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Anti-Dumping Ordinance

May 2004

Ordinance 20 Against Dumping of Imported Goods into Vietnam was passed by the Standing Committee of Vietnam's National Assembly on 29 April 2004.

Following *Ordinance 40 on Prices* dated 26 April 2002 and *Ordinance 42 on Self-Protection in Import of Foreign Goods into Vietnam* dated 25 May 2002, the new Ordinance 20 is the latest limb of Vietnam's developing legal framework to regulate imports in anticipation of the opening of its markets under the terms of the US-Vietnam Bilateral Trade Agreement and its accession to the World Trade Organization. Ordinance 20 will become effective as of 1 October 2004.

Aimed at limiting the adverse impact on domestic manufacturing industries caused by dumping of imported goods in Vietnam, Ordinance 20 prescribes the range of anti-dumping measures which may be applied and stipulates the procedures for investigations and application of such measures.

Goods imported into Vietnam will be deemed to be dumped when they are sold at a price lower than the "normal price". "Normal price" means the comparable price in normal commercial conditions of similar goods which are being sold on the local market of the exporting country or territory. "Similar goods" are goods with all the same features as the dumped goods or, if none, goods which have many basic features the same as the dumped goods. If there are no similar goods or an insignificant quantity of similar goods being sold on the local market of the exporting country or territory, the "normal price" will be either (i) the comparable price of similar goods being sold in normal commercial conditions on the market of a third country or (ii) the reasonable prime cost of goods plus other reasonable expenses and profits at a reasonable level, considered pursuant to each phase from manufacture to circulation on the market of the exporting country or territory or of a third country.

Anti-dumping measures include:

- Application of anti-dumping duty, ie an additional import duty;
- Requirement for an undertaking on measures to eliminate dumping to be given by the organization or individual manufacturing or exporting the dumped goods to Vietnam's State anti-dumping body or to domestic manufacturers if the State anti-dumping body so agrees.

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The State anti-dumping body is to be established under the Ministry of Trade and will comprise an anti-dumping investigative body ("ADIB") and an anti-dumping council ("ADC"). The ADIB will conduct investigations, check anti-dumping cases and, where necessary, recommend the application of interim anti-dumping measures. The ADC, comprising a number of standing members and a number of other members appointed on a case-by-case basis, will decide (by majority) whether dumping is proven from the investigation conclusions of the ADIB and, if so, recommend that the Minister of Trade issue a decision on application of anti-dumping duty.

Anti-dumping measures will only be applied after an investigation concludes that imported goods have been dumped at a significant dumping margin, that the volume, quantity or value of dumped goods is significant, and that the dumping of such goods directly causes, or threatens to cause, significant loss to a domestic manufacturing industry.

The dumping margin will be significant where the difference between the normal market price of the imported goods and the cost of exporting such goods to Vietnam exceeds 2%. The volume, quantity or value of dumped goods will be insignificant if the volume, quantity or value of goods dumped from any one country is less than 3% of the total volume, quantity or value of similar goods imported into Vietnam, unless the total volume, quantity or value of goods dumped from a number of countries exceeds 7% of the total volume, quantity or value of similar goods imported into Vietnam. "Significant loss to a domestic manufacturing industry" is defined as a significant reduction or inhibition of growth in the volume, prices, sales, profits, development speed of manufacturing, job creation, investment, and other indicators of a domestic manufacturing industry; or as a situation leading to difficulty in the formation of a domestic manufacturing industry. "Threat to cause a significant loss to a domestic manufacturing industry" is defined as the imminent, clear and proven capacity that significant loss will be caused to a domestic manufacturing industry.

An anti-dumping investigation may be conducted on the initiative of the Minister of Trade (pursuant to an investigation decision) when there is clear evidence that dumping of goods is causing, or threatening to cause, significant loss to a domestic manufacturing industry. Or an anti-dumping investigation may be requested by the representative of a domestic manufacturing industry (following prescribed procedures). An organization or individual will be deemed to be the representative of a domestic manufacturing industry where (a) the volume, quantity or value of goods they manufacture or represent accounts for at least 25% of the total volume, quantity or value of similar goods of the domestic manufacturing industry, and (b) the volume, quantity or value of goods they manufacture or represent plus that of domestic manufacturers supporting the request for an investigation exceeds the volume, quantity or value of similar goods of domestic manufacturers opposing the request. If the request file is complete, the Minister of Trade must issue a decision to hold an investigation within 60 days of receipt of the file (in special undefined circumstances, this time-limit may be extended up to 90 days). Prior to issuance of an investigation decision, the ADIB must notify the competent authorities of the exporting country or territory of the anti-dumping laws of Vietnam. Within 15 days of the investigation decision, the ADIB must notify such decision to the applicant representative of a domestic manufacturing industry and to the manufacturers, exporters and competent authorities of the exporting country or territory, as well as any other parties concerned.

An anti-dumping investigation will investigate and determine what goods are being dumped into Vietnam and the dumping margin, what significant loss is caused or is threatened to be caused to a domestic manufacturing industry and what is the relationship between the dumping and that significant loss. All concerned parties are obliged to provide information and data as requested by the ADIB. If they fail to do so, the ADIB may issue its decision based on whatever information and data is available. Parties are entitled to request that information be kept confidential by the ADIB. Consultations may be held between the ADIB and the concerned parties, but attendance is not compulsory (Ordinance 20 provides for the interests of any party failing to attend to be protected). The duration of an investigation may not exceed 12 months (in special undefined cases, this may be extended by up to 6 months).

The ADIB must announce its preliminary conclusion on the matters under investigation within 90 days of an investigation decision (in special undefined cases, this may be extended by up to 60 days). Based on a preliminary conclusion of dumping, the Minister of Trade may issue a decision applying interim anti-dumping duty for up to 120 days (if requested by exporters of similar goods, this may be extended by another 60 days). The rate of interim anti-dumping duty must not exceed the dumping margin specified in the ADIB's preliminary conclusion. Payment of interim anti-dumping duty may be secured by a cash deposit or by other means. Alternatively, the Minister of Trade may accept an undertaking from the manufacturer or exporter of goods under investigation to adjust the selling price of the goods or to limit the volume, quantity or value of the goods. Any such undertaking must be publicly

announced by the ADIB. If such undertaking resolves the loss, or threat of loss, to a domestic manufacturing industry, the anti-dumping investigation will be suspended. The parties providing such undertaking must periodically provide the ADIB with data and information proving implementation of the undertaking. Failure to implement the undertaking will result in continuance of the anti-dumping investigation or imposition of interim anti-dumping duty.

The Minister of Trade will issue a decision on termination of an investigation if the applicant requesting the investigation voluntarily withdraws its request file or if the ADIB's preliminary conclusion is that there is no dumping, the dumping margin is insignificant, the volume, quantity or value of goods dumped into Vietnam is insignificant, or there is no significant loss or threat thereof to a domestic manufacturing industry.

Upon conclusion of the investigation, the ADIB must announce its final conclusion. This final conclusion is subject to review by the ADC (but Ordinance 20 fails to prescribe the review procedures or time-limit). If no undertaking was given, upon a final conclusion of dumping by the ADIB and if so recommended by the ADC, the Minister of Trade will issue a decision to apply anti-dumping duty. The rate of anti-dumping duty must not exceed the dumping margin specified in the ADIB's final conclusion. Anti-dumping duty may be applied for up to 5 years (this period may be extended if a check by the Minister of Trade concludes that anti-dumping duty should continue to apply). Any decision on anti-dumping duty must be publicly announced.

Ordinance 20 provides for retrospective application of anti-dumping duty where the ADIB's final conclusion confirms there is significant loss or threat thereof to a domestic manufacturing industry and interim anti-dumping duty was applied in the period prior to the final conclusion. Anti-dumping duty may be backdated up to 90 days prior to the date of application of interim anti-dumping duty if the imported goods were dumped and the volume, quantity or value of the dumped goods increased suddenly causing loss which was difficult to remedy to a domestic manufacturing industry. If the final anti-dumping duty rate applied is higher than the interim anti-dumping duty rate, the difference between the two duties will not be collected. However, if the final anti-dumping duty rate applied is lower than the interim anti-dumping duty rate, the difference will be refunded.

If the Minister of Trade issues a final decision not to apply anti-dumping duty, any interim anti-dumping duty already collected or any items used to secure payment of interim anti-dumping duty will be refunded.

If a party concerned in an anti-dumping investigation so requests and the evidence provided by such party so merits, the Minister of Trade may conduct a check of the application of anti-dumping measures, but only after such measures have been applied for one year. A check may also be conducted on the initiative of the Minister of Trade, but only one year prior to expiry of the decision applying the anti-dumping measures. The check will be carried out by the ADIB (as per the procedures applicable to an investigation by the ADIB). The duration of a check of the application of anti-dumping measures must not exceed 12 months from the date of the decision to conduct the check. At the end of a check, the Minister of Trade will issue a decision to continue the applicability of anti-dumping measures, a decision adjusting the rate of anti-dumping duty commensurate with the result of the check, or a decision terminating the applicability of anti-dumping measures.

Any party concerned in an investigation or application of anti-dumping duty and disagreeing with a decision of the Minister of Trade will have the right to complain to the Minister within 60 days from the date of the Minister's decision applying anti-dumping duty. Any complaint must be resolved within 60 days (in special undefined circumstances, this may be extended by up to 60 days). If, upon expiry of this time-limit, the Minister of Trade has not issued a decision resolving a complaint or if the complainant disagrees with the decision of the Minister of Trade resolving the complaint, the complainant will have the right to institute court proceedings. Dispute resolution and dealing with breaches of Vietnam's anti-dumping laws will be implemented in accordance with Vietnamese law, unless an international treaty which Vietnam has signed or acceded to contains different provisions (in which case, such treaty will prevail).