

**MINISTRY OF INDUSTRY  
AND TRADE**

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No.: 06/2018/TT-BCT

**SOCIALIST REPUBLIC OF VIETNAM**  
**Independence – Freedom – Happiness**

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*Hanoi, April 20, 2018*

**CIRCULAR**

**PROVIDING DETAILED REGULATIONS ON TRADE REMEDIES**

*Pursuant to the Law on foreign trade management dated June 12, 2017;*

*Pursuant to the Government's Decree No. 10/2018/ND-CP dated January 15, 2018 on guidelines for the law on foreign trade management on trade remedies;*

*Pursuant to the Government's Decree No. 98/2017/ND-CP dated August 18, 2017 defining the Functions, Tasks, Powers and Organizational Structure of Ministry of Industry and Trade;*

*At the request of the Director of the Trade Remedies Authority of Vietnam;*

*Minister of Industry and Trade promulgates Circular providing detailed regulations on trade remedies.*

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope**

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. Regulated entities**

1. Regulatory bodies competent to investigate, apply and handle trade remedies.
2. Vietnamese traders, foreign traders, other domestic and foreign agencies, organizations 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 produced 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 to serve receiving parties’ 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 their mother languages 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 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 imposition of trade remedies, organizations 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 conducting of investigation or review of the imposition of trade remedies.

3. Organizations and individuals shall prepare applications using the application form for registration as interested parties stated in the Appendix 01 enclosed herewith and send them to the investigating authority within the time limit specified in the Decision on conducting of investigation or review of the imposition 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 interested party is refused, the investigating authority is required to explain such refusal in writing to the applicant.

5. If an organization 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 organization or individual as an interested party of the case, except the 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. Organizations and individuals that are accepted as interested parties shall have rights and obligations defined in Article 9 and Article 10 of the Government's Decree No. 10/2018/ND-CP dated January 15, 2018 on guidelines for the law on foreign trade management on trade remedies.

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

The import declaration included in the dossier for import of goods must be prepared using the form stated in the Appendix 02 enclosed herewith.

### **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 remedies investigation**

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

1. The petition for investigation and imposition of trade remedy submitted by the requesting party and its accompanied appendixes;
2. Documents provided by interested parties when registering for participating 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 imposition of trade remedy given by interested parties;
5. The record or summary of the consultation about the investigation case;
6. Notices issued by the investigating authority and Ministry of Industry and Trade, including notices on the receipt of the petition for investigation and imposition of trade remedies, disclosures of preliminary and final determinations, notices of acceptance or non-acceptance of applications for registration as interested parties and questionnaires, 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 conclusions 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 furnished by interested parties of a trade remedy investigation, including:

- a) Business secrets relating 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 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 hurt or cause material injury to the competitive advantage of the information provider.

2. In 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, ENTITIES, CRITERIA AND 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 substituted by the like or directly competitive products produced by domestic industry;

- b) The imports are special products of the like or directly competitive products produced by domestic industry;
- c) There are no sales of the like or directly competitive products produced by the domestic industry in the ordinary course of trade in the domestic market;
- d) The volume of the like or directly competitive products produced by the domestic industry is not enough satisfy the needs of the domestic market.

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

- a) With regard to the requests for exclusion from trade remedies received by the investigating authority as per regulations in Clause 1 Article 13 herein, the exclusion period shall last from the effective date of the decision on imposition of provisional or official trade remedies or the decision on the outcome of a review of trade remedy to December 31 of the year in which the exclusion decision is made.
- b) With regard to the requests for exclusion from trade remedies received by the investigating authority as per regulations in Clause 2 Article 13 herein, the exclusion period shall last for one year from January 01 to December 31 of the following year.
- c) With regard to the requests for additional exclusion received by the investigating authority as per regulations in Clause 4 Article 13 herein, the exclusion period shall last from the date of receipt of the valid and sufficient exclusion request to December 31 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 organizations 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 laid down 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 produced 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. Organizations and individuals are exempted 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 stated in the Appendix 03 enclosed herewith;
  - b) The copy of the enterprise’s certificate of business registration or investment certificate;
  - 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 organization 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 stated in the Appendix 03 enclosed herewith;

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 conformable with the law regulations 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 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 imposition 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 gives the notice of receipt of exclusion requests, the organizations 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 organization 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 requester 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 organization or individual that is exempted 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 organization or individual that is exempted from trade remedies.

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

1. In case 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 regulations of law.

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

Every 06 months within the exclusion period, the organization or individual that is exempted 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 stated in the Appendix 04 enclosed herewith.

#### **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 law regulations on exclusion from trade remedies.
3. Contents of a post-exclusion inspection include:
  - a) Examine and verify the legal status of the organization or individual granted exclusion;
  - b) Examine and verify the genuineness of the product excluded from trade remedies according to the exclusion request submitted to the investigating authority;



- c) Examine the adequacy, legality and validity of customs declarations, accounting records, financial statements, documentation and data relating the imported product excluded from trade remedies;
- d) Examine the compliance with terms and obligations of the requester 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 make decision on inspection and establishment of inspection team. The head of the inspection team must be an officer 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 organizations and individuals exempted 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 organizations and/or individuals that concern or are able to give assistance to clarify issues, unreasonable contents or signs of violating the law. Such verification includes:
  - a) Subjects of verification are regulatory bodies, relevant organizations and individuals.
  - b) Forms of verification include sending written requests or appointing officers 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 considering the case.
4. The inspected organization or individual shall appoint its/his 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 organization 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 law regulations.

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

4. Over the time limit specified in Clause 3 of this Article, if the inspected organization or individual gives no response, it is considered to assent to the inspection findings.

5. Over the time limit for response, the inspection team shall:

a) Consider the explanation sent by the inspected organization or individual or work with its/his representative, where necessary.

b) In case 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 specialized 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 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 or fulfilled;

d) The eligibility requirements for exclusion are not satisfied.

2. The organization 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 imposition of official anti-dumping or countervailing measure, the investigating authority must notify and get opinions about the draft disclosure of investigation determinations to the requesting party and the requested party.

2. The investigating authority shall:

- a) Send exclusion decisions to requesters for exclusion;
- b) Send decisions on revocation of exclusion decision to organizations 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 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 June 15, 2018.
- 2. Difficulties that arise during the implementation of this Circular should be reported to the investigating authority and Ministry of Industry and Trade for consideration./.

**MINISTER**

**Tran Tuan Anh**

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