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Nam Ngoc Trinh
 Attorney-at-Law
 nam.t@tilleke.com

<< Right
Nu Thi To Nguyen
 Associate
 nu.n@tilleke.com

A Practical Approach to Navigating Anti-Dumping Cases in Vietnam

As Vietnam continues to integrate into the world economy via bilateral and multilateral trade agreements, tariff barriers in the country have gradually been removed. This has made Vietnam an even more attractive target for foreign manufacturers and exporters, but it has also indirectly introduced a new challenge: local authorities are increasingly applying non-tariff barriers, such as anti-dumping duties, in an attempt to protect domestic industry.

From Vietnam's WTO accession in January 2007 until July 2020, the Ministry of Industry and Trade (MOIT), the principal authority for anti-dumping practices in Vietnam, initiated 11 anti-dumping cases in total. Though this number is not large, eight of these cases were initiated after January 1, 2018, the effective date of the Law on Foreign Trade Management, which domesticated the WTO Anti-Dumping Agreement (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994) into Vietnamese law. Clearly, there has been an upward trend since this law took effect, and the risk that products of foreign manufacturers/exporters will be subject to anti-dumping investigations is likely to grow.

If your company becomes the subject of an anti-dumping investigation in Vietnam, the following notes, gleaned from our experience assisting clients in recent anti-dumping cases, can help you effectively and efficiently deal with the process.

A Marathon, Not a Sprint: Have a Long-Term Budget and Defense Strategy

An anti-dumping investigation by the MOIT may take from 12 to 18 months. Your company, as an interested party whose products are under consideration, may need to do the following:

- ▶ Answer the investigation questionnaire provided by the Trade Remedies Authority of Vietnam (TRAV);
- ▶ Supplement information as requested by TRAV;
- ▶ Attend public or private hearings held by TRAV;
- ▶ Review and respond to the draft of the final investigation conclusion; and
- ▶ Prepare and submit information, data, and documents as requested by TRAV.

The workload for each activity may be very heavy because there is a huge volume of information and materials to assess. Thus, before taking any action, foreign manufacturers and exporters should carefully calculate all relevant figures to decide whether it makes economic sense to defend themselves, or whether they should simply pay the anti-dumping duties. It is worth noting that anti-dumping duties may be applied for a maximum period of five years, which can be renewed, subject to the review of the MOIT at the end of each period.

If your company ultimately decides to defend itself, an estimate of resources and a well-planned strategy can

prevent any unexpected financial and technical issues that may occur during the process of the investigation.

Playing Defense: Every Chance to Protect your Interests Counts

When answering the anti-dumping investigation questionnaire, many foreign companies think that simply answering all the questions in accordance with the MOIT's guidelines will be sufficient to defend their interests. In reality, however, even if your company answers the questionnaire in full, it may still receive an unfavorable result in the preliminary or final investigation decision—the information requested in the questionnaire is not always enough. Thus, in addition to passively answering the questions of the investigating authority, your company should simultaneously make a proactive attempt to prove that its products should be eliminated from the investigation scope, or should not be subject to any anti-dumping measures. Opinions can be proactively provided to the MOIT at any time during the investigation period, to ensure that your voice is heard.

You Are Not Alone: Cooperation with Other Parties Can Benefit All

In an anti-dumping case, more often than not, there are many interested parties. Based on article 74.1 of the Law on Foreign Trade Management, the following parties could find themselves on the same side as a foreign manufacturer or exporter whose products are under investigation:

- ▶ Other foreign manufacturers or exporters with similar products;
- ▶ Vietnamese importers who import the investigated products into Vietnam;
- ▶ Foreign associations whose members are primarily foreign manufacturers or exporters whose products are subject to the investigation; and
- ▶ The government and authorities of the manufacturer's or exporter's country.

By gathering information and data from these parties, your company can acquire better insight into the market of the products under investigation in Vietnam. This can help make your response to the MOIT more practical and persuasive. Therefore, it is highly recommended that you connect with any other interested parties on the same side to best protect your interests—as well as theirs—before the Vietnamese authority.

An International Battle on a National Battlefield: Find a Local Scout

Although anti-dumping cases are carried out in compliance with an international agreement (the WTO Anti-Dumping Agreement), the investigation authority is local. Moreover, as the WTO Anti-Dumping Agreement has been domesticated into the Vietnamese legal system, there are now regulations that are specific to anti-dumping practices in Vietnam.

Knowing and understanding the regulations under the WTO Anti-Dumping Agreement, while certainly beneficial, is not sufficient. You also need to be well versed in the specific regulations on anti-dumping under Vietnamese law, as well as the still-evolving practices of the MOIT. This type of insight can best be obtained from trusted local counsel with firsthand experience in anti-dumping cases. These experts can identify potential problems before they occur, and will save costs in the long run.

Anti-dumping investigations are never easy, but with preparation, a proactive defense, teamwork, and allies on the ground, you can greatly improve your chances for a favorable outcome. 🦋