



LAC DUY & ASSOCIATES

NEWSLETTER

04/2021



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RECOGNITION AND ENFORCEMENT
OF FOREIGN ARBITRATION
JUDGMENTS IN VIETNAM**

**SIMULTANEOUSLY IMPOSE ANTI-
DUMPING AND COUNTERVAILING
DUTIES ON THAILAND SUGAR
CANE: RISK OF DOUBLE REMEDIES?**

PUBLISHED BY LAC DUY & ASSOCIATES

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Dear Clients,

Lac Duy & Associates would like to send you the newsletter of April 2021 with some outstanding new point and article as:

- Updating of judgments on recognition and enforcement of foreign arbitration judgments In Vietnam
- Case law no. 40/2021/al regarding the recognition for actual convert of land use rights;
- Case law no. 41/2021/al regarding termination of actual marriage;
- Case law no. 42/2021/al regarding the right to choose a dispute settlement court of consumer in case a model contract has an arbitration agreement;
- Case law no. 43/2021/al regarding the validity of mortgage contract when the mortgaged property is real estate and land which the mortgagor accepted for the transfer but has not yet paid in full to the seller;
- Simultaneously impose anti-dumping and countervailing duties on thailand sugar cane: risk of double remedies?;



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UPDATING OF JUDGMENTS ON RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRATION JUDGMENTS IN VIETNAM

On 1 April, 2021, at the Conference on International Commercial Arbitration and the Court organized by the Center for International Commercial Arbitration of the Washington College of Law Faculty of American University Law, Washington, U.S., Dr. Le Nguyet – Partner of Lac Duy & Associates, Member of the Scientific Council of the Vietnam International Arbitration Center VIAC, reported a judgment 01/2019/KDTM-ST on 12 July, 2019 by the People's Court of TN province for non-recognizing and enforcing the judgment of the Thailand Arbitration Institution (“TAI”), Accordingly, one of the reasons on which the Court refused to recognize and enforce the TAI’s award as the contract had been signed inconsistent with the procedures (the contract was not stamped by the legal representative). The application of Thailand law to conclude that the contract does not need to be stamped with new legal effect is contrary to the basic principles of Vietnamese law.

As for the lesson learnt, Dr. Le Nguyet reminded that the signing of the contract and, even, dispute resolution is an extremely complex process, which takes a lot of time and efforts. When foreign arbitration rulings are not recognized and enforced in Vietnam for a small reason related to the signing and stamping, the damage to the enterprise will be enormous. Therefore, enterprises need to carefully check signatures and seals because in resolving disputes by arbitration, signing, stamping is the procedure and usually only serious procedure violations are not recognized and/or annulled arbitration judgment only.


Recent Court Cases on International Commercial Arbitration
Developments in Australia, China, the Philippines, and Vietnam

Event of the Alumni of the AUWCL Center on International Commercial Arbitration
Date: Thursday, April 1, 2021

Time:
8 a.m. EST (Time in Washington, D.C.); 11 PM Australia; 9 PM Philippines and China; 6 7 PM in Vietnam.

The event is online through Zoom (webinar), and will be recorded.

Registration:
The event is free of charge, but registration required.
<https://www.aucan.ac.edu/auwcl-center-on-international-commercial-arbitration/2021-04-01-08-00-04>




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Recently, the Supreme Court has issued Decision No. 42/QĐ-CA on the announcement of the case law. This decision shall enter into force as of March 12, 2021. According to the Supreme Court, the People's Court and the Military Court at all levels are responsible for studying and applying the case law in adjudication from April 15, 2021. The following content will analyze in detail these cases and provide extended legal situations and solutions so that readers can refer to and effectively apply legal cases in judicial practice.

CASE LAW NO. 40/2021/AL REGARDING THE RECOGNITION FOR ACTUAL CONVERT OF LAND USE RIGHTS

Source of case law: According to the cassation decision No. 37/2019/ĐS-GĐT dated June 28, 2019 of the Committee of Judges of the Supreme Court in Hanoi on the civil case "Property inheritance dispute" in Thanh Hoa province between the plaintiffs are Mr. Le Van C1, Le Van C2, Ms. Le Thi M and the defendants are Mr. Le Van D1, Ms. Nguyen Thi T2; persons with related interests and obligations are the People's Committee of town B and Ms. Lai Thi H.





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Location of case law content: Paragraphs 8, 9 of the section “Judgment of the Court”.

The content’s outline of the case law:

- **Case law:** The parties actual convert of land use rights, without a written agreement; The parties have used the land stably, for a long time, without any disputes, have registered, have declared, and been granted a land use right certificate for the converted land.
- **Legal solution:** In this case, the conversion of land use rights in fact must be recognized; the parties have the right to use the converted land.

Legal provisions related to case law:

- Clause 2, Article 3 of the Land Law 1993 (corresponding to Clause 1, Article 106 of the Land Law 2003; Clause 1, Article 167 of the Land Law 2013);
- Clause 2 Article 170 of the Civil Code 2005 (corresponding to Clause 2, Article 221 of the Civil Code 2015).

Keywords of case law: "Actual convert of land use rights"; "Using land for a stable and long term"; "Is the land use right certificate granted"; "Recognizing the actual convert of land use rights".

Case analysis:

According to the content of the case, the allocation of land to farmer households in commune T complies with the State's policy and is publicly documented. When the People's Committee of commune T and the People's Committee of town B implement the policy of allocating land and issuing land use right certificates to 716 farmer households of commune T, including householder U and household of Ms. T2, Both U and K are still alive but do not have an application, do not declare for the disputed land, the two only declare the land No. 325 (the land exchanged for Mr. D1, Ms. T2 as per their declaration) and they have been granted a land use right certificate for this land, and Ms. T2's household has been granted a land use right certificate for the land No. 986a (which is the disputed land No. 986). On the other hand, after Ms. T2's household was granted the certificate of land use right to the disputed land, no one had complained; It was only in 2008 when Mr. U and Mrs. K died that the dispute occurred between their children. Therefore, there is a basis to determine that Mr. U and Mr. K did exchange land for Ms. T2, Mr. D1.



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In fact, the parties converting the land use rights do not have a written agreement but the parties have used the land stably, long-term, without disputes, registered, declared and granted the right certificate land use for the converted land.

The provisions of Clause 2, Article 3 of the Land Law 1993 (corresponding to Clause 1, Article 106 of the Land Law 2003; Clause 1, Article 167 of the Land Law 2013), stipulates that the land users can do their rights: convert, transfer, lease, sublease, inherit, donate, mortgage, contribute land use rights as capital. Besides, in Clause 2, Article 170 of the Civil Code 2005 (corresponding to Clause 2, Article 221 of the Civil Code 2015), there are also provisions on the basis of establishing ownership rights over property in case of convert ownership under an agreement or a decision of a competent state agency.

The Court of First Instance said that according to map 299 in 1985, Mr. K and Mr. U were the disputed land user, so the disputed land was the legacy of Mr. U, Mr. K, and had divided the inheritance of K's land is not right.

Thus, in this case, the actual conversion of land use rights must be recognized; the parties have the right to use the land for the converted land.



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CASE LAW NO. 41/2021/AL REGARDING TERMINATION OF ACTUAL MARRIAGE

Source of case law: Appellate civil judgment No. 48/2010/DSPT dated July 29, 2010, of the Appellate Court of the Supreme Court in Da Nang on the case of "Dispute division of inheritance and division of common property" in Kon Tum between the plaintiff is Ms. Tran Thi Trong P1 and the defendants are Mr. Tran Trong P2 and Mr. Tran Trong P3; the person with related interests and obligations includes 06 people.

Location of case law content: Paragraphs 3, 4 of the section "Judgment of the Court".

Outline of the content of the case law:

- **Case law:** Men and women live together as husband and wife, they do not register their marriage but then they do not live together and before the 1986 the Marriage and Family Law came into effect, there was someone living together as husband and wife with other people. Marriage first and second marriage is both actual marriages.
- **Legal solution:** In this case, we shall determine the actual first marriage ended.

Legal provisions related to case law:

- Article 676 of the Civil Code 2005 (corresponding to Article 651 of the Civil Code 2015);
- Resolution No. 35/2000/QH10 dated June 9, 2000, of the National Assembly on the implementation of the Law on Marriage and Family 2000;
- Resolution No. 02/2000/NQ-HDTP dated December 23, 2000, of the Council of Judges of the Supreme People's Court guiding the application of a number of provisions of the Law on Marriage and Family 2000.

Keywords of case law: "Actual marriage"; "Termination of actual marriage".

Case analysis:

According to point a Clause 1, Article 676 of the Civil Code 2005 ("Civil Code 2005") (corresponding to Article 651 of the Civil Code 2015) ("Civil Code 2015"), the wife is classified as the first inheritance when considering the legal inheritance. It seems that such a rule is clear enough, but, in fact, there are still husband-wife relationships arising based on the relationship "actual marriage", so determining whether this marriage relationship still exists or not, whether the parties are still spouses or not is a difficult issue in judicial practice.



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According to the case law, in 1969, Mr. T1 started living with Mrs. T2 and had 2 children together, P2 and P3. Since 1982, Mrs. T2 moved to Ba Ria - Vung Tau to live with Mr. D and had 03 children together. About Mr. T1, since 1985, he lived with Mrs. S and had a child together, P1. In 2003, Mr. T1 died without a will. Therefore, on October 8, 2004, Ms. P1 filed a lawsuit for the division of the inheritance of Mr. T1's estate. In this case, the people with related interests and obligations are 6 people, including Mrs. T2 (who lived with Mr. T1 from 1969 to 1982). The legal issue raised in this case is whether the marriage relationship between Mr. T1 and Mrs. T2 has ended or not? In other words, is Mrs. T2 considered as the wife of Mr. T1 to become one of the heirs according to the provisions of Point a, Clause 1, Article 676 of the Civil Code 2005 (corresponding to Point a, Clause 1, Article 651 of the Civil Code 2015)? are not?

For this case, first of all, the Court has determined that the marital relationship between Mr. T1 and Mrs. T2, Mr. T1 and Mrs. S, are both actual marriage relationships. According to Point a Clause 3 of the National Assembly's Resolution No. 35/2000/QH10 of June 9, 2000, on the implementation of the Law on Marriage and Family 2000 ("Resolution 35/2000/QH10"), if the wife and husbands relationship was established before January 3, 1987 (the effective date of the Law on Marriage and Family 1986), but has not yet been registered, they are encouraged to register for marriage; in case of a divorce request, it shall be accepted and settled by the Court in accordance with the divorce provisions of the Law on Marriage and Family 2000. That means, a husband and wife relationship was established before 03/01/1987, the marriage registration was encouraged by the State; however, if the marriage is not registered, this relationship is still recognized by law as an actual marriage relationship. According to this provision, the husband and wife relationship between Mrs. T2 and Mr. T1 was established in 1969 – before January 3, 1987, and this is the actual marriage relationship. Similarly, the relationship between Mr. T1 and Mrs. S since 1985 is also an actual marriage.

Then, in fact, since 1982, Mrs. T2 has not been Mr. T1's wife. Pursuant to Point c1, Clause 1, Resolution No. 02/2000/NQ-HDTP dated December 23, 2000, of the Council of Judges of the Supreme People's Court on guiding the application of a number of provisions of the Law on Marriage and Family 2000 ("Resolution 02/2000/NQ-HDTP"), "married person is someone who lives with others like husband and wife before January 3, 1987, and living together as a wife and husband without marriage registration". Considering that Mr. T1 and Mrs. T2 have not been living together since 1982. And since 1985, Mr. T1 and Mrs. S lived together until Mr. T1 died. Thus, it is determined that since 1985, Mr. T1 is the husband of Mrs. S and that Mrs. S is the wife of Mr. T1. For that reason, the Court



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judged that the actual marriage relationship between Mrs. T2 and Mr. T1 has ended. Mrs. T2 is no longer the wife of Mr. T1. This is consistent with the spirit of Resolution 02/2000/NQ-HDTP. Therefore, Mrs. T2 is not entitled to inherit under the law as provided for at Point a Clause 1, Article 676 of the Civil Code 2005 (corresponding to Point a, Clause 1, Article 651 of the Civil Code 2015). With the case being analyzed, from 1982, both Mrs. T2 and Mr. T1 lived together and had children with others. The actual marital relationship between two people is, therefore, determined to have ended. Expanding that only one of the two people, the spouse left, lived with another person before January 3, 1987, and did not return, this situation can also be considered the first actual marriage ended. Therefore, it is possible to form the following legal situation and legal solution: **“Men and women live together as husband and wife, do not register their marriage but then they no longer live together and before the Law on Marriage and Family 1986 took effect, with someone living together as husband and wife with other people. Thus, the first marriage relationship and the second marriage relationship are both actual and in this case, it must be determined that the first real marriage ended”**.





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CASE LAW NO. 42/2021/AL REGARDING THE RIGHT TO CHOOSE A DISPUTE SETTLEMENT COURT OF CONSUMER IN CASE A MODEL CONTRACT HAS AN ARBITRATION AGREEMENT

Source of case law: First instance judgement No. 54/2018/DS-ST dated November 16, 2018, of the People's Court of Nha Trang City, Khanh Hoa Province on the civil case of "Service contract dispute" between the defendants are Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S with the defendant is V Tourist Co. Ltd.

Location of case content: Paragraph 9 of the section "Judgment of the Court"

Outline of the content of the case law:

- **Case law:** In the model contract signed with the consumer, there is a clause to select foreign arbitration to resolve the dispute. When there is a dispute, the consumer files a lawsuit in Vietnam Court.
- **Legal solution:** In this case, it is necessary to determine that consumers do not choose arbitration and have the right to choose a Vietnamese court to settle in accordance with Article 38 of the Protection of Consumers' Rights Law 2010, Article 17 of Commercial Arbitration Law 2010 and guidance in Clause 5 Article 4 of Resolution No. 01/2014/NQ-HDTP.

Legal provisions related to the legal case:

- Article 38 of the Protection of Consumers' Rights Law 2010;
- Article 17 of the Commercial Arbitration Law 2010;
- Clause 3 Article 26, Clause 1 Article 35 of the Civil Procedure Code 2015;
- Clause 5 Article 4 of Resolution No. 01/2014/NQ-HDTP dated March 20, 2014 of the Council of Judges of the Supreme People's Court guiding the implementation of a number of provisions of the Law on Commercial Arbitration.

Keywords of case law: "Contract according to the form of agreement on selection of foreign arbitration"; "Consumers"; "Choice of Vietnamese Court".

According to case law No. 42/2021/AL, dated February 26, 2017, Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S signed vacation ownership contract number PBRC-S-064621 with V Tourist Co., Ltd. In Article 12.3 of the Vacation Ownership Contract, the parties agree to choose the agency and



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method of dispute settlement which is the Singapore International Arbitration Center (SIAC) according to SIAC's arbitration rules and took effect at the time of dispute resolution.

Then, on April 26, 2017, Ms. Nguyen Thi Long T, Mr. Nguyen Hoang S carefully reviewed the signed contract and found that the terms of the contract were unreasonable, so they actively proposed to terminate the contract. contract, but not accepted by V Tourist Co., Ltd. Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S sued at the Court with the content: Request the Court to declare the vacation ownership contract number PBRC-S-064621 dated 26/02/2017 invalid and refund for Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S the paid amount is VND 300,488,000.

One of the legal issues raised in this case is that the vacation ownership contract is a type of pre-written contract made by the service provider, stipulating the arbitration agreement, the plaintiff signing the contract. It means this arbitration agreement is also in effect. So, when there is a dispute, the plaintiff sued at the Court and whether Court will resolve or refuse this case?

For this case, first of all, it is necessary to determine what is the disputing legal relationship between the two parties. The Court based on Article 513 of the Civil Code 2015, and Article 14 of the Protection of Consumers' Rights Law 2010 to determine the vacation ownership contract between Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S signed with V Tourist Co., Ltd is a service contract, dispute legal relation between Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S and V Tourist Co., Ltd is a dispute of service contract. That means V Tourist Co., Ltd is the service provider and Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S are consumers.

However, Article 17 of the Law on Commercial Arbitration and guidance in Clause 5, Article 4 of the Resolution No. 01/2014/NQ-HDTP dated March 20, 2014, of the Council of Judges of the Supreme People's Court stipulates the unenforceable arbitration agreement: "The goods/service seller and consumers have an overall agreement on provision of goods/services that contain arbitration terms drafted by the seller as prescribed in Article 17 of LCA, but the consumers refuse to have the dispute that arises resolved by an arbitral tribunal".



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Therefore, vacation ownership contract No. PBRC-S-064621 is a type of pre-written contract given by the service provider, pre-drafted by the arbitration agreement, now the plaintiff is the consumer who disagrees to choose the arbitration and requests the People's Court of Nha Trang City to resolve, is consistent with Article 38 of the Law on the Protection of Consumers' Rights 2010, Article 17 of the 2010 Law on Commercial Arbitration and guidance in Clause 5, Article 4 of Resolution No. 01/2014/NQ-HDTP dated March 20, 2014, of the Council of Judges of the Supreme People's Court. Thus, the Nha Trang City People's Court accepts and resolves disputes, which is within the right authority according to Clause 3 Article 26, Clause 1 Article 35 of the Civil Procedure Code 2015 and is still within the statutory limitations as per Article 429 of the Civil Procedure Code 2015, Article 184 Civil Procedure Code 2015.



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CASE LAW NO. 43/2021/AL REGARDING THE VALIDITY OF MORTGAGE CONTRACT WHEN THE MORTGAGED PROPERTY IS REAL ESTATE AND LAND WHICH THE MORTGAGOR ACCEPTED FOR THE TRANSFER BUT HAS NOT YET PAID IN FULL TO THE SELLER

Source of case law: Cassation Decision No. 01/2019/KDTM-GdT dated January 11, 2019 of the Judicial Council of the Supreme People's Court on the commercial business case "Credit contract dispute" at Ho Chi Minh City between the plaintiff is Bank A and the defendant is Ms. Nguyen Thi L; the people with related rights and obligations are Ms. Pham Thi Kim H, Mr. Duong Quoc K.

Location of case law content: Section 2 of "Judgment of the Court".

Overview of legal case contents:

- **Legal case:** The contract for the transfer of the house ownership and the right to use residential land which has been notarized, the buyer has been issued a certificate of house ownership and the right to use residential land but can only pay a part of the money to buy real estate; the parties have not yet implemented the house handover. The buyer mortgages the real estate and land to the Bank, has registered the mortgage in accordance with the provisions of law; The seller knows and agrees to let the buyer mortgage the house and land, but then requests to cancel the contract of transfer of homeownership and the right to use residential land.

- **Legal solution:** In this case, it is necessary to determine that the mortgage contract has legal validity, not to accept the request to cancel the transfer contract of ownership of the house and the right to use residential land.

Legal provisions related to the legal case:

- Articles 168, 323, 342, 425, 438, 689 of the Civil Code 2005 (corresponding to articles 161, 298, 318, 423, 440, 502 of the Civil Code 2015); Articles 439, 692 of the Civil Code 2005;

- Article 10 of Decree No. 163/2006/ND-CP dated December 29, 2006, of the Government on secured transactions.

Keywords of case law: "Transfer contract of homeownership and right to use residential land"; "Issuance of certificates of homeownership and right to use residential land"; "Haven't paid all the money to buy a house and land"; "Cancellation of the transfer of homeownership and the right to use residential land"; "Mortgage contracts"; "Mortgage registration".



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Case analysis:

This case law brings out the difficulty in settling disputes of the transfer of house ownership and land use rights when both parties have their own plausible reasons. So this case is one of the solutions if there is a repeat in the future.

In the content of the case, the Bank gave Ms. Nguyen Thi L - Owner of Nguyen Tan D commercial and service private enterprise a total loan of 8,000,000,000 VND under credit contract No. 6360-LAV-200900957 dated December 4, 2009, the contract appendix amending the credit contract No. 01/PL/BS/HDTD dated December 4, 2009, and 02 debt acknowledgment papers (on December 4, 2009, the loan amount is 7,750,000,000 VND, dated December 4, 2009 loan amount: 250,000,000 VND) with the interest rate of 12%/year, the overdue interest rate of 150% of the interest rate within the term, the loan term is 12 months. After that, the two sides signed the credit contract annex No. 6360-LAV-200900957/PLHD dated December 15, 2010, agreed to adjust the loan interest rate within a term of 16%/year. The collateral for the above loan includes:

- Right to use 298.3m² of land and houses on land plot No. 7, map sheet No. 93 at No. 26D, Ward Q, District P, Ho Chi Minh City according to house ownership and use right certificate residential land No. 7332/2008/UB.GCN issued by the People's Committee of District P, Ho Chi Minh City on November 7, 2008, to Ms. L.
- The right to use 113.16m² of land and housing on the land plot No. 82, MPT 79, map sheet No. 89 located at 20/2T, Ward Q, District P, Ho Chi Minh City according to the title certificate house ownership and residential land use right No. 7331/2008/UB.GCN issued by the People's Committee of District P, Ho Chi Minh City on November 7, 2008, to Ms. L.

Ms. L pledged the assets under the notarized contract of mortgage No. 6360-LCP-2009-00949 dated December 1, 2009, and registered the collateral in accordance with the law. The bank disbursed Ms. L with the total amount of VND 8,000,000,000. During the contract performance, Ms. L did not pay in full, when the due date, Ms. L only paid interest within the due date on May 12, 2010, so the Bank transferred overdue debts to the credit contract and its appendixes. The Bank files a lawsuit to require



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Ms. L to pay the outstanding amount as of December 7, 2012, of VND 14,780,416,666, of which the principal is VND 8,000,000,000, the overdue interest is VND 2,879,083,333, overdue interest 3,901,333,333 VND. If Ms. L cannot pay the debt, she will be request to dispose of the collateral to recover the debt.

On November 3, 2008, Mr. Duong Quoc K and Ms. Pham Thi Kim H had an agreement to sell Ms. L two houses at No. 26D and No. 20/2T for VND 5,500,000,000; Ms. L has paid 3,000,000,000 VND, she still owes 2,500,000,000 VND by appointment on November 3, 2009 will pay enough to receive the house. Ms. L asked her grandparents to notarize Ms. L in the name of the real estate so that Ms. L can mortgage the bank. After getting money from the bank, Ms. L cannot pay them enough. Later, they knew that the Bank had lent Ms. L an amount exceeding the State's regulations. Currently, they are still managing and using these two houses, they requested to take back the house and return to Mrs. L 3,000,000,000 VND which they received before.

Business and commercial appellate judgment No. 171/2013/KDTM-PT dated October 10, 2013, of the Court of Appeal of the Supreme People's Court in Ho Chi Minh City, decides to amend the first instance judgment as follows:

- The mortgage contract of assets No. 6360-LCP-2009-00949 between Bank A - Branch B and Ms. Nguyen Thi L - The owner of Nguyen Tan D, a commercial and service private enterprise, for house No. 26, will be invalidated. Ward Q, District P, City. Ho Chi Minh City and house number 20/2T, Ward Q, District P, City. Ho Chi Minh was signed and notarized on December 1, 2009. Bank A (Bank A branch of district B) must pay 02 certificates of house ownership and land use right number 7332/2008/UB.GCN dated November 7, 2008, and No. 7331/2008/UB. GCN dated November 7, 2008, by the People's Committee of District P issued to Ms. Nguyen Thi L.



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However, at the Court of Cassation, the Chief Justice of the Supreme People's Court commented as follows on the handling of collateral: According to documents in the case file, the collateral is determined to be real estate. At No. 26D and 20/2T above are from Ms. L receiving the transfer from Mr. Duong Quoc K, Ms. Pham Thi Kim H under the notarized transfer of house ownership and land use rights on November 4, 2008. On November 7, 2008, Ms. L was granted a certificate of homeownership and the right to use residential land. Thus, **the two houses above belong to the ownership of Ms. L from November 7, 2008, so Ms. L has the right to use these two houses as collateral for the Bank to borrow money; Mr. K and Ms. H also know and agree to let Ms. L mortgage the above property with the Bank. The notarized mortgage contract, the mortgage registration, and the legal security transaction registration should have legal effect. Mr. K and Ms. H believe that Ms. L has not fully paid for the house and land, still owes 2,500,000,000 VND to request the cancellation of the house purchase contract, and return 3,000,000,000 VND received to Ms. L is unfounded.** If Ms. L does not pay the full amount of the property, Mr. K and Ms. H have the right to initiate another lawsuit asking Ms. L to pay this amount. Therefore, the Court of First Instance decided that Bank A is entitled to request the sale of the assets mentioned above by



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Ms. L to recover the debt when Ms. L fails to pay or pay in full within a period of 6. month from the date the judgment takes legal effect is well-grounded and lawful. The appellate court declared invalid property mortgage contract No. 6360-LCP-2009-00949 between the Bank and Ms. L for house No. 26D and house No. 20/2T, Ward Q, District P, Ho Chi Minh City date December 1, 2009, is incorrect, affecting the legitimate rights and interests of the plaintiff. Therefore, the Court decided to keep the Business and commercial first instance Judgment No. 287/2013/KDTM-ST dated March 19, 2013, of the People's Court of Ho Chi Minh City.



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SIMULTANEOUSLY IMPOSE ANTI-DUMPING AND COUNTERVAILING DUTIES ON THAILAND SUGAR CANE: RISK OF DOUBLE REMEDIES?

Dr. Le Thi Anh Nguyet* | *TheSaigontimes* No. 17-2021

On February 9, 2021, to prevent damages for Vietnam's sugar products, Ministry of Industry and Trade of Vietnam has imposed the temporary anti-dumping and countervailing duties on Thailand imported sugar cane products ("Decision 477"). On May 12, 2021, Ministry of Industry and Trade will also hold a consultation on the investigation and application of these two temporary duties. Meanwhile, Article VI.5 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") requires members of the World Trade Organization ("WTO") to not impose anti-dumping and countervailing duties on a imported goods ("principles of avoiding double remedies "). The article analyzes the principle of avoiding double counting and, accordingly, to recommend some solutions thereto.

WTO requires to avoid double remedies

For the purpose of trade liberalization, WTO requires its members to cut down tariffs and eliminated tariff quotas. Therefore, to prevent damages for the domestic industries relating



thereto, WTO allows its members to apply a number of the temporary remedies including: (i) anti-dumping measures (when foreign enterprises are concluded to dump); (ii) anti-subsidies (when foreign governments provide subsidies, financial incentives towards the export performance) and (iii) safeguard measures (when imported goods increase). Anti-dumping, anti-subsidies and safeguard measures have been regulated since 1947 in the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). In order to enhance the effectiveness of application, the WTO has specified these obligations in anti-dumping agreement ("ADA Agreements"), Subsidies and countervailing measures ("SCM Agreements") and Safeguard Agreement ("SA").

In general, under these Agreements, when investigating and imposing anti-dumping or anti-subsidies duties on imports from other WTO members, Vietnam shall not be obliged to directly apply GATT 1994, ADA and SCM Agreement



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to investigate anti-dumping and anti-subsidies for imported goods. Therefore, the fact that Vietnam promulgates and applies Law on Foreign Trade Management 2017 and its guidelines documents, not directly applies the ADA and SCM Agreements, to the process of investigation and imposition anti-dumping and anti-subsidies on sugarcane imported from Thailand is entirely consistent with the obligations of Vietnam under WTO.

However, Vietnam shall be obliged to make the corresponding regulations to comply with the obligations as provided in the above Agreements (Article XVI.4 of the Marakesh Agreement establishing the WTO and Article 18.4 of the ADA, Article 32.5 of the SCM). In the context that Vietnam has simultaneously imposed anti-dumping and anti-subsidies duties on imported sugarcane, Vietnam shall obliged to comply with the principle of avoiding double remedies as set

forth in Article VI.5 of the GATT Agreement 1994 “No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization”.

According to the SCM WTO, subsidies are categorized into 03 types: (1) red-light subsidies (prohibited subsidies) including one of 02 subgroups such as (i) subsidies related to export bonuses and (ii) subsidies for the use of domestic goods over imports;² (2) yellow-light subsidies (actionable) such as support in approaching to land funds, loans to the whole enterprise, unnecessarily related to exports³ and (3) green-light subsidies (which non-actionable – expired since 2003); i.e., scientific research subsidies to improve production productivity.⁴ In other words, goods receiving yellow

light and green light subsidies are not exported and are only consumed in the country of subsidies granting countries. Therefore, there is no anti-subsidies tax on goods receiving the two subsidies.

In fact, there are many reasons why enterprises export their goods to foreign markets at unfair prices. Accordingly, export subsidies are also a way for enterprises those exporting their goods to be compensated for the losses. Therefore, WTO condemned that, if the enterprises had received money from government to compensate for losses of production cost and dumped, then when anti-dumping tariffs are imposed, the good prices will have to increase, and then damages to the like products produced by the domestic enterprises of the importing country will have been eliminated. At this time, WTO requires that if the importing



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requires that if the importing country continues to impose anti-subsidies duties, its competent authorities shall be obliged to eliminate the injuries caused by dumping and the anti-subsidies duties shall only be used to eliminate the damage caused by export subsidies. Thus, anti-dumping and anti-subsidies duties also additional import duties. Therefore, it is totally reasonable when WTO requires its members to ensure that “double counting” is not applied to the same items imported from WTO members. In fact, many WTO members also sued the WTO’s Dispute Settlement Body (“DSB”) for violating this principle. For example, Argentina sued Peru because Peru imposed both anti-dumping duties (Decision No. 189-2016/CDB-INDECOPI of October 19th, 2016) and anti-subsidies duties (according to Decision No. 011-2016/CDB-INDECOPI of January 25, 2016) for biodiesel products imported

from Argentina. Up to now, China is a WTO member who has been the most frequent user of this principle against, the United States, the European Union ... as the WTO members have repeatedly imposed anti-dumping and anti-subsidies duties on goods exported from China. Specifically, in the China lawsuit against the United States (DS368), the United States argued that Chinese GPX tire imported into the United States at unfair prices caused material injuries to the U.S. domestic tire industry and, consequently, imposed a 29.93% anti-dumping duties and countervailing duties at of 14%. China sued the United States to DSB because the US’ simultaneous imposition of anti-dumping and anti-subsidies on this product by a unfair comparison method applying to countries with a non-market economy (refusing to use Chinese prices, and replacing prices from

from other countries on Chinese goods prices) as a two-time sanctions measure.

The imposition of dual anti-dumping and anti-subsidies duties: Has Vietnam avoided double counting?

In Vietnam, sugar cane is one of the long-standing industries, but its competitiveness is still low. In the context of integration, Vietnam cannot continue to protect it by the import tariff and tariff quotas. Therefore, Vietnam has been and will continue to apply many measures to free trade in the sugar industry (such as cutting import tax for suger to 5%; revoking sugarcane import quotas from January 1st, 2020 for ASEAN countries ...) and at the same time supporting to improve competitiveness (improving the quality of sugarcane varieties, mechanization ...). However, in the current period, the price



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of raw materials and sugar imported into Vietnam is still lower than the price of raw sugar, the price of finished sugar produced by Vietnam.

In September 2020, the Trade Remedies Authority of the Ministry of Industry and Trade of Vietnam is pursuant to the Law on Foreign Trade Management 2017 and the guiding documents that have received the Request for application of Anti-Dumping Measures () and anti-subsidies) of some sugarcane producers of Vietnam and inquiring dumping and subsidies investigations for some sugarcane products originating from Thailand with HS code 1701.13.00, 1701.14.00, 1701.99.10. As of February 9, 2021, the Ministry of Industry and Trade has imposed anti-dumping duties (refined sugar is 48.88% and raw sugar is 33.88%) and anti-subsidies duties on sugar cane imported from Thailand.⁵

The WTO once asserted that "the term "double remedies" does not,

term "double remedies" does not, however, refer simply to the fact that both an anti-dumping and a countervailing duty are imposed on the same product. Rather, as explained below, "double remedies", also referred to as "double counting", refers to circumstances in which the simultaneous application of anti-dumping and countervailing duties on the same imported products results, at least to some extent, in the offsetting of the same subsidization twice."⁶ Thus, when Vietnam simultaneously applies both anti-dumping and anti-subsidies, if we want to prove that Vietnam does not double remedies, we are obliged to prove that Vietnam does not eliminate Thailand's export subsidies twice!!

In this context, the provisions of the Law on Foreign Trade Management 2017 and the guiding documents have not specified the principle of avoiding duplicate double counting as

required by Article VI.5 of the GATTs 1994. Moreover, the questionnaires which the Trade Remedies Authority sent to enterprises have not yet shown information to avoid double remedies in determining anti-dumping and anti-subsidies duties rates. ⁷ In particular, Vietnamese enterprises have cited a number of subsidies programs implemented by the Thailand government ,including export subsidies and regular subsidies, (e.g. exemption of import tax , corporate income tax, value-added tax for exports and programs to support sugarcane farmers from Thailand government...).

The duty is only temporary?

We believe that it is necessary to review the simultaneous application of temporary anti-dumping and anti-subsidies duties on some sugar cane products for a variety of



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reasons. Firstly, as analyzed, according to the WTO, the obligation to eliminate “double counting” is the active obligation of WTO members to simultaneously apply anti-dumping and anti-subsidies duties on an imported item under investigation. Therefore, Vietnam needs to record in more detail about this initiative in the Law on Foreign Trade Management 2017 and the guiding documents to prevent

Vietnam being sued because Vietnamese law is inconsistent with WTO obligations under WTO agreements (as such violation). At the same time, the competent authorities of Vietnam also need to review each of the investigation dossier and apply anti-dumping and anti-subsidies measures a certain item, Vietnam has analyzed the programs, algorithms and methods that Vietnam used to exclude the possibility that Vietnam had doubly counted anti-dumping and anti-subsidies duties on the same damage or the same trading at an unfair price in order to prevent Vietnam from being sued for practically applying laws that violating Vietnam’s obligations under the WTO (as applied violation). **Secondly**, these two duties will increase the price of sugar cane. In theory, this will affect the cost of production, the cost of other industries using sugar as raw materials and consumers will suffer effect and losses. Meanwhile, the Law on Foreign Trade Management affirmed that “the competent authorities in Vietnam will have to determine the impact of anti-dumping measures on the socio-economic – Article 80). **The last but not least**, Decision 477 is just a decision imposing temporary anti-dumping duties and countervailing duties. Vietnam has the right to review and adjust in the direction of applying other trade remedies measures if Vietnam has sufficient evidence to prove that Vietnam’s sugar cane has been seriously damaged in order to avoid the risk of violating the double remedies.

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¹ Decision No. 477/QĐ-BCT on imposing temporary anti-dumping duties and countervailing duties on Thailand imported sugar crane product.

2 Article 3 SCM Agreement.

3 Article 5 SCM Agreement.

4 Article 8 SCM Agreement.

5 WT/DS379/AB/R, para541.

6 Decision 2466/QĐ-BCT dated September 21 2020.



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LEGAL DOCUMENTS 04/2021

NO.	EFFECTIVE DATE	NAME
BUSINESS - GOVERNMENT FINANCE		
1.	19/04/2021	Decision 830/QD-BTC in 2021 announcing the list of reports in the corporate finance sector under the State management scope of the Ministry of Finance.
2.	26/04/2021	Decision 11/2021/QD-UBND regulating the method of interest rate difference support and supporting documents, order and procedures for businesses according to Resolution 87/2019/NQ-HDND on special policies encourage businesses to invest in agriculture and rural areas in Vinh Phuc province in the period 2020-2025
INFORMATION TECHNOLOGY		
3.	26/04/2021	Decision 09/2021/QD-UBND to annul Decision 52/2014/QD-UBND stipulating preferential policies and support for investment in information technology parks in Da Nang city
TRANSPORT		
4.	20/04/2021	Decision 838/QD-UBND in 2021 announcing the list of administrative procedures under the jurisdiction of the Department of Transport of Can Tho City
TRADE		
5.	28/04/2021	Decision 10/2021/QD-UBND on the Regulation on the construction, management and implementation of the Trade Promotion Program in Vinh Phuc province.
CRIMINAL LIABILITY, CULTURE - SOCIETY		
6.	12/04/2021	Decision 416/QD-BXD on the implementation plan of crime prevention and fighting in 2021 of the Ministry of Construction
7.	20/04/2021	Decision 1418/QD-BVHTTDL in 2021 on assignment of tasks in the leadership of the Ministry of Culture, Sports and Tourism
NATURAL RESOURCES - ENVIRONMENT		



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8.	08/04/2021	Decision 753/QD-UBND in 2021 on the Regulation on coordination in the management of natural resource tax collection, licensing fees, and environmental protection fees for mineral resource exploitation activities in Thua Thien Hue province
		SPORT - HEALTH
9.	26/04/2021	Decision 2008/QD-BYT in 2021 on guidance for the diagnosis and treatment of COVID-19 due to the new Corona virus strain (SARS-CoV-2) issued by the Minister of Health.
10.	22/04/2021	Decision 1966/QD-BYT in 2021 on guidance for the diagnosis and treatment of thrombocytopenia and thrombosis syndrome after COVID-19 vaccination issued by the Ministry of Health.