting application of self-protective measures, which shall include the following principal items:

1. Detailed description of imported goods, including their technical qualities, use purpose, code number under the import tariff list, and applicable import duty rate under the current list of export-import goods of Vietnam;
2. Detailed description of similar goods or directly competing goods, including their technical qualities and use purpose;
3. Names and addresses of the representatives of individuals, organizations and enterprises named in the application and of the representatives of manufacturers of similar goods or directly competing goods;
4. The percentage of imported goods over the output of similar goods or directly competing goods manufactured domestically by the individuals, organizations and enterprises named in the application;
5. Information on the volume, quantity or value of the imported goods which are the subject of investigation in the current year and in each year for a period of three consecutive years prior to the date on which the request for application of self-protective measures was made;
6. Description of the increase in imported goods in an absolute or relative way in comparison to goods manufactured domestically;
7. Information relating to the serious loss to a domestic manufacturing industry or the threat of serious loss to a domestic manufacturing industry in the current year and in each year for a period of three consecutive years prior to the date on which the request for application of self-protective measures was made, including:
 - (a) Quantity, volume or value of similar goods or directly competing goods which are being manufactured domestically;
 - (b) Co-efficient of utilization of manufacturing capacity;
 - (c) Market share;
 - (d) Level of stockpiled goods;

- (dd) Profit and loss figures;
 - (e) Labour productivity indicators;
 - (g) Employment figures, and labour and income rates for the domestic manufacturing industry;
 - (h) Changes in status of sales of goods: quantity and price;
 - (i) Other relevant necessary information;
8. Information relating to the possible increase of imported goods and the capacity to export or the level of stockpiled goods of exporting countries with respect to the goods which are the subject of investigation, resulting in the threat of serious loss to a domestic manufacturing industry, if any;
 9. Explanation of the serious loss which has already occurred, is occurring or will occur or the threat to cause serious loss due to excessive imports of goods;
 10. Specific request for self-protective measures and/or for interim measures and the duration of applicability;
 11. Plan for changes to the domestic manufacturing industry in order to raise competitiveness with imported goods which are the subject of the request for investigation into application of self-protective measures.

Article 7 *Contents of decision to conduct investigation into application of self-protective measures*

Any decision of the Ministry of Trade to commence an investigation into application of self-protective measures shall contain the following principal items:

1. Detailed description of imported goods which are the subject of investigation, including their technical qualities, use purpose, code number under the import tariff list, and applicable import duty rate under the current list of export-import goods of Vietnam;
2. Detailed description of similar goods or directly competing goods, including their technical qualities and use purpose;
3. Names of enterprises and representatives of domestic organizations and individuals manufacturing similar goods or directly competing goods (if any) which have requested application of self-protective measures;
4. Name(s) of country(ies) of origin of the goods which are the subject of investigation;

5. Summary of information relating to the increase of import of the goods which are the subject of investigation and to the serious loss or threat of serious loss to a domestic manufacturing industry due to the increased imports.

Article 8 *Contents of investigation of serious loss or threat of serious loss*

The investigation to determine whether the increase in imported goods causes or threatens to cause serious loss to a domestic manufacturing industry shall be based on the following matters:

1. The ratio and level of sudden increase in imports in an absolute or relative way of the type of goods which are the subject of investigation in comparison to the manufacture of similar goods or directly competing goods by the domestic manufacturing industry;
2. The impact of the increase in imports of the type of goods which are the subject of investigation on the domestic market share;
3. The price of the type of goods which are the subject of investigation in comparison to the price of similar goods or directly competing goods of the domestic manufacturing industry;
4. The impact of the increase in imports of the type of goods which are the subject of investigation on the domestic manufacturing industry with respect to volumes being manufactured, co-efficient of utilization of manufacturing capacity, level of sales, market share, prices, labour productivity, profit and loss figures, employment rates, income and other indicators of serious loss caused or threatened to be caused to the domestic manufacturing industry;
5. The level of stockpiled goods, the potential and/or actual capacity to export, and the possibility of increase in the exports of the goods which are the subject of investigation by one or all of the exporting countries;
6. Other relevant matters which are necessary for the investigation.

Article 9 *Confidentiality of information*

The Ministry of Trade shall maintain the confidentiality of information provided by State bodies and by organizations and individuals concerned in the investigative process and shall not publicize such information without the consent of the information providers.

Article 10 *Consultation during investigation*

1. Parties concerned in the investigative process shall have the right to present written evidence, to participate in debate and to express their opinions on the socio-economic benefits which would result from application of self-protective measures.
2. The Ministry of Trade shall consult the parties concerned in the investigative process and shall prepare minutes of consultation and announce them publicly, unless the information is confidential.

CHAPTER III**Application of Self-Protective Measures****Article 11** *Notification of application of interim self-protective measures*

Any decision to apply interim self-protective measures prior to conclusion of an investigation shall be made in accordance with the principles stipulated in article 20 of the *Ordinance on Self-Protection in Import of Foreign Goods into Vietnam*. Any such decision shall be announced publicly and contain the following items:

1. Detailed description of imported goods which are the subject of investigation, including their technical qualities, use purpose, code number under the import tariff list, and applicable import duty rate under the current list of export-import goods of Vietnam;
2. Detailed description of similar goods or directly competing goods, including their technical qualities and use purpose;
3. Names of enterprises manufacturing similar goods or directly competing goods (if any);
4. Name(s) of country(ies) of origin of goods which are the subject of application of interim measures;
5. Rate of increased import duty upon application of interim measures;
6. Duration of applicability of interim measures;
7. Information and evidence proving that the increase in imports of goods which are the subject of investigation causes or threatens to cause serious loss to a domestic manufacturing industry, if any;
8. Information and evidence proving that any delay in the application of interim measures will cause, or threaten to cause, serious loss to a domestic manufacturing industry, and the difficulty in overcoming such loss.

Article 12 *Refund of import duty difference upon application of interim self-protective measures*

1. In the case where the results of the investigation by the Ministry of Trade indicate that it is not necessary to apply interim measures or that import duty should be increased at a rate lower than the already applicable import duty, the difference between the amount of such duty shall be refunded to tax payers. The Ministry of Trade shall issue decisions thereon.
2. The duty difference provided for in clause 1 of this article shall be refunded within thirty (30) days from the date on which the Ministry of Trade issues a decision to apply or not to apply interim self-protective measures.
3. Interest shall not be paid on the duty difference provided for in clause 1 of this article.
4. The Ministry of Finance shall be responsible to carry out procedures for tax refund in accordance with current regulations on the basis of the decision of the Ministry of Trade provided for in this article.

Article 13 *Application of self-protective measures to under-developed countries*

1. It may be that self-protective measures will not be applied to imported goods originating from an under-developed country if the volume of the goods of such country which are imported into Vietnam does not exceed three per cent of the total volume of imported goods which are the subject of investigation into application of self-protective measures.
2. Notwithstanding the provisions of clause 1 of this article, self-protective measures may be applied to imported goods originating from an under-developed country if the aggregate volume of the goods of such country which are imported into Vietnam exceeds nine per cent of the total volume of imported goods which are the subject of investigation into application of self-protective measures.
3. A determination of whether a country is under-developed shall be based on the criteria for classification of under-developed countries of the United Nations Organization.

Article 14 *Notification of application of self-protective measures*

A decision on application of self-protective measures must be announced publicly and contain the following items:

1. Detailed description of imported goods to which the measures are applied, including their technical qualities, use purpose, code number under the import tariff list, and applicable import duty rate under the current list of export-import goods of Vietnam;
2. Detailed description of similar goods or directly competing goods, including their technical qualities and use purpose;
3. Names of enterprises manufacturing similar goods or directly competing goods;
4. Name(s) of country(ies) of origin of goods to which the measures are applied;
5. Summary of results of investigation, indicating the necessity to apply self-protective measures;
6. Form and scope of applicability of self-protective measures;
7. Date of effectiveness and duration of applicability of self-protective measures;
8. Summary of contents of evidence of serious loss or threat to cause serious loss;
9. Amended plan of the domestic manufacturing industry which manufactures similar goods or directly competing goods;
10. Refund of import duty difference during the applicability of interim measures (if any);
11. Name of under-developed country(ies) exempt from application of self-protective measures in accordance with the provisions of article 13 of this Decree.

Article 15 *Consultation prior to application of self-protective measures*

1. Prior to issuing a decision to apply self-protective measures, the Ministry of Trade shall create opportunities for adequate consultation with countries which benefit significantly from the export into Vietnam of the goods which are the subject of application.

2. The Ministry of Trade may reach agreement with countries which benefit significantly as stipulated in clause 1 of this article on forms of compensation for loss to overcome unfavourable consequences caused by the application of self-protective measures.

CHAPTER IV

Implementing Provisions

Article 16

This Decree shall be of full force and effect after fifteen (15) days from the date of its publication in the Official Gazette.

Article 17 *Responsibility for implementation*

1. The Minister of Trade shall be responsible to provide guidelines for implementation of this Decree.
2. Ministers, heads of ministerial equivalent bodies, heads of Government bodies, and chairmen of people's committees of provinces and cities under central authority shall be responsible for implementation of this Decree.

For the Government
Prime Minister

PHAN VAN KHAI