State Practice of Asian Countries in International Law

Vietnam

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TREATIES

LAW ON INTERNATIONAL TREATIES – IMPLEMENTATION OF INTERNATIONAL TREATIES

Adoption of New Law on International Treaties

On 6 April 2016, at the 11th Meeting of the XIII National Assembly, the Law 108/2016/QH13 on International Treaties (the “Law on International Treaties 2016”) has been adopted and would be enforced on 1 July 2016 as the replacement of the Law on Signing, Accession and Implementation of International Treaties 2005.

The Law on International Treaties 2016 contains 10 chapters and 84 articles, amongst which are 10 retained, 24 deleted, 73 amended and 20 new written articles compared with the former 2005 law. Remarkably, many provisions of the new law clearly specify related articles of the Constitution 2013 of the Socialist Republic of Vietnam, providing a flexible and effective legal framework for the signing and implementation of international treaties with the aim to promote the international integration of Vietnam.

One of the most significant revisions in the Law on International Treaties 2016 is the specification of the relationship between international treaties, the Constitution of Vietnam and other legal instruments. Accordingly, the Vietnamese legal instruments (including all laws and regulations) must comply with the treaties that Vietnam is a contracting party; however, the conclusion of international treaties must not be contrary to the Constitution. Article 6 of the Law on International Treaties 2016 specifically stipulates that if any legal document, except the Constitution, and a treaty to which Vietnam is a contracting party have different provisions on the same issue, the international treaty shall prevail. The Law has set the hierarchy of source of laws as follows: (i) the Constitution, (ii) international treaties, and (iii) other legal instruments.

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Another important point of the Law on International Treaties 2016 is the adoption of the definition of the term “international treaty,” which significantly affects the status and contents of agreements concluded by the government and government agencies. Accordingly, “international treaty” is defined as “an agreement in written form concluded in the name of the State or in the name of the Government of the Socialist Republic of Vietnam with a foreign contracting party, that give rise to, change or terminate rights and obligations of the Socialist Republic of Vietnam under international law...”¹, which is consistent with the definition of treaty under Article 2.1(a) of the Vienna Convention on the Law of Treaties (1969). Based on the above mentioned, the State documents which fully meet the criteria of an international treaty must follow the negotiation and signing procedures stipulated by the Law. Declarations and political commitments that do not create rights and obligations under international law shall not be regarded as international treaties under the laws of Vietnam. In addition, the diplomatic documents regulated by provisions on the diplomatic administration and on the jurisdiction, functions of the state diplomatic agencies are also not quantified as treaty under the Law on International Treaties 2016.

Agreements and commitments on foreign borrowing if they are signed in the name of the State, the Government of Vietnam and foreign signatories such as the State, Foreign Government or the World Bank (WB) Asian Development Bank (ADB) are still considered as international treaties and fall under the scope of the Law. However, specific loan agreements in the name of the Government with foreign banks that have provisions governing the law of the lending country or the donor country will no longer be considered international treaties and the signing of such agreements shall be subject to regulations of the law on public debt management.²

Furthermore, the specification by the Law of the term “international treaties on human rights, fundamental rights and obligations of citizens” and “international treaties regarding the membership of Vietnam in important international and regional organizations,” which are also prescribed in Article 70 of the Constitution 2013, is to differentiate international treaties on human rights, fundamental rights and obligations of citizens from international treaties on specific aspects of cooperation such as legal assistance, extraditory, transfer of prisoners, child adoption, crime prevention and other kinds of cooperation.³

1 Article 2.1, Law on International Treaties 2016.

2 Article 70.3, Law on International Treaties 2016.

3 Article 29.1 (c), Law on International Treaties 2016.

Lastly, there are significant revisions on the procedure on conclusion and implementation of international treaties to meet the practical requirements of international integration. The Law of International Treaties 2016 introduces a new chapter on summary order and procedures of negotiation, signing, amendment, supplementation or extension of a number of types of international treaty. In particular, the Law provides for two forms of shortening, including (i) a simplification of procedures (simultaneous submission of negotiation and signing of international agreements); and (ii) reduction of time limits and records. Hence, the summary order and procedure shall not apply to international treaties that fall under the authority of the National Assembly for ratification or accession, as these treaties have widespread effects on the legal system and thus, required full procedure of screening and strict assessment by the legislators.

Regarding the organization on implementation of the international treaties, the Law on International Treaty 2016 regulates in detail the roles and responsibilities of state agencies in planning, urging the formulation and submission for promulgation, amendment and supplementation or annulment of legal instruments to implement international treaties as well as appraising the conformity of legal documents with existing treaties. The two key agencies in this procedure is the Ministry of Foreign Affairs and Ministry of Justice, who shall regularly report to the Government and the Prime Minister on the implementation of international treaties.

The adoption of the Law on International Treaties 2016 has great political and legal implications in the domestic and foreign domains, creating a legal framework. It is important for the process of international integration of Vietnam in the future. The law has created favorable conditions for agencies to propose the signing of international treaties in a unified manner, creating mechanisms for coordination among agencies in signing, joining and implementing the treaties. International agreements in full, rhythm, in accordance with the provisions of law and international practice.

CRIMINAL LAW

CRIMINAL LAW – LAW ENFORCEMENT – MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS – EXECUTION

Treaty between the Socialist Republic of Vietnam and Hungary Concerning Mutual Legal Assistance in Criminal Matters

On 16 March 2016, the representatives of Socialist Republic of Vietnam and Hungary signed the Treaty between the Socialist Republic of Vietnam and

Hungary concerning Mutual Legal Assistance in Criminal Matters, witnessed by President Truong Tan Sang of Vietnam and members of the Hungary Ministry of Justice.⁴

Procurator General Nguyen Hoa Binh opined that the signing of the Treaty between the two States concerning Mutual Legal Assistance in Criminal Matters has significant political and legal meaning. This is the direct legal ground for the legal execution of authorities from the two countries to enhance their cooperation in the investigation, prosecution, adjudication of criminal cases in order to fight against crimes, especially cross-border crimes, as well as to protect citizens of the two countries. The Treaty is seen as a milestone to promote further cooperation in other fields between Vietnam and Hungary, as well as the symbol of the determination of the two States in executing international agreements in criminal law.

The Treaty between the Socialist Republic of Vietnam and Hungary concerning Mutual Legal Assistance in Criminal Matters consists of 24 articles covering the scope of mutual legal assistance, central authority, content and formation of the request, refusal or postpone of the assistance, executing request for assistance, service of documents, providing information and evidence, returning documents for the requested, investigation and restrain, collecting evidence and affidavit, arranging the temporary transfer of the person in custody to assist the investigation, requesting the assistance for investigation or provide evidence, special rules, ocating, restraining and forfeiting the proceeds and/or instruments of crime, providing documents, records, and evidence through diplomatic channels, transfer the criminal prosecution, security and limitation, protection of personal information, certification and authentication, representative and costs, relationa with other international agreements, consultation, dispute settlement and final provisions.⁵

Treaty between the Socialist Republic of Vietnam and the Republic of France Concerning Mutual Legal Assistance in Criminal Matters

On 6 September 2015, with the witness of the President of the Socialist Republic of Vietnam Tran Dai Quang and the President of the Republic of France Francois Hollande, the representatives of the two States signed the Treaty between the Socialist Republic of Vietnam and the Republic of France concerning Mutual Legal Assistance in Criminal Matters. The Treaty concerning Mutual

4 The Supreme People's Procurary of Vietnam (2016), *The Signing Ceremony of the Treaty between the Socialist Republic of Vietnam and the Hungary concerning Mutual Legal Assistance in Criminal Matters*, available at <http://www.vksndtc.gov.vn/tin-chi-tiet-5590>.

5 The Supreme People's Procurary of Vietnam (2016), *The Signing Ceremony of the Treaty between the Socialist Republic of Vietnam and the Republic of France concerning Mutual Legal Assistance in Criminal Matters*, available at <http://www.vksndtc.gov.vn/tin-chi-tiet-5590>.

Legal Assistance in Criminal Matters is a significant international instrument in criminal justice as well as the legal ground for contracting parties to provide each other ultimate assistance in the process of investigation, prosecution and adjudication in order to collect documents, evidence and follow procedures to bring justice in criminal cases.

The Treaty between the Socialist Republic of Vietnam and the Republic of France concerning Mutual Legal Assistance in Criminal Matters consists of the Preamble and 24 articles regarding the scope of mutual legal assistance, central authority, content and formation of the request, refusal or postpone of the assistance, executing request for assistance, service of documents, providing information and evidence, returning documents for the requested, investigation and restrain, collecting evidence and affidavit, arranging the temporary transfer of the person in custody to assist the investigation, requesting the assistance for investigation or provide evidence, special rules, ocating, restraining and forfeiting the proceeds and/or instruments of crime, transfer the criminal prosecution, voluntary exchange of information, information about criminal records, security and limitation, protection of personal information, certification and authentication, expenses, relation with other international agreements, consultation, dispute settlement and final provisions.

The Treaty is a remarkable milestone for the new stage of development in criminal mutual legal assistance between the two countries. After being ratified by the competent body, the Agreement will become a legal framework to be directly applied in the process of drafting, sending and executing requests of mutual legal assistance in criminal matters between Vietnam and France. Thus, the cooperation of the two States would efficiently resolve criminal cases, as well as protect the legal rights of citizens of the two countries. Moreover, the signing of such Treaty also marked the success of the comprehensive partnership between Vietnam and France since 2013.

DIPLOMATIC AND CONSULAR

THE CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS 1965 – LEGAL AUTHORIZATION – INTERNATIONAL LAW HARMONIZATION

The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965

In order to comply with the multilateral diplomatic policy and to actively initiate in the context of global intergration, on 10 March 2016, Vietnam

officially acceded to The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965 ("The Hague Convention 1965"). Therefore, since 1 November 2016, the Convention has entered into force for Vietnam. The Ministry of Justice of the Socialist Republic of Vietnam is designated to be the Central Authority in accordance with Article 2 of The Hague Convention 1965 and the one and only authority designated for the purpose of Article 6 and Article 9 of this Convention.

In the situation where Vietnam is making efforts toward judicial and legal reforms, the accession to such a Convention would benefit the country in harmonizing its domestic provisions with international standards on legal authorization and legal proceedings. Besides, this also helps judicial bodies in Vietnam resolve existing problems arising from civil cases involving foreign elements in order to protect the legitimate rights and benefits of both Vietnamese and foreign citizen. Thus, with the aim to harmonize Vietnamese provisions with international agreement standard to execute The Hague Convention 1965, a range of Vietnamese domestic rules must be reviewed, changed and supplemented, regarding the channel of service, the sample of service request, the Confirmation of the service result and, especially, the mechanism to collect service fees. Hence, the Vietnam Ministry of Justice, together with the Ministry of Foreign Affairs and the People's Supreme Court, has issued the new Joint Circular No. 12/2016/TTLT-BTP-BNG-TANDTC on 9 October 2016 regarding the procedures of mutual legal assistance in civil matters to replace the Joint Circular No. 15/2011/TTLT-BTP-BNG-TANDTC on 15 September 2011 guiding the application of certain provisions regarding mutual legal assistance in civil matters governed by the Vietnam Law on Mutual Legal Assistance 2007.

The new Joint Circular contains 5 chapters, 27 articles on principles, orders, procedures, authority regarding the mutual legal assistance on civil matters, as well as duties of governmental bodies relating to mutual legal assistance on civil matters. In comparison with the Joint Circulation No. 15/2011, the Joint Circulation No. 12/2016 introduces notable changes, supplements and replacements as follows:

- i. With respect to the Vietnam authority to execute mutual legal assistance, according to Article 10 of the Joint Circulation No. 12/2016, the competent bodies to request such assistance are the People's Supreme Court, the People's High Court, the People's Court at provincial level, the Civil Enforcement Bureau at provincial level, the People's Supreme Procurary, the People's Procurary at provincial level, other competent organizations according to the law and bodies directly involved requesting a legal authorization. The People's Court, the People's Procurary and the

- Civil Enforcement Bureau at district level, in the course of proceeding and enforcing a civil case which requires abroad legal authorization, shall prepare a dossier compliant with Article 11 of the Law on Mutual Legal Assistance and Article 11 of the Joint Circulation No. 12/2016, and send to the respective bodies at provincial level.
- ii. Regarding the authority to execute foreign legal authorization on civil matters, according to Article 17 of the new Joint Circulation, the competent bodies are: (i) the People's Court at provincial level; (ii) the Civil Enforcement Bureau at provincial level in case the legal authorization concerning the legal enforcement of a civil case; and (iii) bailiff. Such provision is compliant with the practice and changes about the organizational structure, function and duties of related bodies according to the Law on People's Court Organization 2014, the Code on Civil Procedure 2015, Decree No. 61/2009/ND-CP on 24 July 2009 of the Government on the organization and operation of bailiff in Ho Chi Minh City and Decree No. 135/2013/ND-CP regarding the changes to Decree No. 61/2009/ND-CP.
 - iii. With regard to the collecting and payment of actual expenses incurred from a civil legal authorization, Articles 7, 8 and 9 of the Joint Circulation No. 12/2016 are introduced and based on the new provisions of the Code on Civil Procedure 2015 and The Hague Convention 1965, respectively, concerning the collecting and payment of actual expenses incurred from a civil legal authorization of Vietnam, the procedure on the transfer and advance payment of actual expenses incurred from a civil legal authorization of Vietnam and the procedure on the transfer and payment of actual expenses incurred from such legal authorization.
 - iv. Relating to the service for overseas Vietnamese citizens, the Joint Circulation No. 15 had regulated specific provisions on the legal authorization procedures for such persons. Nonetheless, due to problems arising during the course of implementing the Joint Circulation No. 15 and according to advices from the People's Court at provincial level, on 14 July 2016, the Official Letter No. 140/TANDTC-HTQT issued by the People's Supreme Court, together with the Official Letter No. 2089/BNG-LS issued by the Ministry of Foreign Affairs, unified the proposal on drafting a Joint Circulation by the People's Supreme Court and the Ministry of Foreign Affairs regarding the service of documents for overseas Vietnamese. The extraction of such issue from the Joint Circulation No. 15/2011 to form a new separated joint circulation is practically necessary and compliant with legal regulations.

SOVEREIGNTY – TERRITORIAL DISPUTE

**VIETNAM OBJECTION TO THE BAN ON FISHING BY CHINA –
TERRITORIAL DISPUTES IN THE SOUTH CHINA SEA – DISPUTE
SETTLEMENT BY PEACEFUL MEASURES**

Statement by Vietnam on the objection to the ban on fishing imposed by the People's Republic of China, 17 May 2016

On 17 May 2016, the Vietnamese Ministry of Foreign Affairs has made an official protest against the ban on fishing imposed by the People's Republic of China since 1999. The document stressed that:

Vietnam resolutely refuses and objects to such null and void regulations. First and foremost, Vietnam affirms that the country has full historical evidence and legal foundations to prove its sovereignty over Hoang Sa (Paracel) and Truong Sa (Spratly) archipelagos.

The Government of Vietnam called on all concerned parties involved in territorial and other disputes in the South China Sea to adhere to the United Nations Convention of the Law of the Sea and asserted that such illegal actions could not challenge the truth about Vietnam's sovereignty over the Paracel and Spratly Islands.

The Vietnam spokesperson stressed that Vietnam resolutely asks China to respect Vietnam's sovereignty, to immediately end the wrongful actions, and to seriously abide by the Declaration of Conduct of Parties in the East Sea, as well as the Agreement on Basic Principles guiding the Settlement of Issues at Sea, between Vietnam and China.⁶

Statement by Vietnam on Territorial Disputes in the South China Sea in the 42nd G7 Summit held on 26 – 27 May 2016 in Mie, Japan

On 27 May 2016, the Prime Minister of Vietnam, Nguyen Xuan Phuc, attended the first round of the 42nd G7 summit held on 26 -27 May 2016 in Mie, Japan. This was the first time that the Socialist Republic of Vietnam participated in the G7 summit.

⁶ Ministry of Foreign Affairs Spokesperson Le Hai Binh's Press Conference on 17 May 2016, *Vietnam opposes the ban on fishing imposed in the South China Sea by China* [Việt Nam bác bỏ lệnh cấm đánh bắt cá của Trung Quốc ở Biển Đông], available at <http://thanhnien.vn/thergioi/viet-nam-bac-bo-lenh-cam-danh-bat-ca-cua-trung-quoc-o-bien-dong-703829.html>.

At the beginning of his speech, the Vietnam Prime Minister stated that:

We acclaim the prioritized topics in the discussion schedule of the Summit. They are indeed significant and urgent issues regarding the peace, stability and sustainable development of the Asia Pacific region in particular and the world in general.

The Prime Minister asserted that Vietnam is well aware that its own peace and development is part of the world's peace and welfare, and the contribution to the resolution of common challenges is the duty as well as the right of any country, regardless of its level of development. Then, he also stressed that the welfare and sustainable development of Vietnam, Asian region and the world is secured only if there is a peaceful and stable international environment, meanwhile the world has been facing the escalating conflicts in regions, especially problems concerning the marine and aviation security, safety and freedom in the South China Sea.

The unilateral and illegal actions against international law and regional agreement, such as the construction of large-scale artificial islands that alters the original status of such entities and military enforcement have seriously threatened the regional peace and stability. This situation requires the involved nations to restrain themselves and settle the dispute with peaceful measures compliant with international law, which includes the United Nations Convention on the Law of the Sea 1982 and the Declaration on the Conduct of Parties in the South China Sea 2002 (DOC), as well as enhancing the resort to diplomatic measures based on mutual trust, and looking forward to the future Code of Conduct of Parties in the East Sea (COC).⁷

The G7 leaders reaffirmed the importance of claims based on international law, not using force or coercion in trying to drive their claims, and seeking to settle disputes by peaceful means such as through judicial procedures, including arbitration. They expressed concern about the situation in the East China Sea and South China Sea and endorsed the G7 Foreign Ministers' Statement on Maritime Security.⁸

The Ise-Shima Summit is the first G7 Summit held in Asia in eight years, the G7 leaders together with outreach participants discussed quality infrastructure

7 Prime Minister Nguyen Xuan Phuc's Speech in the 42nd G7 Summit held on 26–27 May 2016 in Mie, Japan, *The Prime Minister raises the South China Sea concerns in the extended G7 summit* [Thủ tướng nêu vấn đề Biển Đông tại hội nghị G7 mở rộng], available at <http://vnexpress.net/tin-tuc/the-gioi/thu-tuong-neu-van-de-bien-dong-tai-hoi-nghi-g7-mo-rong-3410261.html>.

8 Ministry of Foreign Affairs of Japan (2016), *G7 Ise-Shima Summit*, available at http://www.mofa.go.jp/ms/is_s/page4e_000457.html#section5.

investment and open and stable seas under the theme of “Asian stability and prosperity.”

INTERNATIONAL ECONOMIC LAW

IMPORT-EXPORT – GATT 1994 – ANTI-DUMPING LAW AND PRACTICES – SAFEGUARD INVESTIGATION AND MEASURES

Application of anti-dumping measures against certain imported stainless steel cold-rolled products to Vietnam originating from the People's Republic of China, Republic of Indonesia, Malaysia and Taiwan

On 29 April 2016, the Ministry of Industry and Trade of the Socialist Republic of Vietnam issued the Decision No. 1656/QĐ-BCT on the conclusion of the first review on anti-dumping measures against certain imports of stainless steel cold-rolled products.⁹ Products under investigation include: (i) stainless steel cold-rolled coil or sheet containing a maximum of 1.2% carbon and a minimum of 10.5% chromium with or without other elements; and (ii) stainless steel cold-rolled coil or sheet has been annealed or heat-treated by other methods and pickled or skin passed to remove impurities on the surface. Such products have been subsequently processed (severed or sawed) provided that the process does not alter their technical characteristics.

Precedent to the decision, on 5 September 2014 the Vietnam Ministry of Industry and Trade issued the Decision No. 7896/QĐ-BCT on the imposition of anti-dumping measures against certain stainless steel cold-rolled products (referred to as “imports under investigation”) imported into Vietnam from the People's Republic of China (“China”), Republic of Indonesia (“Indonesia”), Malaysia (“Malaysia”) and Taiwan area (“Taiwan”). On 15 September 2015, the Ministry of Industry and Trade received the valid petition by Posco VST Co., Ltd and Inox Hoa Binh Joint-stock Company (the petitioners), on behalf of domestic producers, for a review on anti-dumping duty against stainless steel cold-rolled products imported into Vietnam according to Article 24 of the Anti-dumping Ordinance. On 21 October 2015, the Ministry of Industry and Trade, after examining the local producers' petition for review, issued the Decision No. 11353/QĐ-BCT on the review on anti-dumping measures against stainless

⁹ Ministry of Planning and Investment (2016), *The conclusion on the investigation against certain imported stainless steel cold-rolled products to Vietnam* [Kết quả rà soát chống bán phá giá một số sản phẩm thép không gỉ nhập khẩu], available at <http://business.gov.vn/tabid/130/catid/10/item/14422/kết-quả-ra-soat-chống-ban-pha-gia-một-số-sản-phẩm-thép-không-gi-nhập-khẩu.aspx>.

steel cold-rolled products imported into Vietnam from three countries including China, Malaysia and Indonesia.

Pursuant to Article 25 of the Anti-dumping Ordinance and the investigation authority's conclusion of the review, the Ministry of Industry and Trade decided the revision of anti-dumping duty on foreign producers and exporters, amongst which the Yuan Long Stainless Steel Corp. from Taiwan is imposed the highest tax rate (37.29%), followed by the producers from China.

According to the Decision No. 1656, new anti-dumping duty rates shall take effect from 14 May 2016 to 06 October 2019, unless otherwise extended or reviewed as per the laws. Importers of products under investigation, when importing such products, must provide customs authorities with origin papers including Certificate of origin and Mill-test certificates from producers located in countries and territories having been investigated in this case.

On 17 September 2016, the Ministry of Industry and Trade issued the Decision No. 3465/QĐ-BCT on handling complaints of Bahru Stainless Steel Sdn.Bhd from Malaysia regarding the result of the first investigation on anti-dumping measures against certain stainless steel cold-rolled products imported into Vietnam, in which anti-dumping duty imposed on Bahru Stainless Steel Sdn.Bhd is adjusted to 9.31% from 9.55%.

Application of anti-dumping measures against the H-shaped steel products imported into Vietnam originating from the People's Republic of China (including Hong Kong)

On 7 July 2016, the Vietnam Competition Authority (VCA) received a petition from Posco SS Vina Company Limited saying that H-shaped steel products under the HS Code: 7216.33.00, 7228.70.10 và 7228.70.90 imported from China and Hong Kong have severely hit domestic steel producers.¹⁰ There are five companies in Vietnam that produce H-shaped steel products, but Posco SS Vina is the only producer amongst those with an annual capacity of 700,000 tonnes. This makes the company eligible to represent all local H-shaped steel firms and file a lawsuit against imported products of the same type.

On 5 October 2016, the Ministry of Industry and Commerce issued Decision No. 3993/QĐ-BCT on initiation of an investigation into alleged dumping on

10 Vietnam Competition Authority (2016), *The temporary conclusion on the impose of anti-dumping measures against the H-shaped steel products imported into Vietnam originating from the People's Republic of China (including Hong Kong)* (Case No. AD03) [Dự thảo Kết luận sơ bộ vụ việc điều tra áp dụng biện pháp chống bán phá giá đối với một số mặt hàng thép hình chữ H nhập khẩu vào Việt Nam có xuất xứ từ Trung Quốc (bao gồm Hồng Kông) (Mã vụ việc AD03)] available at <http://www.vca.gov.vn/NewsDetail.aspx?ID=3532&CatelID=272>.

H-shaped steel products imported into Vietnam originating from the People's Republic of China (including Hong Kong) (Case No. AD03). The period for investigation of dumping margins and injury caused to Vietnamese industry is from 1 April 2015 to 31 March 2016. According to Article 20 of the Ordinance on anti-dumping, the Minister of Industry and Trade may decide to impose temporary anti-dumping duties on products under investigation based on preliminary conclusions of the VCA. Therefore, the VCA called for importers and distributors of products under investigation to take this regulation into account before signing contracts with exporters.

Application of anti-dumping measures against imported steel products originated from the People's Republic of China (including Hong Kong) and the Republic of South Korea

On 3 March 2016, the Ministry of Industry and Trade issued Decision No. 818/QĐ-BCT on investigating the impose of anti-dumping measures against imported steel products which originated from the People's Republic of China (including Hong Kong), and the Republic of South Korea (Case No. AD02). It followed the petition of four local Vietnamese steelmakers requesting the Vietnam Competition Authority (VCA) for measures against the alleged price-dumped coated steel sheets from China (including Hong Kong) and Korea in the end of the year 2015. The VCA said it will look through evidence provided by the local enterprises and then hold a public consultation with related parties to calculate the exact anti-dumping margins. The duration for investigation is from 1 October 2014 to 30 September 2015.

On 1 September 2016, the Ministry issued Decision No. 3584/QĐ_BCT on the temporary anti-dumping duties against galvanized steel imports from China, Hong Kong and South Korea, which ranged from 4.02% to 38.34%. The duration of such anti-dumping duty imposed is 120 days, started from 16 September 2016 until 13 January 2017. This decision complies with Article 16 of the Vietnam Anti-Dumping Ordinance, Article VI of GATT 1994 and The Agreement on Implementation of Article VI of GATT 1994, commonly known as the Anti-Dumping Agreement, which regulated the time limit for investigation of the application of anti-dumping measures shall not exceed 12 months from the date of issuance of the investigation decision.

On 2 December 2016, according to Article 14 of the Ordinance No. 20/2004/PL-UBTVQ on the anti-dumping measures against goods imported to Vietnam and Article 29 Decree No. 90/2005 supplementing the Ordinance No. 20/2004/PL-UBTVQ on the anti-dumping measures against goods imported to Vietnam, the VCA, as the investigation authority, hold the consultation of the involved parties in the Case No. AD02 to exchange opinions. During the

meeting, while representatives from Vietnam affirmed their view that there were injuries for the local industry caused by the import of coated steel sheets, the Korean companies insisted that the import of such products from Korea had not caused or threatened to cause any injury to the Vietnam industry, according to the price per product and the market share of the Korea import of such goods during the investigation period. Both producers from Korea and China requested the investigation authority to adjust the calculation of their dumping margins. The VCA accepted and has continued the investigation of this case.

Safeguard investigation on imports of steel ingots and long steel products to Vietnam

On 29 December 2015, The Vietnam Competition Authority (VCA) under the Ministry of Industry and Trade has announced a safeguard investigation on imports of steel ingots and long steel products. This comes after Hoa Phat Steel Joint Stock Company (JSC), Southern Steel Co Ltd, Thai Nguyen Iron and Steel JSC and Vietnam-Italy Steel JSC called for safeguard measures against steel ingots and long steel products imported into Vietnam, which are under the HS code: 7207.11.00; 7207.19.00; 7202.20.99; 7224.90.00; 7213.10.00; 7213.91.20; 7214.20.31; 7214.20.41; 7227.90.00; 7228.30.10; 9811.00.00. The authority confirmed that the firms' petition is in line with the prevailing Vietnam regulations. Ministry of Industry and Trade also signed Decision No. 14296/QD-BCT approving the safeguard investigation into such imported products.

Until 7 March 2016, the Vietnam Ministry of Industry and Trade issued the Decision No. 862 on the imposition of temporary safeguard duties of 23.3% on steel ingots and 14.2% on long steel imported from a number of exporting countries from 22 March to 7 October 2016. Such safeguard duties are exempted for developing and least-developed countries whose imports into Vietnam do not exceed 3% the total imports into Vietnam, and the total imports of such group do not exceed 9% the total imports into Vietnam.

Following the Decision No. 862, on 18 July 2016, the Ministry introduced Decision No. 2968/QD-BCT on the exemption for certain steel ingots and long steel products from the application of temporary safeguard duties. Furthermore, on 26 September 2016, the Vietnam Ministry of Industry and Trade issued Decision No. 3914/QD-BCT on the exemption of safeguard measures against long steel products under HS Code 7227.90.00 used for sealing compound production in the year 2017. The exemption is granted for 10 producers, who may return the safeguard duties imposed on imported products in 2017 according to the Decision No. 2986.

INTERNATIONAL DISPUTE SETTLEMENT

WTO DISPUTE SETTLEMENT SYSTEM

Communication from the Panel in the case Indonesia – Safeguard on Certain Iron or Steel Products (WT/DS4904 and WT/DS496/5)

The Indonesian government issued a three-year safeguard duty on flat-rolled products of iron or non-alloy steel imported from Vietnam, Taiwan and South Korea. Accordingly, the products face tariffs at 50 per cent in 2014, 46 per cent in 2015 and 41 per cent in 2016. Indonesia decided to impose the tariff on flat rolled products of iron or non-alloy steel on the basis of absolute volume of imported steel, instead of the percentage of total import values, as usual. The measure jeopardized the legitimate trading rights of the Vietnamese steel producers and exporters. Thus, Vietnam initiated dispute proceedings against Indonesia with the World Trade Organization (WTO) to challenge these safeguard measures.

On 1 June 2015, Vietnam requested consultations with Indonesia regarding a safeguard measure imposed by Indonesia on imports of certain flat-rolled iron or steel products and the investigation and determinations leading thereto. Vietnam claims that the measures are inconsistent with:

Articles I:1, XIX:1(a) and XIX:2 of the GATT 1994; and Articles 2.1, 3.1, 4.1(a), 4.1 (b), 4.1(c), 4.2(a), 4.2 (b), 4.2(c), 12.2 and 12.3 of the Agreement on Safeguards.

The Panel on *Indonesia – Safeguard on Certain Iron or Steel Products* (WT/DS496) was established by the DSB on 28 October 2015 at the request of Vietnam. The Panel was finally composed on 9 December 2015.

The Communication of the Panel, dated 8 June 2016, explained that the beginning of the Panel's work has been delayed as a result of a lack of available experienced lawyers in the Secretariat. The Panel delivered that it did not expect to issue its final report to the parties before the second half of 2017.¹¹

11 *Indonesia – Safeguard on Certain Iron or Steel Products*, Communication from the Panel on 8 June 2016.