

WORLD TRADE ORGANIZATION

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Committee on Safeguards

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NOTIFICATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROCEDURES UNDER ARTICLE 12.6 OF THE AGREEMENT ON SAFEGUARDS

VIETNAM

The following communication, dated 28 August 2009, is being circulated at the request of the Delegation of Vietnam.

According to the Article 12.6 of the Agreement on Safe Guard, the Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office, the World Trade Organization and Other International Organizations at Geneva hereby notifies to the Committee on Safeguards as follows:

1. By the date of WTO's accession, the Socialist Republic of Viet Nam (Viet Nam) had notified a number of legal documents on safeguard including Ordinance No. 42/2002/PL-UBTVQH10 dated May 25, 2002 on Safeguards in the Import of Foreign Goods into Viet Nam and Decree No. 150/2003/ND-CP dated December 8, 2003 detailing the implementation of the Ordinance on Safeguards in the Import of Foreign Goods into Viet Nam (please see details in Annex 1 of the Report of the Working Party on the Viet Nam's accession to the WTO, document WT/ACC/VNM/48).
2. For the sake of transparency, we would like to re-notify these legal documents to the Committee on Safeguard and Centre Registration of Notification (CRN).
3. Viet Nam wants to remind the Committee that these legal documents have not been changed or amended until now.

Attached to this Notification are the English versions of the Ordinance No. 42/2002/PL-UBTVQH10 and Decree No. 150/2003/ND-CP.

STANDING COMMITTEE
NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

No. 42-2002-PL-UBTVQH10

Hanoi, 25 May 2002

**ORDINANCE
ON SAFEGUARDS IN THE IMPORT OF FOREIGN
GOODS INTO VIETNAM**

In order to strengthen State administration of the economy; create favorable conditions for the economy of Vietnam to integrate effectively into the international economy; and restrict the disadvantageous impact of irregular increases of goods imported into Vietnam which cause serious loss to domestic manufacturing;

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 Resolution of Legislature X of the National Assembly at its 10th session on the program for formulation of laws and ordinances in 2002;

This Ordinance provides for safeguard measures in relation to the import of foreign goods into Vietnam.

CHAPTER I

General Provisions

Article 1.- Scope of regulation

This Ordinance prescribes the substantive and procedural steps to be taken in order to adopt safeguard measures in cases of excessive imports of goods into Vietnam, which causes serious injury to the domestic manufacturing industry.

Article 2.- Right to apply safeguard measures

The Vietnamese Government has the right to apply safeguard measures in cases where an excessive number of goods of a certain kind are imported into Vietnam under the provisions of this Ordinance.

Article 3.- Safeguard measures

The safeguard measures imposed on imports of foreign goods into Vietnam include:

1. Raising the import tariffs;
2. Imposing import quotas;
3. Other measures to be stipulated by the Government.

Article 4.- Interpretation of terms

In this Ordinance, the following terms are construed as follows:

1. "Excessive import of goods" means the import of goods with a volume, quantity or value increasing, absolutely or relatively, as compared to the volume, quantity or value of like products or directly competitive product.
2. "Serious injury to the domestic industry" means all manufacturers of similar goods or goods directly competing within the territory of Vietnam being manufactured domestically, or their legal representatives, which account for the major proportion of the total production of goods of that industry.
3. "Threat to cause serious injury to the domestic manufacturing industry" means the likely, obvious and provable possibility of causing serious injury to the domestic industry.
4. "Domestic industry" means all manufacturers of the like or directly competitive goods within the territory of Vietnam or their legal representatives, accounting for a major proportion in the total output of goods made by that industry in the country.
5. "Like products" are identical goods or goods with the same functions, utility, quality specifications, technical properties and other intrinsic features.
6. "Directly competitive goods" are goods likely to be accepted by buyers in replacement for goods falling under the scope of application of safeguard measures, because of their competitive edges in terms of price and use purpose.

Article 5.- Principles for application of safeguard measures

1. Safeguard measures shall be applied within the necessary scope and to the necessary extent in order to prevent or limit serious injury to the domestic manufacturing industry and creating conditions for that manufacturing industry to raise its competitive ability.
2. The application of safeguard measures must rely on the investigation results prescribed in Chapter II of this Ordinance, except for cases of application of temporary safeguard measures.
3. Safeguard measures shall apply on the basis of non-discrimination and irrespective of their source.

Article 6.- Conditions for the application of safeguard measures

Safeguard measures shall apply to imported goods only when the following conditions are met:

1. The volume, quantity or value of imported goods suddenly increases, either absolutely or relatively, as compared with the volume, quantity or value of like products or directly competitive products.
2. The increases in the volume, quantity or value of imported goods mentioned in Clause 1 of this Article cause or threaten to cause serious injury to the domestic industry producing like products or directly competitive products.

Article 7.- Consultation

1. The Ministry of Trade may consult the interested parties in the process of investigation and application of safeguard measures at their requests in order to create conditions for all the interested parties to express their opinions and supply necessary information.
2. The interested parties shall not be obliged to attend consultations; any parties not present at consultations shall still have their interests related to safeguard measures preserved.

Article 8.- Injury indemnification

1. Compensation , including the amount of compensation for any loss caused by application of safeguard measures, shall be implemented in accordance with the laws of Vietnam and international treaties which Vietnam has signed or to which Vietnam has acceded.
2. Compensation, including the amount of compensation for any loss, shall be determined on the basis of the results of consultation between parties concerned.

Article 9.- Agency responsible for investigation

The Ministry of Trade shall be responsible for conducting the investigation before deciding to apply or not to apply safeguard measures.

Article 10.- Basis for investigation

1. The Ministry of Trade shall conduct the investigation after receiving the application requesting the adoption of safeguard measures from the organizations and/or individuals representing the domestic manufacturing industry on the condition that all the goods made by these organizations and/or individuals account for at least 25% of the output of like or directly competitive products. The organizations and/or individuals submitting such applications shall be accountable for the information in their application.
2. The Ministry of Trade shall conduct the investigation on its own initiative in cases where it has evidences proving the necessity of applying safeguard measures.

Article 11.- Dossiers requesting the adoption of safeguard measures

The applications requesting the adoption of safeguard measures addressed to the Ministry of Trade shall consist of:

1. The written request for the application of safeguard measures, made according to the form set by the Ministry of Trade;

Article 12.- Decisions to investigate for the adoption of safeguard measures

1. In cases where an application requesting the adoption of safeguard measures lacks information, within 15 days after receiving such dossier, the Ministry of Trade must inform the organization or individual thereof for additional information. The time limit for supplying the additional information shall be at least 30 days from the date the concerned organization or individual receives the request for additional information. The Ministry of Trade shall not issue investigation decisions if information is not supplied within the prescribed time limit.

2. Within 30 days of receiving the application with full information, the Ministry of Trade must issue investigation decisions.
3. Pending the official investigation decisions, the Ministry of Trade must not disclose the contents of the application requesting the adoption of safeguard measures.
4. Where it refuses to issue an investigation decision, the Ministry of Trade must notify the reasons therefore to the organization or individual that has submitted the application requesting the adoption of safeguard measures.
5. The Ministry of Trade shall not issue investigation decisions if the organizations or individuals that have submitted the application requesting the adoption of safeguard measures withdraw the application, except for cases where it has evidence substantiating the necessity of continuing the investigation.

Article 13.- Parties related to the investigation process

The parties involved in the investigation process include:

1. Overseas organizations or individuals manufacturing and exporting the goods subject to investigation;
2. Organizations or individuals importing the goods subject to investigation;
3. The overseas commodity line association representing the majority of organizations and/or individuals manufacturing, exporting or importing the goods subject to investigation;
4. The Government and competent agencies of the country exporting the goods subject to investigation;
5. Organizations and/or individuals submitting the dossier requesting the application of safeguard measures;
6. Domestic organizations and/or individuals manufacturing similar or directly competitive goods;
7. The domestic commodity line association representing the majority of organizations and individuals manufacturing similar or directly competitive goods;
8. The trade union organizations representing the interests of the labourers in the domestic manufacturing industry;
9. Vietnam Peasants' Association;
10. The organization that protects the interests of Vietnamese consumers;
11. The competent Vietnamese State agencies;
12. Organizations and individuals having legitimate rights and interests related to the investigation process or able to help for the investigation process.

Article 14.- Supply of information to the investigation process

1. The related State agencies, organizations and individuals shall have a responsibility to cooperate in and create favourable conditions for the investigation process as well as to supply necessary information at the request of the Ministry of Trade.
2. The Ministry of Trade shall have a responsibility to keep information confidential according to the provisions of law.

Article 15.- Management of the import of goods subject to investigation

1. The investigation process during in order to consider the ability applying safeguard measures must not hinder the clearance of customs procedures for imported goods which are subject to investigation.
2. From the issue of the investigation decision to the end of the investigation process, the Ministry of Trade may apply a regime in which import permits are granted for the goods subject to investigation. The granting of such permits shall serve for statistical purposes only but shall not limit the quantity, volume or value of the imported goods.

Article 16.- Investigation contents

The investigation must be conducted in an objective manner, taking into account the peculiarities of the domestic production situation and clarifying the following:

1. The sudden increase in the volume, quantity or value of the imported goods subject to investigation;
2. The serious injury or threat to cause serious injury to the domestic manufacturing industry on the basis of evaluating:
 - a) Changes in the situation of consumption on the domestic market of goods which are the subject of the investigation;
 - b) Changes in volumes being manufactured; indicators of employee productivity; co-efficients of utilization of production capacity; profit and loss levels; and percentage of the employment for the industry which manufactures the goods which are the subject of the investigation;
 - c) Ratio of import goods which are the subject of the investigation to similar or directly competing goods being sold on the domestic market.
3. The causal link between the rapidly increasing imports of the goods and the serious injury or threat to cause serious injury to the domestic manufacturing industry.

Article 17.- Termination of investigation

The Ministry of Trade shall decide to terminate stop the investigation in the following cases:

1. The applicants withdraw the application for the adoption of safeguard measures during the investigation process;
2. The related foreign parties commit themselves to precluding the serious injury or the threat to cause serious injury to the domestic manufacturing industry;
3. Other cases to be stipulated by the Government.

Article 18.-Investigation duration and publication of investigation results

1. The duration of the investigation shall be no more than 6 months from the date the Ministry of Trade issues the investigation decision; in cases of necessity, the duration of the investigation may be extended once for another 2 subsequent months.
2. After the investigation is concluded, the Ministry of Trade shall make the investigation results public.

Article 19.- Decision to apply or not to apply safeguard measures

1. On the basis of the investigation results, the Ministry of Trade shall issue a decisions to apply or not to apply safeguard measures after consulting the ministries and ministerial-level agencies concerned. Such decisions must be made public.
2. The safeguard measures prescribed in this Ordinance may not be applied if their application results in one of the following consequences:
 - a/ Causing domestic socio-economic injury;
 - b/ Causing harm to the interests of the majority of goods consumers;
 - c/ Other consequences to be determined by the Government.

Article 20.- Application of temporary safeguard measures

1. The Ministry of Trade may issue a decisions to apply temporary safeguard measures before concluding the investigation if it deems that delaying the application of safeguard measures would cause or threaten to cause serious injury to the domestic manufacturing industry, and that such damage would be difficult to repair.
2. Temporary safeguard measures shall be only applied on the condition that the Ministry of Trade continues the investigation.
3. The decisions to apply temporary safeguard measures must be publicly notified to the interested parties.
4. Temporary safeguard measures shall be applied only in the form of import tariffs in accordance with the Export Tax and Import Tax Law.
5. The effective duration of temporary safeguard measures must not exceed the duration needed for eliminating the serious injury or for preventing the threat to cause serious injury to the domestic manufacturing industry and for that industry to make the appropriate adjustments to the competitive circumstance. The effective duration of temporary safeguard measures shall end after the Ministry of Trade issues the decision to apply or not to apply the safeguard measures but must not, under any circumstances, exceed 200 days from the date from which they are applied.
6. In cases of necessity the Ministry of Trade may issue a decisions to terminate the application of temporary safeguard measures ahead of time.
7. Where the Trade Ministry's investigation results show that the application of temporary safeguard measures is unnecessary or the import tariff should be set a rate lower than the one already imposed, the tax difference shall be promptly refunded to the tax payers according to the provisions of law.

Article 21.- Adoption of safeguard measures

1. The adoption of safeguard measures shall be based on the effective decisions of the Ministry of Trade.
2. The safeguard measures may not be applied to goods originating from underdeveloped countries.

Article 22.- Duration of the application of safeguard measures

1. The duration of the application of safeguard measures, including the duration of the application of temporary ones, shall not exceed four years.
2. The duration of the application of safeguard measures may be extended once for another six subsequent years, provided that the serious injury or the threat to cause serious injury to the domestic manufacturing industry is still present and there is evidence proving that the affected manufacturing industry is adjusting itself to be more competitive.

Article 23.- Termination of the application of safeguard measures

The Ministry of Trade shall issue a decisions to terminate the application of safeguard measures in the following cases:

1. The conditions for application of safeguard measures no longer exist;
2. The continued application of safeguard measures causes serious injury to the domestic socio-economic situation.

Article 24.- Principles for the scrutiny of safeguard measures

1. Where the duration of the application of safeguard measures lasts for over three years, the Ministry of Trade shall have to scrutinize the safeguard measures before half of this period has passed so as to conclude whether to maintain, terminate, or mitigate the application of, the safeguard measures.
2. The scrutiny of safeguard measures must comply with the provisions in Chapter II of this Ordinance.

Article 25.- Decision on the results of the scrutiny of safeguard measures

After scrutinizing the safeguard measures, the Ministry of Trade shall issue one of the following decisions:

1. To maintain the safeguard measures being applied;
2. To reduce the level of application of those measures;
3. To terminate the safeguard measures being applied.

Article 26.- Extension of the application of safeguard measures

1. The Ministry of Trade shall consider extending the application of safeguard measures on the basis of the application requesting the extension thereof, which are submitted by the organizations or

individuals representing the domestic manufacturing industry, in accordance with the provisions in Clause 1, Article 10 of this Ordinance.

The application requesting the extension of the application of safeguard measures must include the evidence showing that the affected manufacturing industry has taken the necessary adjusting measures to increase its competitiveness. The application must be sent to the Ministry of Trade at least six months before the date on which such safeguard measures cease to be effective.

2. The procedures for investigation, publication and notification prescribed in Chapter II of this Ordinance shall also apply to the extension of the application of safeguard measures.

3. The extent of the application of safeguard measures during the extended time must not be higher than that in the preceding duration.

Article 27.- Regulations on the re-application of safeguard measures

A safeguard measure once applied in respect of any one type of goods may be re-applied in respect of the same type of goods in accordance with the following provisions:

1. In the case where a safeguard measure has been applied in respect of any one type of goods for more than four years, it may only be re-applied in respect of the same type of goods after a period of time equal to one half ($\frac{1}{2}$) of the former period.

2. In the case where a safeguard measure has been applied in respect of any one type of goods for from six months up to four years, it may only be re-applied in respect of the same type of goods after two years.

3. In the case where a safeguard measure has been applied in respect of any one type of goods for less than six months, it may be re-applied in respect of the same type of goods when both of the following conditions are satisfied:

- (a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and
- (b) such a safeguard measure has not been applied on the same product more than twice in the five year period immediately preceding the date of introduction of the measure.

4. The re-application of a safeguard to a certain kind of goods must comply with the procedures as for the first-time application.

Article 28.- State management over the application of safeguard measures

The State management over the application of safeguard measures shall include:

1. Promulgating, and organizing the implementation of legal documents on the application of safeguard measures;
2. Organizing the application of safeguard measures;
3. Propagating and disseminating legislation and policies related to the application of safeguard measures;
4. Conducting an investigation before applying safeguard measures;

5. Organizing and conducting consultations with the interested parties;
6. Deciding whether or not to apply safeguard measures;
7. Guiding the application of safeguard measures;
8. Organizing the gathering, processing and supply of information about the application of safeguard measures;
9. Inspecting and supervising the observance of the legislation on the application of safeguard measures;
10. Settling complaints about and handling violations of the legislation on the application of safeguard measures.

Article 29.- Agencies in charge of the State management over the application of safeguard measures

1. The Government shall provide the overall State management over the application of safeguard measures.
2. The Ministry of Trade shall be responsible to the Government for performing the unified providing the State management for the application of safeguard measures; organizing the application of safeguard measures after consulting the concerned ministries and ministerial-level agencies.
3. The ministries, the ministerial-level agencies and the People's Committees of the provinces and centrally-run cities shall, within the ambit of their respective tasks and powers, have to coordinate with the Ministry of Trade in order to manage the application of safeguard measures.

Article 30.- Complaints

1. Complaints related to the process of investigation and application of safeguard measures must be addressed to the Ministry of Trade.
2. The Ministry of Trade shall have to settle complaints within 30 days after receiving the written complaints. In special cases, this time limit may be prolonged but must not exceed 60 days.
3. Where the time limit prescribed in Clause 2 of this Article has expired but the Ministry of Trade has not yet settled the complaints or the complaining organizations or individuals disagree with the complaint-settling decisions of the Ministry of Trade, these organizations or individuals may initiate lawsuits in the courts according to the provisions of the law.

Article 31.- Settlement of disputes and handling of infringements

The settlement of disputes and handling of infringements shall comply with the provisions of Vietnamese law and the international treaties which Vietnam has signed or acceded to.

Article 32.- Implementation effect

This Ordinance takes effect from 1 September 2002.

Article 33.- Implementation guidance

The Government shall specify and guide the implementation of this Ordinance.

On behalf of the Standing Committee of the National Assembly

Chairman

NGUYEN VAN AN

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

No. 150-2003-ND-CP

Hanoi, 8 December 2003

**DECREE
ON SAFEGUARDS IN THE IMPORT OF FOREIGN GOODS
INTO VIETNAM**

**Providing detailed regulations for implementation of Ordinance on
Safeguards in the Import of Foreign Goods into Vietnam
THE GOVERNMENT**

Pursuant to the Law on the Organization of the Government dated 25 December 2001;

Pursuant to Ordinance 42-2002-PL-UBTVQH10 on Safeguards in the Import of Foreign Goods into Vietnam dated 25 May 2002;

On the proposal of the Minister of Trade;

**DECREES:
CHAPTER I
General Provisions**

Article 1.- Governing scope

This Decree details the implementation of the Ordinance on safeguards against imports into Vietnam; prescribes safeguard measures, investigation procedures and the application of these measures in case a surge in imports into Vietnam causes or threatens to cause serious injury to domestic industries.

Article 2.- Safeguard measures

Safeguard measures against imports into Vietnam may include:

1. Imposing higher import duty rates than the current import duty rates;
2. Applying the import quotas;
3. Applying the tariff quotas;
4. Applying absolute tax;
5. Using import permits to control import;
6. Imposing surcharges on import goods;
7. Other measures.

Article 3.- Determination of domestic industry

Domestic industry means all the producers of like goods or directly competitive goods within the Vietnamese territory or their lawful representatives, who together represent at least 50% of such industry's total output.

Article 4.- Interpretation of concepts

In this Decree, the following concepts shall be construed as follows:

1. "An import surge" means either an absolute increase or a relative increase in the import volume, quantity or value as compared with the volumes, quantity or value of like goods or directly competitive goods, which are produced at home.
2. "Serious injury to domestic industries" means a significant overall impairment of the position of a domestic industry in light of relevant factors of an objective and quantifiable nature, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.
3. "Threat to cause serious injury to domestic industries" means the strong, obvious and provable possibility of serious injury being caused to domestic industries.
4. "Like goods" means goods which are identical or similar in function, utility, quality specifications, technical qualities and other basic properties.
5. "Directly competitive goods" means goods which are likely to be accepted by buyers as a substitute for the goods subject to safeguard measures due to their advantageous prices and purposes.

Article 5.- Investigation procedures

1. The Trade Ministry is responsible for conducting investigations leading to decisions on the application or non-application of safeguards measures.
2. The investigation is conducted when:
 - a) Organizations or individuals representing the domestic industry file their applications requesting the application of safeguard measures in accordance with Article 10 of the Ordinance on safeguards against imports into Vietnam.
 - b) There is evidence showing the necessity to apply safeguard measures.
3. Basing itself on the applications requesting the adoption of safeguard measures or evidence already verified, the Trade Ministry shall issue a decision whether or not to initiate an investigation in accordance with Article 12 of the Ordinance on safeguards against imports into Vietnam.
4. In the course of the investigation, the concerned State bodies, organizations and/or individuals shall have to coordinate with, and supply necessary information at the request of, the Trade Ministry.
5. After the completion of the investigation (within the time limits prescribed in Article 18 of the Ordinance on safeguards against imports into Vietnam), the Trade Ministry shall publicize the investigation results on all pertinent issues of fact and law.
6. On the basis of the investigation results, the Trade Ministry shall conduct consultations with the concerned parties and, where necessary, seek advice from the relevant ministries and/or agencies, on forms of safeguard measures (in case of application) and the consequences of the application of these measures. By then, the Trade Ministry shall issue a decisions whether or not to apply safeguard measures. Such decisions must be publicized.

Article 6.- Content of the written requests for the application of safeguard measures

The form of written request for the application of safeguard measures is prescribed by the Trade Ministry and shall include the following principal content:

1. A detailed description of import goods in terms of their technical qualities and major intended use, their respective HS (harmonized system) codes and tariff rates under the contemporary Nomenclature of Imports – Exports of Vietnam.
2. A detailed description of like goods or directly competitive goods in terms of their technical qualities and use purpose;
3. Names and addresses of individuals, enterprises or organizations representing the enterprises that file the written requests and the representatives of producers of like goods or directly competitive goods;
4. The percentage of imported goods over the output of like goods or directly competitive goods domestically produced by the individuals or enterprises that file written requests;
5. The information on volume, quantity and value of the subject imports of the current year and each year in the period of three consecutive years before the request for application of safeguard measures is made;
6. The description of the import surge, in both absolute and relative terms, over domestic production;
7. Information related to serious injury or threat of causing serious injury to domestic industries of the current year and each year in the period of three consecutive years before the request for application of safeguard measures is filed, including:
 - a) The quantity, volume and value of like goods or directly competitive goods, which are produced domestically;
 - b) Utilization of production capacity;
 - c) Market shares;
 - d) Inventories;
 - e) Profits or losses;
 - f) Employment;
 - g) Number of labourers used by the domestic industries, their respective proportion in total employment and wage rates;
 - h) Changes in consumption in terms of quantity, prices;
 - i) Other relevant necessary information.
8. Information related to the possible increase in imports and the export capacity or inventories of the subject goods in exporting countries, which threaten to cause serious injury to domestic industries, if any;
9. Explanation on the serious injury which is caused or threatened by the import surge;
10. The specific requirements on safeguard measures, the temporary application of safeguard measures and the time limit for application of such measures;
11. The adjustment plan of the domestic industry to raise the competitiveness of the subject imports.

Article 7.- The content of decisions to initiate safeguard investigations

The Trade Ministry's decision to initiate safeguard investigations shall contain the following principal content:

1. A detailed description of import goods in terms of their technical qualities and use purpose, their respective HS (harmonized system) codes and tariff rates under the contemporary Nomenclature of Imports – Exports of Vietnam.
2. A detailed description of like goods or directly competitive goods in terms of their technical qualities and purpose of use;
3. Names and addresses of individuals, enterprises or organizations representing the enterprises that file the written requests and the representatives of producers of like goods or directly competitive goods;
4. The name(s) of the country(ies) of origin of the subject imports;
5. Brief information relating to the increase of import of the goods which are the subject of investigation and to the serious injury or threat of serious injury to a domestic manufacturing industry due to the increased imports.

Article 8.- Content of the investigation into serious injury or threat to cause serious injury

The investigation to determine whether the import surge causes or threatens to cause serious injury to domestic industries shall be based on the following criteria:

1. The absolute and relative increase in the import volume of the subject goods as compared with that of like goods or directly competing goods of the domestic industry;
2. The impact of such increase in the import of the subject goods on domestic market shares.
3. The prices of the subject goods as compared to the price of like goods or directly competitive goods of the domestic industry.
4. The impact of the import surge of the subject goods on the domestic industry through such elements as: output, utilization of production capacity, sales, market shares, prices, labour productivity, profits or losses, employment rates, income and other elements, which cause or threaten to cause serious injury to domestic industry;
5. The inventory level, potential and actual export capability, the probability of raising the export volumes of the subject goods of one or many exporting countries;
6. Other elements relevant to the investigation.

Article 9.- Confidentiality

The Trade Ministry shall have to keep confidential the information supplied by State bodies, organizations and/or individuals involved in the investigation process; and must not publicize them without consent of the information suppliers.

Article 10.- Consultation in the investigation process

1. The parties involved in the investigation process have the right to present evidence in writing, present their arguments, to participate in debate and to express their opinions on the socio-economic benefits which would result from application of safeguard measures.
2. The Trade Ministry shall consult with the concerned parties during the course of the investigation and make records on consultations and publicize them, except confidential information.

Article 11.- Notification on the temporary application of safeguard measures

The temporary application of safeguard measures before the completion of the investigation shall comply with Article 20 of the Ordinance on safeguards against imports into Vietnam.

The decisions on the temporary application of safeguard measures shall be publicized with the following contents:

1. A detailed description of import goods in terms of their technical qualities and purpose of use, their respective HS (harmonized system) codes and tariff rates under the contemporary Nomenclature of Imports – Exports of Vietnam.
2. A detailed description of like goods or directly competitive goods in terms of their technical qualities and purpose of use;
3. Names of enterprises which produce like goods or directly competitive goods, if any;
4. The name(s) of the country(ies) of origin of the subject imports, if applicable;
5. The increase in the import duty rate due to the temporary application of safeguard measures;
6. The duration of temporary application of safeguard measures;
7. Information and evidences proving that the rise in the import of the goods subject to investigation causes or threatens to cause serious injury to domestic industries, if any;
8. Information and evidence proving that tardiness in temporary application of safeguard measures will cause or threaten to cause serious injury to domestic industries, which can hardly be remedied.

Article 12.- Refund of import tax differences due to the temporary application of safeguard measures

1. In cases where the results of the Trade Ministry's investigation show that the temporary application of safeguard measures is not necessary or the increase in import duty should have been smaller than that already-applied, the differentials shall be refunded to the duty payers. The Trade Ministry shall issue a decision thereon.
2. The duty differentials prescribed in Clause 1 of this Article shall be refunded within 30 days of the date on which the Trade Ministry issues a decision to apply or not to apply safeguard measures.
3. No interest shall be paid on the duty differentials mentioned in Clause 1 of this Article.

4. The Finance Ministry shall have to carry out procedures for tax refund under the current legal provisions on the basis of the Trade Ministry's decision as provided for in this Article.

Article 13.- Application of safeguard measures against less-developed countries

1. The safeguard measures shall not be applied to imported goods originating from a less developed country if the volume of imports from such country into Vietnam does not exceed 3% of the total volume of goods subject to safeguard investigation.

2. The safeguard measures shall apply to imported goods originating from less-developed countries if the combined import volume from such countries into Vietnam exceeds 9% of the total volume of imported goods subject to safeguard investigation, regardless of the provisions in Clause 1 of this Article.

3. The determination of less-developed countries shall be based on the United Nations Organization's criteria for classification of less-developed countries.

Article 14.- Notification on the application of safeguard measures

Decisions on the application of safeguard measures must be publicized with the following content:

1. A detailed description of import goods in terms of their technical qualities and purpose of use, their respective HS (harmonized system) codes and tariff rates under the contemporary Nomenclature of Imports – Exports of Vietnam.
2. A detailed description of like goods or directly competing goods in terms of their technical qualities and purpose of use;
3. Names of enterprises which produce like goods or directly competing goods, if any;
4. The name(s) of the country(ies) of origin of the subject imports;
5. Summary of investigation results proving the necessity to apply safeguard measures;
6. Forms and extents of application of safeguard measures;
7. The effective date and duration of the application of safeguard measures;
8. Summary of evidence for serious injury or threats to cause serious injury;
9. Adjustment plan of the domestic industry, which produce like goods or directly competitive goods;
10. The refund of import tax differentials due to the temporary application of safeguard measures (if any);
11. Name(s) of the less-developed country(ies) exempted from the application of safeguard measures in accordance with Article 13 hereof.

Article 15.- Consultations before the application of safeguard measures

1. Before issuing decisions to apply safeguard measures, the Trade Ministry shall conduct adequate consultations with the countries having considerable interests in exporting the subject goods to Vietnam.
2. The Trade Ministry may reach an agreement with those countries, as provided for in Clause 1 of this Article, on forms of compensation in order to remedy unfavourable consequences caused by the application of safeguard measures.

Article 16.-

This Decree shall come into force 15 days after its publication in the Official Gazette.

Article 17.- Implementation responsibilities

1. The Trade Minister shall have the responsibility for guiding and organizing the implementation of this Decree.
2. The ministers, the heads of the ministerial-level agencies, the heads of the Government-attached agencies and the presidents of the provincial/ municipal People's Committees shall have to implement this Decree.

For the Government
Prime Minister

PHAN VAN KHAI
