

Rödl & Partner

CLIENT ALERT VIETNAM

MANAGING CHANGE

Issue:
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→ Law on foreign trade management

New regulations on state management of foreign trade activities

The National Assembly of Vietnam on 12 June 2017 adopted the Law on Foreign Trade Management No. 05/2017/QH14 (the “Law”) which has entered into force since 1st January 2018. The Law provided the amendment, supplementation and abolishment of number of articles under current Commercial Law of Vietnam.

The Law prescribes new regulations on State management measures for foreign trade activities, measures for development of foreign trade activities as well as solutions for dealing

with disputes in relation to the imposition of measures for the foreign trade management in line with the country’s international commitments under international treaties to which Vietnam is a signatory.

In this edition, we would like to summarize the key issues provided under the Law, especially the issues which may affect to doing business of foreign traders and foreign investment enterprises (“FIEs”) in Vietnam.

→ Law on foreign trade management

Key issue

FOREIGN TRADE ACTIVITIES

Foreign trade activities as defined by the Law comprise international goods trading activities in the forms of export, import, temporary importation, temporary exportation, merchanting trade, transit and other activities related to international goods trading activities in accordance with regulations of Vietnam law and international treaties to which Vietnam is a signatory.

Last time we have provided an important edition on goods trading activities and activities directly related to goods trading of foreign investors and FIEs in Vietnam which are detailed under Decree 09/2018/ND-CP dated 15 January 2018 (“Decree 09”). For more information, please refer to our newsletters of June 2018.

FREEDOM TO EXPORT AND IMPORT

Under the Law and its guidance legislations, it is explicitly provided that:

- Vietnamese traders not being FIEs shall freely carry out the export, import and other business activities without any dependence on its registered business lines, except for the goods listed under the lists of goods banned for export and import and the lists of goods suspended for export and import, and with subject to satisfaction of certain conditions of related licenses in terms of exporting or importing goods required such licenses. Branches of Vietnamese traders shall conduct foreign trade activities pursuant to authorization of such traders.
- FIEs and branches of foreign traders in Vietnam shall conduct their rights to exercise of export and import in accordance with the relevant regulations under the Law and in line with international treaties to which Vietnam is a member, subject to the List of goods and road map laid down by the Ministry of Industry and Trade and comply with relevant law provisions as well. Such rights to exercise of export and import of

FIEs and foreign investors are detailed under Decree 09.

- Foreign traders without presence in Vietnam shall have the right to export, import in accordance with Vietnam laws and international treaties to which Vietnam is a member.

FOREIGN TRADE MANAGEMENT BY ADMINISTRATIVE MEASURES

The Law regulates administrative measures for management of foreign trade activities under this Section, including:

- prohibition on export, import;
- suspension of export, import;
- restriction on export, import;
- tariff rate quotas;
- appointment of border gate checkpoints for export and import;
- appointment of exporters and importers;
- management of foreign trade via licenses and conditions for export and import;
- certificate of origins of products;
- certificate of free sales;
- temporary import, re-export, temporary export, re-import, merchanting trade;
- goods in transit;
- purchasing agents of foreign traders;
- entrustment of export and import;
- processing of products of foreign traders and outsourcing of overseas processing or products;
- management of foreign trade with neighboring countries;
- management of products of customs-controlled areas;

The highlighted issues under these administrative measures which explicitly affect to the rights of FIEs are as summarized:

- Temporary import, re-export: FIEs are not allowed to do business on temporary import, re-export and shall only carry out the temporary import, re-export of goods as specifically prescribed under the Law.
- Merchanting trade: FIEs are not allowed to do business on merchanting trade.

FOREIGN TRADE MANAGEMENT BY TECHNICAL AND QUARANTINE MEASURES

This foreign trade management measure of technical and quarantine aims to satisfaction the

requirements on quality of goods; protection and safety of human health; protection of animals, plants, ecological environment and biodiversity; prevention of epidemics and ensure of national security and interests.

Such foreign trade management measure of technical and quarantine shall be applied based on the principles of:

- transparency, undiscrimination, and avoidance of creating unnecessary barriers to foreign trade activities, especially to exports;
- application of measures for risk management within the allowable conditions and in accordance with the management requirements and international treaties to which Vietnam is a signatory;
- ensure other principles in accordance with regulations of law on the quality of products, products, technical standards and regulations, food safety, measurements, plant phytosanitary and protection, veterinary medicine and prevention of infections.

FOREIGN TRADE MANAGEMENT BY TRADE REMEDIES

The Law stipulates the State management of foreign trade activities by trade remedies comprising: (i) anti-dumping measure, (ii) countervailing measure, and (iii) safeguard measure imposed on goods imports into Vietnam by Minister of Industry and Trade in each specific case. The application of these trade remedies shall be based on the principles of within reasonable scope and level for a certain period of time to protect domestic industry, to prevent or limit the injury to domestic production with transparency, equality complying to the law provisions and investigation results.

(i) Anti-dumping measure: the measure of anti-dumping includes imposing of anti-dumping taxation, undertaking on implementation measures for removing dumping. Nevertheless, this trade remedy measure shall only be applied in case concurrently satisfying all these conditions of:

- goods imported into Vietnam are dumped with specific dumping margin, except for the case of a product with dumping margin is not more than per cent of its export price; and
- material injury or threat of material injury to the domestic industry or material retardation

of establishment of the domestic industry;
and

- existence of a causal link between the dumping on imports and injury to the domestic industry prescribed under this Point (i).

In addition, there are some regulations on cases of exemption from anti-dumping measures prescribed under the Law.

(ii) Countervailing measure: this countervailing measure shall be imposed in case subsidized goods imported into Vietnam causing or threat of material injury to domestic industry or retardation of establishment of domestic industry. Nevertheless, such countervailing measure shall only applied in case concurrently satisfying all these conditions of:

- Goods are subsidized under the forms as specifically prescribed under the Law and with certain subsidization rate, except for the cases of producers or exporters of a developed country with subsidization rate being not more than 1 per cent of the price of products exported to Vietnam, producers or exporters of a developing country with subsidization rate being not more than 2 per cent of the export price and producers or exporter of a less-developed country with subsidization rate being not more than 3 per cent of the export price; and
- material injury or threat of material injury to the domestic industry or the material retardation of establishment of the domestic industry; and
- existence of a causal link between the import of subsidized products and the injury to the domestic industry prescribed in this Point (ii).

In addition, there are some regulations on cases of exemption from countervailing measures prescribed under the Law.

(iii) Safeguard measure: the safeguard measure on foreign goods imported into Vietnam shall be imposed on increased imports of particular goods into Vietnam which cause or threat of serious material injury to domestic industry. Such safeguard measure include imposing of safeguard duties, import quotas, tariff-rate quotas, import licenses and other safeguard measures. Nevertheless, such safeguard measure shall be only applied in case satisfying concurrently all these conditions of:

- an absolute increase or a relative increase in imports compared with domestic production of similar products; and
- a serious injury or threat of serious injury to the domestic industry; and
- the increased production of imports as prescribed right above is the major cause of the serious injury or threat of serious injury to the domestic industry.

In addition, there are regulations on cases of exemption from countervailing measures prescribed under the Law.

FOREIGN TRADE MANAGEMENT BY URGENT CONTROL IN FOREIGN TRADE ACTIVITIES

The foreign trade management measure under this Section shall mainly apply to goods from the countries, territories, geographic areas suffered from war, riot, risk of arm conflicts, natural disaster, epidemic, environmental incidents or technical incidents ...

MEASURES FOR DEVELOPMENT OF FOREIGN TRADE ACTIVITIES

The Vietnam Government, by promulgated the Law, provides its policies on development of foreign trade activities. Such policies comprise the policies on development of foreign trade activities related to domestic products obtaining the competitive advantages, technological products and input materials serving the domestic production. In addition, such policies also comprise the policies on encouraging small and medium-sized enterprises and enterprises in mountainous regions, border regions, islands, remote and isolated regions, ethnic minority regions and regions whose socio-economic conditions are difficult or especially difficult to engage in foreign trade activities.

Moreover, the development of foreign trade is also via activities of foreign trade promotion organizations in Vietnam where it allows foreign trade organizations to establish their representation offices in Vietnam under certain conditions for carry out the activities in relation to trade promotion, development of foreign trade activities.

Conclusion

It is expected that after the Law entered into force, its regulations may reduce the application of sublicenses in relation to foreign trade activities as well as help boost the development of foreign trade activities in Vietnam.

Rödl & Partner Vietnam accompanies clients of all kinds in their business activities in Vietnam.

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