

Legal news

July & August 2004

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Trade

A New Legal Tool For Protecting Domestic Manufacturing Industries

By Nguyen Thi Thu Ha

[Article published in the Vietnam Investment Review, the Legal Column, Issue dated 16 August 2004]

A new regulation will offer domestic producers relief from import dumping.

Ordinance No.20/2004/PL UBTVQH11, dated April 29, 2004, will add new teeth to anti-dumping laws on imported goods into Vietnam.

According to the ordinance, dumping means the export of an article from any country or territory to Vietnam at less than its normal value. For example, when the prices at which goods are exported to Vietnam are less than the comparable price for a similar product destined for the domestic market of the exporting country.

The investigation (into alleged import dumping) shall be conducted once the application dossier is filed requesting the imposition of anti-dumping measure of the individual, organization representing domestic manufacturing industry. For this purpose, individuals or organizations shall be deemed to be the representative of a domestic manufacturing industry where the volume, quantity or value of goods they manufacture or represent accounts for at least 25 per cent of total volume, quantity or value of the domestic manufacturing industry. The Ministry of Trade is also entitled to initiate the investigation if it has clear evidence that the alleged dumping causes, or threats to cause, material damages to the domestic manufacturing industry.

The anti-dumping agency, which will be established under the Ministry of Trade comprising of an anti-dumping investigation unit and a council for settlement of anti-dumping cases, shall conduct its inquiries within 12 months of the investigation's start. During the procedures, the anti-dumping investigation agency shall only impose anti-dumping measures if the dumping margin is identified concretely (above 2 per cent) and the quantity, or value of dumped goods is significant, and threatens the domestic manufacturing industry.

Subject to the preliminary conclusion, which must be publicized within 90 days (with a 60-day extension in special cases) the Minister of Trade will rule on the provisional anti-dumping duty.

This duty shall not exceed the dumping margin stated in the preliminary conclusion and is only applicable for the period not exceeding 120 days from the date of decision. After the preliminary conclusion and before the end of the investigation, the exporter, producers may commit with the Ministry of Trade and domestic producers on the adjustment of the sale price, voluntarily limit of sale volume, quantity and value of dumped goods.

If no commitment has been made, subject to the conclusion and recommendation of the council for case's settlement, the Minister of Trade may decide on an anti-dumping duty. The rate of anti-dumping duty shall not exceed the dumping margin and be applied for a period not exceeding 5 years from the decision's date. In case the imported goods are dumped, and cause damage to the domestic manufacturing industry, the anti-dumping duty may be backdated.

However it cannot exceed 90 days from the day of imposing provisional anti-dumping duty. After one year of application, the anti-dumping duty can be reviewed subject to the Minister of Trade's decision upon request of relevant party and consideration of evidence.

It is clear that the ordinance shall contribute much to limiting the adverse impact on domestic manufacturing industries, and protecting enterprises as well as eliminating unfair competition caused by the dumping of imported goods in Vietnam.

However, at the moment, the regulations for setting up the anti-dumping agency has not been finalized while the date of effect of the ordinance is on October 1, 2004. Hopefully, such regulations shall be promulgated soon so that the domestic producers shall not have to wait any longer.

Drug Administration

Pharmaceutical imports and exports put on strict governance

By Nguyen Thi Thanh Xuan

[Article published in the Vietnam Investment Review, the Legal Column, Issue dated 19 July 2004]

Under great pressure caused by its weak ability to control soaring drug price, the Ministry of Health (MOH) finally issued the long-awaited Circular 07/2004/TT-BYT (Circular 07) on May 31, 2004 to guide the import and export of pharmaceuticals and cosmetics in the period to 2005. Taking into full force from July 2004, Circular 07 replaces Circular 06/2002/TT-BYT dated 23 April 2001 (Circular 06).

Circular 07 has been welcomed by commentators as it could be an effective tool for controlling drug prices. Less privileged people are eagerly awaiting a reduction in pharmaceutical prices, hopefully to be reduced to at least on a par with neighbouring countries with similar economic conditions. Together with other urgent measures being deployed by State authorities, there are reliable reports that prices will be better governed.

Circular 07 improves control in many ways, for starters it extends its scope of application and governing to designated companies authorized to engage in a contractual relationship with the pharmaceutical manufacturers and trading companies.

Under Circular 07, the designated companies will be responsible for controlling the quality of imported pharmaceuticals, and are to comply fully with regulations concerning the declaration of prices.

Overseas pharmaceutical companies that have trading licenses for pharmaceuticals will be able to provide finished products and raw materials not only to the company which is listed as applicant in the registration dossier but also to any Vietnamese company permitted to import pharmaceuticals in accordance with the laws. The manufacturing and trading pharmaceutical companies would surely welcome this disposition as it may help prevent a monopoly in the drug market.

Declaration of prices is a salient tool for controlling drug imports and Circular 07 stipulates that proposed prices must be included in any application letters for import of drugs. Further to Decree 120/2004/ND-CP dated May 12, 2004 on the management of drug prices, the import company will be required to declare the imported price, proposed wholesale or retail price applied in Vietnam and price in other regional countries.

Furthermore, companies are required to make a report on all imports and exports of the previous month and send to the MOH prior to the tenth day of each month. In this report, apart from stating the import or wholesale price, the imported drug price of the next month has to be forecast.

Import of unregistered finished drugs may be conducted. The dispositions on import of unregistered finished products have been summed up to provide fertile ground for non-transparent practices related to the applicable import quota. To avoid this, Circular 07 points out the cases to accept and determine a quota for imported unregistered drugs. Circular 07 allows consideration of finished products subject to new registration or renewal of visas or under-licences, which are waiting for visas or extended visas. However the import of finished drugs in these cases will be approved for a limited quota if any.

In this regard, it is noted that the foreign invested manufacturing companies are expressly permitted to import unregistered finished products for marketing purposes in compliance with the dispositions of the MOH and Ministry of Trade.

With respect to the application for import of unregistered finished products, additional documents are required. Namely, a declaration of price and a copy of a monograph in case the pharmacopoeia specifications are applied for Quality Specifications and Analytical Methods (QSAM). Circular 07 also requires a Vietnamese translation if the QSAM is written in a foreign language other than English.

An official letter will be made from the Drug Administration of Vietnam to accept or refuse application within 20 working days from the date of submission of application. In case of refusal, the Drug Administration of Vietnam will be responsible for stating clearly the reasons why.

Circular 07 only draws attention to dealing with intellectual property matters in drug imports and exports as infringement of registered trademarks of pharmaceutical products is rife. However the dispositions of Circular 07 are far off expectation of pharmaceutical companies in stipulating generally that foreign invested companies and Directors of Vietnamese companies who are responsible for the intellectual property of pharmaceutical products manufactured or imported by them. The inadequate protection of intellectual property rights will discourage technology transfer and franchising which the Vietnamese government says it desires in the pharmaceutical field.

The society is now awaiting for the government to implement further long term policies and overall reform in the drug and health care sector in order to provide the people with more advanced health care and treatment infrastructure at reasonable expenses.

Civil

New guide to compensation for intangible losses

Road accidents, work-related injuries and other occurrences caused by illegal acts of people are unwelcome but unavoidable in any society.

The damage caused through loss of life, health, prestige and property, effects the victims and their families not only physically and financially, but also mentally. In other words, they wound the spirit aspect of people and thereby the losses cannot be measured and compensated materially.

Therefore, instead of deliberating over compensation, the highest priority should be negotiation and mutual understanding between the two involved sides. Otherwise, the identification of the compensation amount shall be vested in the judges in charge and more importantly, in the legal regulations covering such matter.

For many judges, this work is recognized as rather complicated, even to the experienced ones as the conditions, situations, arguments, requirements and the claim amounts vary from case to case and the principles and guidance on this scrutinized job lay scattering in a several official letters of the People's Supreme Court upon question of inferior ones.

Lawmakers have tried to work out principles for non-contractual compensation for damage, realising that lost business chances, unsure benefits and mental damages are impossible to be compensated precisely in kind or in cash.

They have worked out these principles on the basis of the regular incomes of the victim, family members dependent on the victim, living standard of the society at that time, etc.

Now, the difficulties of the judge in determining the compensation amount seem to ease thanks to the Resolution No. 01/2004/NQ-HDTP issued in 28 April 2004 of the Judges Council of the People's Supreme Court on the guidance on application of a number of provisions of the Civil Code on non-contractual compensation for damage. In this article, we only discuss on the items of damage and identification the amounts thereof in case of infringement on health, life and honour, dignity and reputation.

For the case of infringement on health, the damage shall include:

reasonable expenses on recovering the health, such as the ambulance cost, doctor, wheelchair, beauty recovery, etc.

lost and reductive income of the injured in case the injured has the actual income prior to the infringement on health. Let take some situations to illustrate the case as follows where before the infringement, the actual monthly income of the injured was stable and in accordance with his salary stipulated in the employment contract, the income will be defined as the same as the salary, wages of the latest month; where the monthly incomes of the injured were different, the income shall be calculated by taking average of 6 consecutive months before the infringement; where the injurer's actual income before the infringement was unstable & indeterminable, the average income shall be defined as

the average income of such profession; where the injured had no job and no income before the infringement, no compensation shall be made;

the lost and decreased income of the person nursing such injured in the treatment term; reasonable costs for nursing the injured and the subsidy to the person depending on the injured's income in case the injured has lost more than 81% of health. The resolution, however, does not clarify the term in which the person in fault must pay the subsidy and compensation in this case;

The payment for mental damage due to health decrease which shall be calculated upon the seriousness of the loss but not exceeding 30 months of minimum salary as provided by the State. Then at present, with the minimum salary is of VND290,000, the compensation amount for mental damage in this case shall be at maximum of VND8,700,000. This amount may be deemed too small in some cases but this has an excellent function to eliminate the unreasonable or even incredible claims from the injured and then facilitate the judge's job in determining such compensation amount.

For the case of infringement on life, other than the amounts provided in case of infringement on health, the damage now shall include also: the reasonable cost for the funeral including the cost for coffin, incineration or burying and other items. In the case of infringement on life, not in every case the relatives of the deceased are entitled to mental compensation but subject to the seriousness of the specific case and this amount (if any) cannot exceed 60 months of minimum salary provided by the State, currently equivalent to VND17,400,000.

For the case of infringement on honour, dignity and reputation which applied to both individuals and legal entities, the compensation amount shall include only the reasonable cost for limitation & recovery of damage, lost and decreased actual income and mental agony. Not every case the victim is entitled to mental compensation but subject to the specific situation. However, the maximum compensation payment for mental damage does not exceed 10 months of the minimum salary, equivalent to VND2,900,000 at present.

It should be noted that these are the principles and thresholds for identifying the damage in non assets-related-cases which set the ground for the judges to determine the compensation amounts but not the actual compensation amounts themselves. The judges are still playing the vital role in determining the most reasonable and appropriate amounts acceptable not only by the victim, the person at fault but also society.

Other Sectors

Taxation

- The Government issued Decree 152/2004/ND-CP on August 06, 2004, on amendment of and supplementation to Government's Decree 164/2003/ND-CP dated December 22, 2003, providing the implementation of the Law on corporate income tax.
- The Ministry of Finance issued Circular 81/2004/TT-BTC on August 13, 2004, guiding the implementation of Government's Decree 147/2004/ND-CP dated July 23, 2004, with detailed regulation on the implementation of the Ordinance on income tax applied on high income earners.

Finance

- On June 28, 2004 the Ministry of Finance issued Circular 63/2004/TT-BTC, guiding the implementation of a number of articles of Government's Decree 106/2004/ND-CP dated April 01, 2004 on State credit on development investment.
- The Ministry of Finance issued Circular 67/2004/TT-BTC on July 07, 2004, regulating the collecting, payment, using and management of the fees on granting permit for advertisement.
- The Ministry of Finance issued Decision 66/2004/QD-BTC on August 11, 2004, promulgating the Regulation on procedures, formalities for issuance of the Government bonds, bonds which are guaranteed by the Government and local administrative bonds.
- Decision 67/2004/QD-BTC dated August 13, 2004 of the Ministry of Finance, issuing the Regulation on self-checking of finance and accounting of unites using the expenses from the State budget.

Banking

- Decision 787/2004/QD-NHNN on June 24, 2004 of the State Bank of Vietnam, on issuance of temporary regulations on Joint Stock Trading Banks which register to list their shares and offer them to the public.
- On August 17, 2004 the Governor of the State Bank issued Decision 1022/2004/QD-NHNN, promulgating the Regulations on deposit of valuable papers at the State Bank.

Accounting & Auditing

- On June 29, 2004 the Ministry of Finance issued Circular 64/2004/TT-BTC, guiding the implementation of a number of articles of Government's Decree 105/2004/ND-CP dated March 30, 2004 on independent auditing.
- The Minister of Finance issued Decision 59/2004/QD-BTC on July 09, 2004, on issuing the Regulation on examination and granting Certificate of Auditor and Certificate of accounting practice.

Labor

- Government's Decree 155/2004/ND-CP dated August 10, 2004, on amendment of and supplementation to a number of articles of Government's Decree 41/2002/ND-CP dated April 11, 2002, on the policy on redundant employees due to SOEs' reform.
- Decision 82/QD-QLLDNN on August 05, 2004 of the Department of Overseas Labourer Management, on the suspense of labor export activities for 6 months.
- The Ministry of Labor, War Invalids and Social Affairs issued Dispatch 2742/LDTBXH-BHXH on August 13, 2004, guiding the social insurance policy on employees working overseas.

SOEs' reform

- On August 09, 2004 the Government issued Decree 153/2004/ND-CP, on the organization and management of State General Corporations and conversion of State General Corporations and independent State company under the model of Holding Companies.

Telecoms

- On July 08, 2004 the Government issued Decree 142/2004/ND-CP, dealing with administrative violations in the field of post, telecommunication and electronic wireless frequency.

Environment

- Government's Decree 143/2004/ND-CP dated July 12, 2004, on the amendment of and supplementation to Article 14 of Government's Decree 175/CP dated October 18, 1994, guiding the implementation of the Law on Environmental Protection.

Miscellaneous

- Law No. 22/2004/QH11 dated June 15, 2004 of the National Assembly on Inspection.
- The Ministry of Planning and Investment issued Circular 03/2004/TT-BKH on June 29, 2004, guiding the formalities and procedures for business registration in accordance with the Regulation of Government's Decree 109/2004/ND-CP dated April 02, 2004, on business registration.
- On August 10, 2004 the Prime Minister issued Decision 143/2004/QĐ-TTg, on the approval of Assistant Program on Training of Human resources for Small and Medium Enterprises for the period of 2004-2008.

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