

Evidence in the process of handling an anti-subsidy case refers to actual information used by the anti-subsidy investigating agency and the coun

**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*);

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

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

- (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:

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;

- (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 informat

- (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*

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. 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 per tim

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 dome

Application of Measure Being an Undertaking

Article 32

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

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: