

No. 22-2004-PL-UBTVQH11

ORDINANCE
ON MEASURES AGAINST SUBSIDIZED PRODUCTS
IMPORTED INTO VIETNAM

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

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

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

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

Chapter 1

General Provisions

Article 1 *Governing scope*

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

Article 2 *Interpretation of terms*

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

1. *Subsidy* means financial contribution by a Government or Governmental body provided to an organization or individual when manufacturing and exporting products into Vietnam, which subsidy carries a benefit for such organization or individual.
2. *A domestic industry* means a collection of domestic manufacturers or their representatives with the volume, quantity or value of products manufactured domestically which accounts for the major proportion of the volume, quantity or value of like products manufactured domestically on condition that such manufacturers do not import, and do not have any direct association with organizations or individuals manufacturing, exporting or importing the products the subject of the request for imposition of countervailing measures.
3. *Countervailing tax* means an additional import duty applicable in cases where subsidized products imported into Vietnam cause or threaten to cause material injury to a domestic industry.
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6. *Like products* means products which have the same special characteristics as the products the subject of the request for application of countervailing measures, or if there are no such products then products which have many fundamental characteristics which are the same as those of the products the subject of the request for application of countervailing measures.
7. *Insignificant subsidized level* means a subsidy at less than one per cent (1%) of the value of the product.
8. *A specific subsidy* means a subsidy which is only applied to a specified organization, individual or industry, or a subsidy which is only applied to an organization, individual or industry in a specified geographical area in the country or territory which is the subject of an investigation for imposition of countervailing measures.

Article 3 *Forms of subsidy*

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

Article 4 *Countervailing measures*

1. Imposition of countervailing tax.
2. Approval of an undertaking from an organization or individual or from the Government of the manufacturing or exporting country or territory given to the competent State body of Vietn

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

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

Article 7 *Responsibilities for State administration of countervailing measures*

1. The Government shall uniformly exercise State administration of countervailing measures applicable to products imported into Vietnam.
2. The Government shall establish an Countervailing Commission under the Ministry of Trade and provide regulations on the specific staffing apparatus, functions and duties of the Countervailing Commission which shall comprise:
 - (a) An agency for countervailing investigations (hereinafter referred to as the ~~IOI~~)

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

Article 11 *Parties concerned with investigative process*

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

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

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

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

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

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

- (b) The price of imported products is low due to their being subsidized, and this leads to a follow-on reduction of the price of products manufactured by the domestic industry;
- (c) The impact of the imported products which are subsidized on other factors relative to

investigative process as stipulated in articles 13, 14 and 15 of this Ordinance. In special cases this

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

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

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

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

Article 24 *Imposition of countervailing tax*

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

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

Chapter IV

Review of Imposition of Countervailing Measures

Article 26 *Review of imposition of countervailing measures*

Chapter VI

Implementing Provisions

Article 30 *Effectiveness*

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

Article 31 *Implementing guidelines*

The Government and the Supreme People's Court shall, within the scope of their respective duties and op wersin