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**CIRCULAR**

**Detailing some contents regarding trade remedies**

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*Pursuant to the Law on Foreign Trade Management dated 12 June 2017;*

*Pursuant to Decree No. 10/2018/ND-CP dated 15 January 2018 of the Government detailing a number of articles of the Law on Foreign Trade Management regarding trade remedies;*

*At the proposal of the Director General of the Trade Remedies Authority of Viet Nam;*

*The Minister of Industry and Trade promulgates the Circular detailing some contents regarding trade remedies.*

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope of regulation**

This Circular provides detailed regulations on interested parties in an investigation case; provision and collection of information and documents, and information confidentiality; languages used in investigation; management of imports subject to trade remedy investigations; exclusion from trade remedies.

**Article 2. Subjects of application**

1. Regulatory bodies competent to investigate, apply and handle trade remedies.
2. Vietnamese traders, foreign traders, other domestic and foreign agencies, organisations and individuals relevant to the investigation, application and handling of trade remedies.

**Article 3. Interpretation of terms**

For the purpose of this Circular, the terms below are construed as follows:

1. “Special products” refers to the products which have physical and chemical properties similar to but some characteristics, appearance or quality different from the like or directly competitive products manufactured by the domestic industry.
2. “Non-confidential summary” refers to the summary of information upon the treatment of information as confidential by the investigating authority and which

provides sufficient detail for the receiving parties to gain reasonable understanding of information submitted in confidence.

#### **Article 4. Language used in trade remedy investigations**

1. The statutory language used during the investigation for application of trade remedies is Vietnamese. Interested parties are entitled to speak and write in their mother tongues with the presence of accompanied interpreters/translators.

2. Information and documents in other languages provided by interested parties must be translated into Vietnamese. Interested parties must ensure the truthfulness and accuracy, and assume liability for the contents of such translations.

#### **Article 5. Registration as interested parties in a trade remedy investigation**

1. After the Minister of Industry and Trade has made a decision to conduct a trade remedy investigation or review the application of trade remedies, organisations and individuals prescribed in Clause 1 Article 74 of the Law on Foreign Trade Management may register to participate in a trade remedy investigation as interested parties.

2. The investigating authority shall consider determining the time limit for registration as interested parties in each trade remedy investigation provided that it shall not be fewer than 20 working days from the effective date of the Decision on the initiation of an investigation or review of the application of trade remedies.

3. Organisations and individuals shall prepare applications using the application form for registration as interested parties provided in Annex 01 herein and send them to the investigating authority within the time limit specified in the Decision on the initiation of an investigation or review of the application of trade remedies.

4. Upon the receipt of applications for registration as interested parties, the investigating authority shall consider whether a party is accepted as an interested party or not within a period of 07 working days. If an application for registration as an interested party is refused, the investigating authority is required to explain such refusal in writing to the applicant.

5. If an organisation or individual fails to register as an interested party within the time limit specified in Clause 2 of this Article, the investigating authority may refuse to accept that organisation or individual as an interested party of the case, except for cases prescribed in point a and point dd Clause 1 Article 74 of the Law on Foreign Trade Management and the Government and competent authorities of the exporting country of product subject to the countervailing duty investigation as prescribed in Point d Clause 1 Article 74 of the Law on Foreign Trade Management.

6. Organisations and individuals that are accepted as interested parties shall have rights and obligations as defined in Article 9 and Article 10 of Decree No.

10/2018/ND-CP dated 15 January 2018 of the Government detailing a number of articles on the Law on Foreign Trade Management regarding trade remedies.

#### **Article 6. Import declaration**

The import declaration included in the dossier for import of goods must be prepared using the form provided in Annex 02 herein.

### **Chapter II**

## **REGULATIONS ON PROVISION OF INFORMATION AND DOCUMENTS, AND CONFIDENTIALITY OF INFORMATION IN TRADE REMEDY INVESTIGATIONS**

#### **Article 7. Non-confidential information in a trade remedy investigation**

Non-confidential summaries of the following information and documents are published in a trade remedy investigation:

1. The petition for investigation and application of trade remedies submitted by the requesting party and its accompanied annexes;
2. Documents provided by interested parties when registering for participation in the investigation case;
3. Completed questionnaires and additional questionnaires provided by interested parties during the investigation;
4. Other documents provided for the investigating authority by interested parties during the investigation, consisting of: documents serving the consultations; written opinions about the petition for investigation and application of trade remedies provided by interested parties;
5. The record or summary of the consultation about the investigation case;
6. Notices issued by the investigating authority and the Ministry of Industry and Trade, including notices on the receipt of the petition for investigation and application of trade remedies, disclosures of preliminary and final determinations, notices of acceptance or non-acceptance of applications for registration as interested parties and questionnaires, on-site investigations, public consultations and limitation of the scope of investigation by sampling;
7. Documents about contents of a trade remedy investigation which is used as the basis for final determinations of the investigating authority;
8. Other information verified and published by the investigating authority during the investigation.

**Article 8. Request for protection of confidential information concerning a trade remedy investigation**

1. The investigating authority shall consider accepting the request for protection of confidential information provided by interested parties of a trade remedy investigation, including:

a) Business secrets related to the characteristics of some products or production process;

b) Information concerning the enterprise's production and business, including production costs, selling expenses, terms of sales other than the non-confidential ones, selling price of each transaction, estimated transaction or other offers for sale, information concerning clients, distributors or suppliers, and the enterprise's financial information;

c) Information concerning an accurate dumping margin of a specific transaction in an anti-dumping investigation;

d) Information concerning interests received by the requesting party under a subsidy program to be investigated or reviewed in a trade remedy investigation, except for the program specification, amounts specified in documents or announced publicly, and the subsidy rate for each sales transaction which is calculated and allocable to the requesting party under a subsidy program;

dd) Other information which is found by the investigating authority to threaten to affect or cause material injury to the competitive advantage of the information provider if published.

2. In the case of refusal, the investigating authority shall explain the reasons for refusal in writing to the requesting party within 07 working days from the receipt of such request for protection of confidential information.

### **Chapter III**

## **EXCLUSION FROM TRADE REMEDIES**

### **Section 1**

## **SCOPE, SUBJECTS, CRITERIA AND CONSIDERATION PERIOD OF EXCLUSION FROM TRADE REMEDIES**

### **Article 9. Scope and period of exclusion from trade remedies**

1. The Minister of Industry and Trade shall consider granting exclusions from provisional and/or official trade remedies on certain imports subject to trade remedies in the following circumstances:

a) The imports have characteristics which are different from and not substitutable by the like or directly competitive products manufactured by the domestic industry;

b) The imports are special goods of the like or directly competitive products manufactured by the domestic industry;

c) There are no sales of the like or directly competitive products manufactured by the domestic industry in the ordinary course of trade in the domestic market;

d) The volume of the like or directly competitive products manufactured by the domestic industry is not enough to satisfy the demand of the domestic market.

2. The period of exclusion from trade remedies shall be determined as follows:

a) Regarding the requests for exclusion from trade remedies received by the investigating authority as prescribed in Clause 1 Article 13 herein, the exclusion period shall last from the effective date of the decision on application of provisional or official trade remedies or the decision on the outcome of a review of trade remedies to 31 December of the year in which the exclusion decision is made.

b) Regarding the requests for exclusion from trade remedies received by the investigating authority as prescribed in Clause 2 Article 13 herein, the exclusion period shall last for 01 year from 01 January to 31 December of the following year.

c) Regarding the requests for additional exclusion received by the investigating authority as prescribed in Clause 4 Article 13 herein, the exclusion period shall last from the date of receipt of the valid and sufficient exclusion request to 31 December of the year in which the exclusion decision is made.

#### **Article 10. Entities requesting exclusion from trade remedies**

The following entities may submit requests for exclusion from trade remedies:

1. Importers of products subject to trade remedy investigations;
2. Users of products subject to trade remedy investigations;
3. Other organisations and individuals as decided by the Minister of Industry and Trade.

#### **Article 11. Criteria and form of granting exclusion from trade remedies**

1. The Minister of Industry and Trade shall consider and decide to grant exclusion from trade remedies on products in the circumstances prescribed in Clause 1 Article 9 herein on the basis of evaluation reports submitted by the investigating authority.

2. The investigating authority shall consider and evaluate every request for product exclusion from trade remedies according to the following criteria:

a) The trade name, physical properties and chemical properties of the product for which exclusion is requested so as to distinguish it and the product subject to the trade remedies;

b) Technical standards of the product for which exclusion is requested;

c) The quality of the product for which exclusion is requested;

d) The purposes of the product for which exclusion is requested;

dd) The domestic industry capacity to produce the products that are like or directly competitive with the product for which exclusion is requested;

e) The availability of the like or directly competitive products manufactured by the domestic industry to substitute the product for which exclusion is requested;

g) Other criteria as decided by the Minister of Industry and Trade.

3. Organisations and individuals are excluded from trade remedies according to the volume and quantity of their imports.

## **Section 2**

### **REQUESTING, INSPECTING AND REVOKING EXCLUSIONS FROM TRADE REMEDIES**

#### **Article 12. Request for exclusion from trade remedies**

1. The initial request for exclusion from trade remedies (hereinafter referred to as the “exclusion request”) includes:

a) The written request for exclusion from trade remedies made according to the form provided in Annex 03 herein;

b) The copy of the enterprise’s certificate of business registration or investment registration;

c) The document stating specifications of the imported product for which exclusion is requested, consisting of: scientific name, trade name, common name; basic physical and chemical properties; main purposes; production process; applicable international and domestic standards and/or regulations; HS code and import duties applied in each period;

d) The document stating information about the volume, quantity and value of imported product for which exclusion is requested (normally, for the past three years and in the current year);

dd) The written production process of the product of which input materials are the products for which exclusion is requested (if any);

e) The demand for consumption or use of the imported product for which exclusion is requested (normally, for the past three years and in the current year);

g) The consumption standard of raw materials which are the products for which exclusion is requested;

h) Documents or samples proving the distinctions between the product for which exclusion is requested and the imported product subject to a trade remedy.

2. If an organisation or individual submits the additional request for exclusion to the investigating authority as prescribed in Clause 4 Article 13 herein, the additional request for exclusion includes:

a) The written request for (additional) exclusion from trade remedies made according to the form provided in the Annex 03 herein;

b) The document stating information about the volume, quantity and value of the imported product for which additional exclusion is requested;

c) Evidences and documents proving that the additional request for exclusion is compliant with legal provisions on exclusion from trade remedies;

d) Other documents and materials supporting the additional request for exclusion.

3. Based on the initial or additional request for exclusion, the investigating authority shall consider, verify and request the Minister of Industry and Trade to make the decision on the granting of initial or additional exclusion from trade remedies.

### **Article 13. Notice of acceptance of exclusion requests**

1. The investigating authority shall officially notify the receipt of exclusion requests after the Minister of Industry and Trade makes the decision on application of provisional or official trade remedies, or the decision on the outcome of review of trade remedies.

2. With respect to safeguard measures, the investigating authority shall annually give the official notice of receipt of exclusion requests in October. The investigating authority must send the notice of any changes in the safeguard measures to the requesters for exclusion in a timely manner so that they can formulate their own suitable business plans.

3. Within 30 days from the date on which the investigating authority notifies the receipt of exclusion requests, the organisations and individuals must submit exclusion requests as prescribed in Article 12 herein to the investigating authority, excluding the case specified in Article 4 of this Article.

4. An organisation or individual that wishes to request exclusion of a particular product in addition to the products specified in the decision on granting exclusion of products from trade remedies within the exclusion period must submit the additional request for exclusion to the investigating authority.

5. Within 15 working days from the receipt of the request for further information or documents from the investigating authority, the parties requesting for exclusion is liable to provide sufficient and accurate documents as requested.

### **Article 14. Contents of a decision on granting of exclusion from trade remedies**

1. Name of the organisation or individual that is excluded from trade remedies;

2. Specifications of the imported products which are excluded from trade remedies;

3. The volume and quantity of the imported products which are excluded from trade remedies;

4. Exclusion period, terms and obligations of the organisation or individual that is excluded from trade remedies.

#### **Article 15. Refund of trade remedy duties**

1. In the case where the imported product is excluded from trade remedies, the trade remedy duties charged on the shipments for which customs declarations have been submitted within the exclusion period will be refunded.

2. Procedures for claiming refunds of trade remedy duties prescribed in Clause 1 of this Article shall be carried out in accordance with applicable legal provisions.

#### **Article 16. Periodical reports**

Every 06 months within the exclusion period, the organisation or individual that is excluded from trade remedies is required to submit reports on the import of products excluded from trade remedies and its compliance with terms and obligations of exclusion to the investigating authority, using the form prescribed in Annex 04 herein.

#### **Article 17. Post-exclusion inspection**

1. The post-exclusion inspection shall be conducted by adopting risk management method as regulated by law to determine the subjects, scope and contents of inspection of approved exclusion requests.

2. The post-exclusion inspection is aimed to appraise the compliance by the holders of approved exclusion requests with terms and legal provisions on exclusion from trade remedies.

3. Contents of a post-exclusion inspection include:

a) Examination and verification of the legal status of the organisation or individual granted exclusion;

b) Examination and verification the accuracy of the product excluded from trade remedies according to the exclusion request submitted to the investigating authority;

c) Examination of the adequacy, legality and validity of customs declarations, accounting records, financial statements, documentation and data relating the imported product excluded from trade remedies;

d) Examination of the compliance with terms and obligations of the party requesting for exclusion as specified in the exclusion decision.

#### **Article 18. Conducting post-exclusion inspection**

1. At the request of the investigating authority, Minister of Industry and Trade shall decide on inspection and establishment of inspection team. The head of the inspection team must be an official of the investigating authority. The inspection team



shall conduct the inspection according to the scope, time limit and contents specified in the decision on establishment of the inspection team.

2. The investigating authority shall send written notices of the decision and plan on post-exclusion inspection to organisations and individuals excluded from trade remedies at least 05 working days before the inspection date.

3. While conducting an inspection, the investigating authority is entitled to verify by requesting organisations and/or individuals that are related or are able to assist in clarifying issues, unreasonable contents or signs of violating the law. Such verification includes:

a) Subjects of verification being regulatory bodies, relevant organisations and individuals.

b) Forms of verification including sending written requests; or appointing officials to directly communicate the subjects of verification according to the letter of introduction of the investigating authority.

c) Verification results shall be fully recorded; this record shall be used as the basis for examining the case.

4. The inspected organisation or individual shall appoint its/his/her representative and relevant officers to provide documents and papers as requested and directly work with the inspection team.

#### **Article 19. Post-exclusion inspection results**

1. The inspection team shall make the inspection report immediately after completing the inspection, report inspection results to the inspecting agency and notify them to the inspected organisation or individual.

2. Depending on the degree of violation specified in the inspection report, the inspection team shall suggest the inspecting agency to handle or revoke the exclusion decision or transfer the case to competent authorities for consideration in accordance with legal provisions.

3. If inspection findings are made as prescribed in Clause 2 of this Article, the head of the inspection team shall send the inspection findings draft to the inspected organisation or individual. Within 05 working days from the receipt of the draft inspection findings, the inspected organisation or individual shall provide a written response (accompanied by written explanation and documentary evidences) if dissenting from such inspection findings.

4. If the time limit specified in Clause 3 of this Article lapsed, if the inspected organisation or individual provides no response, it is considered to have assented to the inspection findings.

5. After the period for response, the inspection team shall:

a) Consider the explanation sent by the inspected organisation or individual or work with its/his/her representative if there are matters of disagreement or requiring clarification.

b) In cases where professional or technical advices are required or where the inspection team does not have reasonable grounds for making inspection findings, the inspection findings shall be issued after obtaining advices from specialised agencies or units.

#### **Article 20. Revocation of exclusion decision**

1. The Minister of Industry and Trade shall revoke exclusion decisions in the following cases:

a) The imported product excluded from trade remedies is used for the wrong purpose;

b) Fraudulent request for exclusion from trade remedies is submitted;

c) Provisions, terms and obligations specified in the exclusion decision are not properly complied with or fulfilled;

d) The eligibility requirements for exclusion are not satisfied.

2. The organisation or individual has the exclusion decision revoked must pay duties on imports as regulated by law.

### **Chapter IV**

#### **IMPLEMENTATION PROVISIONS**

#### **Article 21. Responsibility of investigating authority**

1. Before issuing any decision on application of official anti-dumping or countervailing measures, the investigating authority must notify and get opinions about the draft investigation determinations to the requesting party and the requested party.

2. The investigating authority shall:

a) Send exclusion decisions to parties requesting for exclusion;

b) Send decisions on revocation of exclusion decision to organisations or individuals granted exclusion from trade remedies;

c) Send written exclusion decisions and decisions on revocation of exclusion decision to the Ministry of Finance and the General Department of Customs;

d) Publish exclusion decisions and decisions on revocation of exclusion decision on its website and the website of the Ministry of Industry and Trade.

#### **Article 22. Entry into force**

1. This Circular comes into force from 15 June 2018.

2. Difficulties that arise during the implementation of this Circular should be reported to the investigating authority and the Ministry of Industry and Trade for consideration and resolution./.

**MINISTER**

**Tran Tuan Anh**