

## LEGAL UPDATE (November 8<sup>th</sup> , 2021)

In this issue, we would like to bring to your attention to the following:

- New regulations on petrol and oil trading in Decree 95/2021/ND-CP.
- Guidance on investigation and application of anti-dumping, anti-subsidy and bilateral safeguard measures to implement the Free Trade Agreement between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland.

### 1. New regulations on petrol and oil trading in Decree 95/2021/ND-CP

On November 1<sup>st</sup>, 2021, the Government enacted Decree No. 95/2021/ND-CP (hereinafter referred to as “**Decree 95**”), amending and supplementing several articles of Decree 83/2014/ND-CP on petrol and oil trading. Accordingly, some notable features of Decree 95 can be mentioned as follows:

#### a. Additional subjects having the right to determine the wholesale price of petrol and oil

Decree 95/2021/ND-CP has added that the subject who has the right to decide on the wholesale price is the distributor of petrol and oil. However, whenever increasing or decreasing the selling price of petrol and oil, these subjects must follow the general principle of petrol and oil price management that the selling price is made according to the market mechanism, under the management of the Government.

Based on the present condition of the enterprise, the trader and the distributor of petrol and oil shall decide on the retail price of petrol and oil (mazut oil is the wholesale price in particular) in their distribution system following the provisions of the law. Also, the price must be consistent with the actual costs incurred at the enterprise and not higher than the operating price announced by the competent state authority.

For areas that are far from ports, warehouses, petrol and oil production facilities, there are reasonable and valid (within the expenses audited) having actual expenses incurred lead to higher selling prices than operating price, the traders can decide the exact selling price in that area (notified to the Ministry of Industry and Trade) to comprise the incurred expenses but not exceed 2% of the operating price announced at the same time. The traders and distributors of petrol and oil are responsible for notifying the selling price to the Ministry of Industry and Trade

and the Ministry of Finance right after deciding the enterprise's petrol and oil selling price.

If the price of petroleum products has abnormal fluctuations, significantly affecting socio-economic development and people's lives, the Ministry of Industry and Trade is responsible for reporting to the Prime Minister for consideration and appropriate time management of petrol prices.

**b. Suspending of the sale in the event of force majeure**

Previously, according to the provisions of Decree 83/2014/ND-CP, petrol and oil traders for petrol and oil retail stores only suspended selling after they were approved in writing by the Department of Industry and Trade. It means that petrol traders who suspend selling petrol and oil at retail stores need to be approved by the Department of Industry and Trade in all circumstances.

However, Decree 95/2021/ND-CP has added a case allowing petrol and oil traders for petrol and oil retail stores to suspend selling without being approved by the Department of Industry and Trade in the event of force majeure.

**c. Regulatory period for petrol and oil prices**

Regarding Decree 95, the time to operate the petrol prices on the 1st, 11th and 21st of every month. For the operating periods that coincide with a holiday or public holiday according to the regulations of the State, the operating time shall be postponed to the next working day after the holiday or public holiday. For the operating period that coincides with the Lunar New Year, the operating time is postponed to the following operating period.

Decree 95/2021/ND-CP takes effect from January 2<sup>nd</sup>, 2022.

**2. Guidance on investigation and application of anti-dumping, anti-subsidy and bilateral safeguard measures to implement the Free Trade Agreement between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland**

On October 29<sup>th</sup>, 2021, the Minister of Industry and Trade issued Circular 14/2021/TT-BCT (hereinafter referred to as "Circular 14") guiding the implementation of the Free Trade Agreement between the Republic of Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland on Trade Remedies (UKVFTA). Some notable points of Circular 14 are as follows:

**a. Note on the scope of regulation of Circular 14**

According to the guidance, the scope of Circular 14 is to deal with issues related to the investigation, application of anti-dumping measures, anti-subsidy measures and bilateral safeguard measures for the implementation of the Trade Agreement between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland.

At the same time, these provisions also apply to imported goods originating from the United Kingdom of Great Britain and Northern Ireland under the Free Trade Agreement between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland.

**b. Lower tax rate rule in Anti-Dumping and Anti-subsidy**

The anti-dumping or countervailing tax cannot be higher than the dumping margin or the level of subsidy.

Based on the investigation authorities' conclusion, the Ministry of Industry and Trade will consider applying an anti-dumping and anti-subsidy tax rate lower than the dumping margin or the subsidy level if this lower tax rate is enough to eliminate damage to the domestic industry.

**c. Principles of applying bilateral safeguard measures**

At the same time, the bilateral safeguard measure and the safeguard measure specified in Article XIX of the General Agreement on Trade and Tariffs 1994 shall not be applied to the same imported goods enjoying preferential treatment tariffs under the UKVFTA Agreement.

A bilateral safeguard measure may not be applied beyond the transition period, except in the case of agreement with the United Kingdom of Great Britain and Northern Ireland.

**d. The time limit for investigation and application of bilateral safeguard measures**

The time limit for investigation and application of bilateral safeguard measures is 01 year from the date of the investigation decision being announced.

The time limit for the application of bilateral safeguard measures must not exceed 02 years. If the investigating authority concludes that it is necessary to continue to apply a bilateral safeguard measure to prevent or remedy serious damage and

facilitate the adjustment of the domestic industry, the application period may be extended for up to 02 years.

If the duration of application of a bilateral safeguard measure is longer than 02 years, the bilateral safeguard measure must be gradually reduced in magnitude throughout the application process.

Circular 14 takes effect from December 15<sup>th</sup>, 2021

We hope this Monthly Newsletter would bring you useful information.

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