

DECREE

Detailing the Implementation of a Number of Provisions of the Ordinance on Measures Against Subsidized Goods Imported into Vietnam

The Government

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

Pursuant to *Ordinance 22-2004-PL-UBTVQH11* dated 20 August 2004 on Measures Against Subsidized Goods Imported into Vietnam;

Upon the proposal of the Minister of Trade,

Decrees:

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Decree makes detailed provisions for implementation of a number of articles of the *Ordinance on Measures Against Subsidized Goods Imported into Vietnam* (hereinafter referred to as the *Anti-subsidy Ordinance*) including the anti-subsidy investigating agency, the council for handling anti-subsidy cases; procedures for and contents of investigation for imposition of anti-subsidy measures and the imposition of anti-subsidy measures against subsidized goods imported into Vietnam.

Article 2 *Spoken and written language used in the process of handling anti-subsidy cases*

1. The written and spoken language used in the process of handling anti-subsidy cases stipulated in this Decree shall be Vietnamese. Parties concerned in the investigative process specified in article 11 of the *Anti-subsidy Ordinance* (hereinafter referred to as the parties concerned) shall have the right to use their native written and spoken language provided that translation into Vietnamese must be made available..
2. Information and documents in a language other than Vietnamese provided by the parties concerned must be translated into Vietnamese. Parties concerned shall ensure the truthfulness and accuracy of, and shall be responsible before law for the contents of the translation.

Article 3 *Evidence*

Evidence in the process of handling an anti-subsidy case refers to actual information used by the anti-subsidy investigating agency and the council for handling anti-subsidy cases as a basis for determination of the situation of subsidization of goods imported into Vietnam, the situation of material injury or threat to cause material injury being suffered by a domestic industry and the link between the subsidized goods imported into Vietnam and the material injury or threat to cause material injury being suffered by domestic industry as well as other details that are necessary to ensure a proper settlement of an anti-subsidy case.

Article 4 *Definition of the volume, quantity or value of subsidized goods imported into Vietnam being de minimis*

The volume, quantity or value of subsidized goods imported into Vietnam shall be deemed to be *de minimis* if:

1. The volume, quantity or value of subsidized goods imported into Vietnam from a single country does not exceed three per cent of the total volume, quantity or value of like products imported into Vietnam.
2. The total volume, quantity or value of subsidized goods imported from a number of countries satisfying the condition specified in clause 1 of this article does not exceed seven per cent of the total volume, quantity or value of like products imported into Vietnam.

Article 5 *Determination of major proportion of the total volume, quantity or value of like products produced by domestic industry*

The volume, quantity or value of goods produced that accounts for fifty (50) per cent or more of the total volume, quantity or value of like products produced domestically shall be deemed to constitute a major proportion of the total volume, quantity or value of like products produced domestically.

Article 6 *Definition of the directly-associated relationship between the domestic producer of the like products and the individual, organization exporting, [or] importing the goods against which the imposition of anti-subsidy measures is requested.*

1. A producer of like product shall be deemed to have a directly-associated relationship to the individual, [or] organization exporting, [or] importing the goods against which the imposition of anti-subsidy measures is requested in the following circumstances:
 - (a) One party directly or indirectly controls the other party;
 - (b) Both parties are controlled directly or indirectly by a third party;
 - (c) Both parties directly or indirectly control a third party.
2. A party may be deemed to control the other if such party has the ability to influence the latter's financial policy and operation in order to benefit from the latter's business activities.

**Anti-subsidy Competent Authority, Persons Handling Anti-subsidy Cases, Persons
Participating in the Process of handling Anti-subsidy Cases**

SECTION I

Anti-subsidy Competent Authority, Persons Handling Anti-subsidy Cases

Article 7 *Anti-subsidy Competent Authority, Persons Handling Anti-subsidy Cases*

1. The *Anti-subsidy Competent Authority* shall include anti-subsidy investigating agency (hereinafter referred to as the *investigation body*) and the council for handling anti-subsidy cases (hereinafter referred to as the *council for handling anti-subsidy cases*).
2. Persons handling anti-subsidy cases shall include:
 - (a) The head of the investigation body;
 - (b) Investigators in charge of anti-subsidy cases (hereinafter referred to as the *investigators*);
 - (c) Members of the council for handling anti-subsidy cases.

Article 8 *Duties and powers of the investigation body*

In the process of handling anti-subsidy cases, the investigation body shall have the following duties and powers:

1. To issue proforma of dossier requesting the imposition of of anti-subsidy measures and questionnaire forms.
2. To conduct investigative tasks in the investigation for the imposition of anti-subsidy measures pursuant to procedures provided the Anti-Subsidy Ordinance in this Decree.
3. To request parties concerned to provide necessary information and documents relevant to the anti-subsidy case
4. To hold consultation session with parties concerned.
5. To announce preliminary conclusions on matters related to the investigation process.
6. To make recommendations to the Minister of Trade for consideration and issuance of a decision on the imposition of provisional anti-subsidy duty where it is deemed necessary.
7. To make recommendations to the Minister of Trade for consideration and issuance of relevant decision on acceptance, rejection or suggestion on modification of of undertakings upon voluntary proposals of concerned producers, exporters in accordance with article 23 of the Anti-subsidy Ordinance
8. To announce final conclusions on matters related to the investigation process.
9. To conduct reviews with respect to the implementation of anti-subsidy measures pursuant to the decision of the Minister of Trade
10. To conduct other tasks as provided by law.

Article 9 *Head of the investigation body*

1. The head of the investigation body shall be appointed or dismissed by the Minister of Trade.
2. The head of the investigation body shall have the following duties and powers:
 - (a) To organize, [and] direct the investigation body to perform its duties and powers prescribed in Article 8 of this Decree;
 - (b) To assign investigators for handling a specific anti-subsidy case;
 - (c) To assign investigator as a preceding officer for handling consultation session;
 - (d) To supervise investigative activities of investigators;
 - (dd) To make decisions to hold consultation session;
 - (e) To maintain the confidentiality of information in accordance with article 28 of this Decree;
 - (g) To request official authentication.

Article 10 *Investigator*

1. Criteria of an investigator.

A person who satisfies all of the following criteria may be appointed as an investigator:

- (a) Having a good moral virtue, [and] being honest and impartial;
 - (b) Having an undergraduate degree or higher in the economic, financial or law sector;
 - (c) Having, at minimum, 5 years of practical experience in any of the fields referred to in point (b) of this clause;
 - (d) Having been trained or upgraded on the investigation techniques.
2. Investigators shall be appointed or dismissed by the Minister of Trade upon the request of the head of the investigation body.

Article 11 *Duties and powers of investigators*

In the process of handling anti-subsidy cases, an investigator shall have the following duties and powers:

1. To perform investigative tasks as assigned by the Head of the investigation body.
2. To request the parties concerned to provide necessary information and documents relevant to anti-subsidy case as stipulated in article 12 of the *Anti-subsidy Ordinance*.
3. To maintain the confidentiality of information in accordance with article 28 of this Decree.
4. To preserve documents provided.

5. To make report on investigation upon the completion of the investigation of anti-subsidy cases, and to compile and submit preliminary conclusion and final conclusion made during the course of investigation to the head of the investigation body.

Article 12 *Duties and powers of the council for handling anti-subsidy cases*

The council for handling anti-subsidy cases shall have the following duties and powers:

1. To consider conclusions made by the investigation body in accordance with article 37 of this Decree.
2. Discuss and decide through voting on whether or not there exists subsidization of goods imported into Vietnam that causes or threatens to cause material injury to the domestic industry
3. To make recommendations to the Minister of Trade with respect to the imposition of the countervailing duty pursuant to provisions provided in Article 37 of this Decree.

Article 13 *Members of the council for handling anti-subsidy cases*

1. Criteria of a member of the council for handling anti-subsidy cases.

The Minister of Trade shall prepare a list of recommended members of the council for handling anti-subsidy cases and submit it to the Prime Minister of the Government for approval on the basis of the following criteria:

- (a) Having a good moral virtue, [and] being honest and impartial;
 - (b) Having an undergraduate degree or higher in the economic, financial or law sector;
 - (c) Having, at minimum, 9 years of practical experience in any of the fields referred to in point (b) of this clause.
2. The Minister of Trade shall, upon the the list of members of the council for handling anti-subsidy cases approved by the Prime Minister of the Government, consider and issue a decision on quantity of members of the council for handling anti-subsidy cases participating in the handling of a specific anti-subsidy case, including the appointment of a member to act as the chairman of the Council's meeting and to sign decisions and proposals as stipulated in clauses 2 and 3 of article 12 of this Decree.
 3. A member of the council for handling anti-subsidy cases shall be appointed in a 5-year term and may be re-appointed.

Article 14 *Duties and powers of members of the council for handling anti-subsidy cases*

In the process of handling anti-subsidy cases, a member of the council for handling anti-subsidy cases shall have the following duties and powers:

1. Examine, [and] review conclusions of the investigation body and other documents in the dossier of anti-subsidy case referred to by the investigation body.

2. To participate in meeting of the council for handling anti-subsidy cases for discussing and voting to determine whether or not there exists subsidization of goods imported into Vietnam that causes or threatens to cause material injury to the domestic industry.
3. To maintain the confidentiality of information in accordance with article 28 of this Decree.

SECTION II

Persons Participating in the Process of handling Anti-subsidy Cases

Article 15 *Persons participating in the process of handling anti-subsidy cases*

Persons participating in the process of handling anti-subsidy cases shall include:

1. Organizations and individuals representing the domestic industry as stipulated in clause 1 of article 8 of the Anti-subsidy Ordinance who filed a dossier requesting the imposition of anti-subsidy measures to the investigation body (hereinafter referred to as “applicant”).
2. Foreign organization or individual producing, [and/or] exporting goods against which the dossier requesting the imposition of anti-subsidy measures is filed by the applicant (s) or goods subject to the investigation initiated upon the decision of the Minister of Trade as provided in Article 8 of the Anti-subsidy Ordinance (hereinafter referred to as “defendant”)
3. Lawyer of the Applicant(s), [and/or] Defendant(s).
4. Other parties concerned.

Article 16 *Rights and obligations of applicants and defendant*

1. When participating in the process of handling anti-subsidy case, an applicant shall have the following rights:
 - (a) To access to information provided by other parties concerned to the investigation body, except for confidential information preserved under Article 28 of this Decree
 - (b) To request the investigation body and investigators to maintain the confidentiality of information in accordance with article 28 of this Decree;
 - (c) To participate in in the consultation session;
 - (d) To authorize a lawyer to participate on its behalf in the process of handling the anti-subsidy case;
 - (dd) To request the investigation body to hold closed consultation session as provided by Clause 6 Article 27 of this Decree;
 - (e) To lodge a complaint or initiate a legal action against a decision of the Minister of Trade in accordance with article 28 of the *Anti-subsidy Ordinance*.
2. When participating in the process of handling anti-subsidy case, a defendant shall have the following rights:
 - (a) Rights as provided in clause 1 of this article;

- (b) Right to request the investigation body for granting an extension to the amount of time allowed for the provision of information, [or] return of questionnaires pursuant to clause 2 of article 24 of this Decree.
3. A applicant or defendant shall have the following obligations:
- (a) To provide sufficient, truthful, accurate and timely information and necessary documents related to their request;
 - (b) To provide sufficient, truthful, accurate and timely information and necessary documents as requested by the investigation body, [and/or] investigators;
 - (c) To execute the decisions of the Minister of Trade.

Article 17 *Lawyers of applicants and defendants*

1. Lawyers, who have sufficient conditions for participating in a court's proceeding as provided by law, and are authorized by the Applicant(s) and Defendant(s), shall have the right to participate in the process of handling anti-subsidy case as to defend rights and legitimate interests of parties that they represent for.
2. When participating in the process of handling an anti-subsidy case, a lawyer shall have the following rights and obligations:
- (a) To participate in phases of the process of handling the anti-subsidy case;
 - (b) To verify, collect and provide documents in order to defend rights and legitimate interests of parties that they represent for;
 - (c) To examine documents included in the dossier of anti-subsidy case;
 - (d) To take notes, copy necessary documents included in the dossier of anti-subsidy case, except for confidential information preserved under Article 28 of this Decree, in order to defend rights and legitimate interests of parties that represent for;
 - (dd) Provide assistance to parties that they represent for on legal issues related to the defence of rights and legitimate interests of the latter;
 - (e) To respect the truthfulness and law; not to suborn, compel or instigate others to provide false testimony, [or] false documents;
 - (g) Not to disclose confidential information related to the investigation known through their participation in the process of handling handling the anti-subsidy case;
 - (h) Not to use any note taken, [and/or] copies of documents included in the dossier of anti-subsidy case for the purposes of injuring national interest, [and/or] rights and legitimate interests of organizations and individuals

Article 18 *Rights and obligations of other parties concerned*

When participating in the process of handling an anti-subsidy case, parties concerned other than the applicant or defendant shall have the following rights and obligations:

1. To provide truthful, [and] necessary information and documents relevant to the anti-subsidy case with regard to their point of views or as requested by the investigation body, [and/or] investigators.
2. To request the investigation body and investigators to maintain the confidentiality of information in accordance with article 28 of this Decree.
3. To access information related to the anti-subsidy case of the investigation body, except for confidential information preserved under article 28 of this Decree.
4. To participate in the consultation session and present their point of views relevant to the anti-subsidy case, except for cases specified in clause 6, Article 27 of this Decree.

CHAPTER III

Investigation for Application of Anti-subsidy Measures

Article 19 *Files requesting application of anti-subsidy measures*

A file requesting application of anti-subsidy measures to be submitted to the investigation body shall comprise:

1. The file requesting application of anti-subsidy measures, containing the following particulars:
 - (a) Name, address and other necessary information about the applicant or the representative of a domestic industry in the case where the investigation body prepares a file in accordance with a decision of the Minister of Trade;
 - (b) Description of the imported goods which are the subject of the request for application of anti-subsidy measures, including the name, fundamental characteristics, main use purpose, code number on the current import tariff list, current import duty rate, and country of origin of the imported goods;
 - (c) Description of the volume, quantity, unit price and value of the imported goods stipulated in paragraph (b) of this clause within the period of twelve (12) months prior to the date on which the applicant submits the request or the investigation body prepares a file in accordance with a decision of the Minister of Trade;
 - (d) Description of the volume, quantity, unit price and value of like products produced domestically within the period of twelve (12) months prior to the date on which the applicant submits the request or the investigation body prepares a file in accordance with a decision of the Minister of Trade;
 - (dd) Information about the policy on subsidies of the foreign government and about the status and form of subsidies;
 - (e) Information, data and evidence of the material injury or threat to cause material injury to a domestic industry by the importation of subsidized goods into Vietnam;
 - (g) Name, address and other necessary information about the defendant;
 - (h) Specific request for application of anti-subsidy measures, the duration of applicability and the level of application of anti-subsidy measures.

2. Other relevant information and data considered necessary by the applicant or investigation body (in the case where the investigation body prepares a file requesting application of anti-subsidy measures).

Article 20 *Assessment of files requesting application of anti-subsidy measures in cases where there is an applicant*

1. Within a period of forty five (45) days from the date of receipt of the proper and complete file as stipulated in article 19 of this Decree, the investigation body shall be responsible for assessing the file for submission to the Minister of Trade for consideration and issuance of a decision to conduct an investigation.
2. Contents of assessment of the file shall include:
 - (a) Verifying the legal status of the organization or individual submitting the file stipulated in clause 1 of article 8 of the *Anti-subsidy Ordinance* as the representative of a domestic industry;
 - (b) Verifying evidence that subsidized goods imported into Vietnam cause, or threaten to cause, material injury to a domestic industry.

Article 21 *Preparation of files requesting application of anti-subsidy measures in cases where there is no applicant*

1. Where there is no applicant but there are signs that subsidized goods imported into Vietnam cause, or threaten to cause, material injury to a domestic industry, the Minister of Trade shall issue a decision to assign the investigation body to prepare a file requesting application of anti-subsidy measures and submit it to the Minister for consideration and issuance of a decision to conduct an investigation.
2. The period for preparation of a file stipulated in clause 1 of this article shall be six months from the date on which the Minister of Trade signs a decision to assign the investigation body to prepare a file.

Article 22 *Contents of decisions to conduct investigations*

1. A decision to conduct an investigation shall comprise the following particulars:
 - (a) Name, address and other necessary information about the applicant (if any);
 - (b) Name, address and other necessary information about the representative of the domestic industry in the case where there is no applicant;
 - (c) Description of the goods which are the subject of the request for application of anti-subsidy measures, including the name, fundamental characteristics, main use purpose, code number on the current import tariff list, and current import duty rate;
 - (d) Name, address and other necessary information about the defendant;
 - (dd) Name of the country or territory exporting the goods and the country of origin of the goods which are the subject of the request for application of anti-subsidy measures;

- (e) Summary of information on subsidization of imported goods described in paragraph (c) of this clause causing, or threatening to cause, material injury to a domestic industry;
 - (g) The date on which the investigation is commenced;
 - (h) Duration of investigation;
 - (i) Schedule of investigation of the anti-subsidy case;
 - (k) Other information considered necessary by the Minister of Trade.
2. The notification and announcement of decisions to conduct an investigation shall be subject to clause 5 of article 10 of the *Anti-subsidy Ordinance*.

Article 23 *Provision of information and data during investigative process*

1. All parties concerned shall be responsible to provide authentic information and necessary data at the request of the investigation body.
2. Where necessary, the investigation body shall seek the opinion of experts or examine or verify the truthfulness of the information and documents provided by the parties concerned or shall collect other information and data necessary for proper resolution of the anti-subsidy case.
3. In the case of examination and verification of the truthfulness of information and data or collection of other information in a country or territory outside Vietnam, the investigation body must abide by the following provisions:
 - (a) Before verification or collection of information, the investigation body must give notification to the related organizations or individuals and authorized body of such country or territory;
 - (b) Such verification and collection of information must be agreed by the related organizations or individuals and not protested by the authorized body of the country or territory referred to in paragraph (a) of this clause, unless otherwise stipulated by international treaties to which Vietnam, and relevant countries and territories are members.
4. Except for information the confidentiality of which is maintained in accordance with article 28 of this Decree, the investigation body shall publicize the results of examination, and the results of the verification or collection of information to the parties concerned.
5. The investigation body shall make its decision based on the information and data which is available in the following circumstances:
 - (a) The party concerned fails to provide necessary information or data as requested in accordance with clause 1 of this article;
 - (b) The opinion of experts or results of examination or verification have demonstrated that the information and documents provided by the parties concerned are untruthful;
 - (c) The party concerned has not consented to the investigation body conducting the verification;

- (d) The party concerned obstructs the investigative process.
6. In the case of refusal to use part of information and data provided by the parties concerned, the investigation body shall specify the reasons for refusal to use such part of information and data.

Article 24 *Questionnaire*

1. Within a period of fifteen (15) days from the date of the decision to conduct an investigation, the investigation body shall send a questionnaire to the addresses of the following:
 - (a) The defendant or its legal representative;
 - (b) The representative of the country or territory manufacturing and/or exporting the goods which are the subject of the request for application of anti-subsidy measures in Vietnam;
 - (c) The authorized body of the country or territory manufacturing and/or exporting the goods which are the subject of the request for application of anti-subsidy measures;
 - (d) Other parties concerned.
2. Within a period of thirty (30) days from the date of receipt of the questionnaire, the defendant shall send a document answering all of the questions stated in the questionnaire to the investigation body. Where necessary and if so requested in writing by the defendant, the investigation body may consider and extend this period once but not by more than thirty (30) days.
3. The questionnaire shall be deemed effectively given at the address of the recipient on the seventh working day after the date of delivery by the investigation body. The date of delivery shall be determined on the basis of the date stamp postmark.

Article 25 *Verification of specific levels of subsidy*

1. The investigation body shall verify a specific level of subsidy in respect of each defendant in the anti-subsidy case, except for the cases specified in clause 2 of this article.
2. Where the number of persons against whom a request is made or the scope of the goods which are the subject of the request for application of anti-subsidy measures is too numerous, it is impossible to verify specific levels of subsidy, the investigation body may limit the scope of investigation in order to verify specific levels of subsidy in respect of a number of persons against whom a request is made or of the goods which are the subject of the request for application of anti-subsidy measures.

The limitation of the scope of investigation shall be subject to the following provisions:

- (a) The limitation of the scope of investigation shall be conducted by way of selecting an appropriate statistical form on the basis of volume, quantity or value of goods, which are the subject of the request for application of anti-subsidy measures, produced or exported by the defendant or information which the investigation body has obtained at the time of selection of a [*questionnaire*] form;

- (b) Upon selecting a questionnaire form, the investigation body may hold necessary consultation with the defendant or importers relating to the selection of a [questionnaire] form and must obtain the consent of such defendant to the selection of the [questionnaire] form.
- 3. The level of subsidy shall be verified in accordance with article 14 of the *Anti-subsidy Ordinance*.
- 4. The level of subsidy of a defendant who is not subject to an investigation shall be determined as the weighted average of the levels of subsidy applicable to persons against whom a request is made and who are selected for the purpose of verifying specific levels of subsidy in accordance with clause 2 of this article.

Article 26 *Verification of relationship between subsidized goods imported into Vietnam and material injury or threat to cause material injury to a domestic industry*

- 1. Upon verification of the relationship between subsidized goods imported into Vietnam and material injury or threat to cause material injury to a domestic industry, the investigation body may conduct an overall review of the following elements:
 - (a) Relationship between the subsidization of the goods imported into Vietnam and evidence of the material injury or threat to cause material injury to a domestic industry;
 - (b) Quantity and price of non-subsidized like products imported into Vietnam;
 - (c) Rate of reduction of the demand or change in the form of consumption in respect of like products produced domestically;
 - (d) Possibility of export and productivity of the domestic industry;
 - (dd) Other elements as determined by the investigation body.
- 2. Where necessary, in addition to the subsidization of the goods imported into Vietnam, the investigation body may review further other elements causing, or threatening to cause, material injury to a domestic industry.

Article 27 *Consultation in investigations*

- 1. The investigation body may, both prior to and during the investigative process, hold a public consultative meeting with the parties concerned and appoint at least three investigators, including one investigator who shall act as the chairman in order to preside over the consultative meeting.
- 2. No later than thirty (30) days before the consultative meeting, the parties concerned shall send a document registering for participation in the consultative meeting to the investigation body, specifying matters which require consultation accompanied by their written argument.
- 3. Procedures for a consultative meeting:
 - (a) The chairman shall open the consultative meeting;
 - (b) The applicant and defendant or their authorized representatives shall directly present in turn oral evidence to protect their views in relation to the anti-subsidy

case. The time for each party to present its views shall not exceed ninety (90) minutes;

- (c) The applicant and the defendant shall deliver their presentation referred to in paragraph (b) of this clause in writing to the chairman;
 - (d) Any concerned parties not covered by paragraph (b) of this clause shall have the right to deliver a document presenting their views in relation to the anti-subsidy case to the chairman;
 - (dd) The chairman and investigators shall raise questions and hear the answers of the applicant and defendant or their legal representatives. The time for questions to and answers by each party shall not exceed sixty (60) minutes. All of such proceedings shall be included in the minutes of the consultative meeting;
 - (e) The chairman shall summarize the proceedings of the consultative meeting and close the meeting.
4. Within a period of seven working days from the date on which the consultative meeting is held, the parties concerned shall have the right to deliver a document presenting further their views in relation to the anti-subsidy case to the investigation body.
5. The investigation body shall publicize all of the contents of consultation, including the presentations in writing delivered by the parties and the minutes of the consultative meeting.
6. Where necessary, the investigation body may hold a closed consultative meeting as requested by the applicant or the defendant. The investigation body shall consider and decide on participants in the closed consultative meeting on the basis of the request of the party which requests the closed consultative meeting.

Article 28 *Confidentiality of information*

1. The investigation body and investigators shall only be responsible for maintaining the confidentiality of the following information provided by the parties concerned:
- (a) National secrets and other secrets as stipulated by law;
 - (b) Information considered confidential by the [*information*] provider and the request for maintenance of the confidentiality of such information accepted by the investigation body.
2. When providing information the confidentiality of which is requested in accordance with paragraph (b) of clause 1 of this article, the information provider shall enclose a detailed explanatory statement of reasons for the request for maintenance of the confidentiality of information and a summary of confidential information which may be publicized to other parties concerned with such information.
3. Where the request for maintenance of the confidentiality of information given by the information provider is unacceptable or the information provider does not agree to the publication of the information the confidentiality of which is requested to be maintained, the investigation body shall not use such information and shall send it back to the provider.

Article 29 *Preliminary conclusion*

1. Within a time-limit of ninety (90) days from the date of the decision to conduct an investigation for application of anti-subsidy measures, the investigation body shall announce its preliminary conclusion on the matters relating to the investigative process as stipulated in articles 13, 14 and 15 of the *Anti-subsidy Ordinance*. In special cases, this time-limit may be extended, but not by more than sixty (60) days.
2. The preliminary conclusion shall be notified publicly by appropriate means to the parties concerned in the investigative process and shall contain the following particulars:
 - (a) Name, address and other necessary information about the applicant (if any);
 - (b) Description of the imported goods which are the subject of the request for application of anti-subsidy measures, including the name, fundamental characteristics, main use purpose, code number on the current import tariff list, current import duty rate and country of origin of the imported goods;
 - (c) Name, address and other necessary information about the defendant;
 - (d) Description of the volume, quantity, unit price and value of the goods imported into Vietnam referred to in paragraph (b) of this clause within the period of twelve (12) months prior to the date on which the applicant submits the request for application of anti-subsidy measures or before the investigation body prepares a file requesting application of anti-subsidy measures in accordance with a decision of the Minister of Trade;
 - (dd) Level of subsidy;
 - (e) Information and evidence proving that the subsidization of the imported goods described in paragraph (b) of this clause causes or threatens to cause material injury to a domestic industry; or information and evidence proving that the late application of interim anti-subsidy duty will threaten to cause material injury to a domestic industry and that it will be difficult to overcome;
 - (g) Schedule of investigation of the anti-subsidy case;
 - (h) Other information considered necessary by the investigation body.
3. Within seven working days from the date of the temporary conclusion of the investigation, the investigation body shall submit a report on inspection and its temporary conclusion to the Minister of Trade and, where necessary, propose the Minister of Trade issue a decision to apply interim anti-subsidy duty.

Article 30 *Termination of investigation*

1. The Minister of Trade shall issue a decision to terminate an investigation in accordance with article 21 of the *Anti-subsidy Ordinance*.
2. After there is a decision to terminate an investigation, within seven working days the investigation body shall be responsible for notifying the parties concerned in writing or by appropriate means of the decision to terminate the investigation and specifying the reasons for the termination of investigation.

Article 31 *Final conclusion*

1. Within a period of thirty (30) days upon conclusion of the investigative process, the investigation body shall announce its final conclusion on the matters relating to the investigative process as stipulated in articles 13, 14 and 15 of the *Anti-subsidy Ordinance* and the matters specified in article 26 of this Decree.
2. The final conclusion and the main grounds on which it is based in respect of the investigation shall be notified publicly by appropriate means and shall contain the following particulars:
 - (a) Name, address and other necessary information about the applicant (if any);
 - (b) Description of the imported goods which are the subject of the request for application of anti-subsidy measures, including the name, fundamental characteristics, main use purpose, code number on the current import tariff list, current import duty rate and country of origin of the imported goods;
 - (c) Name, address and other necessary information about the defendant;
 - (d) Description of the volume, quantity, unit price and value of the goods imported into Vietnam referred to in paragraph (b) of this clause within the period of twelve (12) months prior to the date on which the applicant submits the request for application of anti-subsidy measures or before the investigation body prepares a file requesting application of anti-subsidy measures in accordance with a decision of the Minister of Trade;
 - (dd) Level of subsidy;
 - (e) Information and evidence proving that the subsidization of the imported goods described in paragraph (b) of this clause causes or threatens to cause material injury to a domestic industry;
 - (g) Schedule of investigation of the anti-subsidy case;
 - (h) Other information considered necessary by the investigation body.
3. Within seven working days from the date of announcement of the final conclusion, the investigation body shall submit the file of the anti-subsidy case to the council for handling anti-subsidy cases, including the following documents:
 - (a) File requesting application of anti-subsidy measures;
 - (b) Report on investigation;
 - (c) Preliminary conclusion;
 - (d) Final conclusion and the main grounds on which it is based;
 - (dd) Proposal of the investigation body.

CHAPTER IV

Application of Anti-subsidy Measures

SECTION I

Application of Measure Being an Undertaking

Article 32 *Provision of written undertaking*

After there is a preliminary conclusion and no later than thirty (30) days prior to termination of the investigative phase, the legal representative of or the government of the country or territory of the defendant may provide a written undertaking on one or more matters specified in clause 1 of article 23 of the *Anti-subsidy Ordinance* (hereinafter referred to as the *subsidy exclusive undertaking*) directly to the Ministry of Trade via the investigation body or to the domestic manufacturers for review prior to submission to the investigation body.

Article 33 *Consideration of subsidy exclusive undertakings*

1. Within a period of thirty (30) days from the date of receipt of the subsidy exclusive undertaking in writing, the investigation body shall be responsible for considering and providing its recommendations to the Minister of Trade for consideration and decision.
2. The subsidy exclusive undertaking shall be considered on the following grounds:
 - (a) The application of the subsidy exclusive undertaking could overcome the material injury or threat to cause material injury to a domestic industry;
 - (b) The application of the subsidy exclusive undertaking will not cause any negative effect on the implementation of the domestic socio-economic policies.

Article 34 *Decisions on subsidy exclusive undertaking*

1. The Minister of Trade may, on the basis of the recommendations of the investigation body on the subsidy exclusive undertaking, issue one of the following decisions:
 - (a) Decision to suspend an investigation and accept the undertaking given by the parties providing an undertaking;
 - (b) Proposal to the party providing an undertaking for amendment to the contents of an undertaking but the Minister may not compel the parties to provide an undertaking;
 - (c) Decision not to accept the undertaking and specify the reason therefor.
2. The decisions specified in clause 1 of this article must be announced publicly by appropriate means to the parties concerned.
3. Where the party providing an undertaking accepts the proposal for amendment to the contents of the undertaking specified in paragraph (b) of clause 1 of this article, the party providing an undertaking shall submit a new undertaking to the investigation body.

Article 35 *Supervision of implementation of subsidy exclusive undertaking*

1. The parties providing an undertaking shall be subject to the supervision of the investigation body in respect of the implementation of the undertaking.
2. The parties providing an undertaking shall provide periodically to the investigation body the data and information relating to implementation of the undertaking, together with

evidence of the accuracy of such data and information in accordance with the decision of the Minister of Trade.

3. If the parties concerned fail to implement correctly the undertaking, thereby causing or threatening to cause material injury to a domestic industry, the investigation body shall propose the Minister of Trade issue a decision to continue the investigation for application of anti-subsidy measures or a decision to apply anti-subsidy measures in accordance with clause 6 of article 23 of the *Anti-subsidy Ordinance*.

SECTION II

Application of Anti-subsidy Duty

Article 36 *Application of interim anti-subsidy duty*

1. After sixty (60) days from the date of a decision to conduct an investigation, based on the preliminary conclusion and proposal of the investigation body, the Minister of Trade may issue a decision to apply interim anti-subsidy duty.
2. The decision to apply interim anti-subsidy duty shall be subject to the provisions of clause 2 to 5 of article 22 of the *Anti-subsidy Ordinance*.
3. The decision to apply interim anti-subsidy duty shall be announced publicly and contain the following particulars:
 - (a) Name, address and other necessary information about the applicant (if any);
 - (b) Description of the imported goods which are subject to application of interim anti-subsidy duty, including the name, fundamental characteristics, main use purpose, code number on the current import tariff list, current import duty rate and country of origin of the imported goods;
 - (c) Name, address and other necessary information about manufacturers or exporters manufacturing and/or exporting goods which are subject to application of interim anti-subsidy duty;
 - (d) Rate of interim anti-subsidy duty;
 - (dd) Date of effectiveness and period of application of interim anti-subsidy duty.

Article 37 *Decisions of the council for handling anti-subsidy cases*

1. Within a period of thirty (30) days from the date of receipt of the file, based on the file of an anti-subsidy case specified in clause 3 of article 31 of this Decree, the council for handling anti-subsidy cases shall be responsible for debating and reaching a majority voting decision on the following matters:
 - (a) Whether or not subsidized goods have been imported into Vietnam;
 - (b) Whether or not there is a situation in which a domestic industry suffers material injury or threat to cause material injury;

- (c) Whether or not there is a relationship between the subsidization of the goods imported into Vietnam and material injury or threat to cause material injury to a domestic industry.
- 2. In the event of a tied vote on the matters specified in clause 1 of this article, the council for handling anti-subsidy cases shall make a decision in accordance with the opinion of the chairman of the meeting.
- 3. Where the decision of the council for handling anti-subsidy cases specified in clauses 1 and 2 of this article affirms that there is subsidization and the subsidization causes, or that there is the threat to cause, material injury to a domestic industry, the council for handling anti-subsidy cases shall propose the Minister of Trade issue a decision to apply anti-subsidy duty.

Article 38 *Application of anti-subsidy duty*

- 1. If an undertaking as stipulated in article 23 of the *Anti-subsidy Ordinance* is not provided, based on the final conclusion of the investigation body and the proposal of the council for handling anti-subsidy cases stipulated in clause 3 of article 37 of this Decree, the Minister of Trade shall issue a decision to apply anti-subsidy duty.

If the application of anti-subsidy duty would cause damage to the domestic socio-economic interests, the Minister of Trade may issue a decision not to apply anti-subsidy duty.

- 2. The decision to apply anti-subsidy duty shall be subject to the provisions of clause 2 to 5 of article 22 of the *Anti-subsidy Ordinance*.
- 3. The decision to apply anti-subsidy duty shall be announced publicly and contain the following particulars:
 - (a) Name, address and other necessary information about the applicant (if any);
 - (b) Description of the imported goods which are subject to application of anti-subsidy duty, including the name, fundamental characteristics, main use purpose, code number on the current import tariff list, and current import duty rate;
 - (c) Name, address and other necessary information about manufacturers or exporters manufacturing and/or exporting goods which are subject to application of anti-subsidy duty;
 - (d) Name of the country or territory manufacturing and/or exporting goods which are subject to application of anti-subsidy duty;
 - (dd) Summary of the results of investigation evidencing that it is necessary to apply anti-subsidy duty;
 - (e) Rate of anti-subsidy duty;
 - (g) Date of effectiveness and period of application of anti-subsidy duty;
 - (h) Difference between the two duty rates refundable (if any) in accordance with article 39 of this Decree.

Article 39 *Refund of difference between rates of interim anti-subsidy duty [and anti-subsidy duty] or of any security for payment of interim anti-subsidy duty*

The refund of any difference between [rates] of interim anti-subsidy duty [and anti-subsidy duty] or any security for payment of interim anti-subsidy duty specified in clause 3 of article 22 of the *Anti-subsidy Ordinance* to taxpayers shall be made at the body and in the place where import duties are paid in accordance with the following provisions:

1. Refund of the whole of the difference between two duty rates in the case where the rate of anti-subsidy duty specified in the decision of the Minister of Trade is lower than the rate of interim anti-subsidy duty paid.
2. Refund of the whole of the interim anti-subsidy duty or security for payment of anti-subsidy duty already paid in the case where the Minister of Trade issues a decision not to apply anti-subsidy duty.
3. Differences in relation to duty refunded in accordance with clauses 1 and 2 of this article shall not bear interest.

CHAPTER V

Implementing Provisions

Article 40

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

Article 41 *Responsibility for implementation*

1. The Minister of Trade shall be responsible for organizing the implementation of this Decree.
2. The Ministry of Finance shall provide guidelines on procedures for collection and payment of anti-subsidy duty in respect of goods imported into Vietnam to the State Budget; procedures for refund of differences between the rates of interim anti-subsidy duty and [anti-subsidy duty] or security for payment of interim anti-subsidy duty.
3. Ministers, heads of ministerial equivalent bodies and Government bodies and chairmen of provinces and cities under central authority shall be responsible for the implementation of this Decree.

On behalf of the Government
Prime Minister
PHAN VAN KHAI