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Page: 1/7

Committee on Customs Valuation

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**INFORMATION ON IMPLEMENTATION AND ADMINISTRATION
OF THE AGREEMENT ON CUSTOMS VALUATION**

CHECKLIST OF ISSUES

VIET NAM

The following communication, dated 10 May 2022, is being circulated at the request of the delegation of the Viet Nam.

1. Questions concerning Article 1:

(a) Sales between related persons:

(i) Are sales between related persons subject to special provisions?

Viet Nam's Commercial Law does not have specific provisions on this issue. The sale and purchase is an agreement of two parties but must be in accordance with Vietnamese law and international practices.

According to the provisions at point d, clause 3, Article 6 of Circular No. 39/2015/TT-BTC dated 25 March 2015, amended and supplemented by Clause 5, Article 1 of Circular No. 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance, one of the conditions to apply the transaction value is that the buyer and seller do not have a special relationship or if so, that special relationship does not affect the transaction value as prescribed in Article 7 of this Circular.

(ii) Is the fact of intercompany prices prima facie considered as grounds for regarding the respective prices as being influenced?

Whether the prices between affiliated companies are eligible for customs valuation by the transaction value method needs to be based on the specific records of the shipment and must meet the condition that the special relationship does not affect the transaction value according to regulations.

(iii) What is the provision for giving the communication of the aforementioned grounds in writing if the importer so requests? (Article 1.2(a))

According to the provisions of Clause 4, Article 7 of Circular No. 39/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Clause 7, Article 1 of Circular No. 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance, at the time of registration of the customs declaration, if the buyer and the seller have a special relationship that does not affect the transaction value, the customs declarant must declare it on the import and export declaration and the customs value declaration (if any); and at the same time:

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- Provide documents showing that the special relationship does not affect the transaction value upon request by the customs authority, specifically:
 - + Documents showing that the buying and selling transaction is conducted as a buying and selling transaction between persons who do not have a special relationship (if any);
 - + Documents showing the transaction value of the goods being under customs valuation, which is approximate or equal to the transaction value of identical or similar goods traded between parties having no special relationship (if any);
 - + Other relevant documents showing that the special relationship does not affect the transaction value (if any).

(iv) How has Article 1.2(b) been implemented?

According to the provisions of Clause 4, Article 7 of Circular No. 39/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Clause 7, Article 1 of Circular No. 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance, in case the special relationship between the buyer and the seller is suspected to affect the transaction value of the imported goods, the customs authority must compare the transaction value of the imported goods with the values specified at Point b, Clause 2 of this Article.

- If the transaction value satisfies the conditions specified at Point b, Clause 2 of this Article, the customs authority will accept that the special relationship does not affect the transaction value;
- If the transaction value does not satisfy the conditions specified at Point b, Clause 2 of this Article, the customs authority shall request the customs declarant to provide information and documents mentioned at Point a.2 of this Clause as evidence.
- If there are enough information and documents to determine that the special relationship does not affect the transaction value or there is not enough basis to determine that the special relationship affects the transaction value, the customs value shall be accepted as self-declared and self-determined by the customs declarant;
- If there are enough documents and documents to determine that the special relationship affects the transaction value, the customs value self-determined and self-declared by the customs declarant shall be rejected; the customs value shall be determined according to the principles and order of methods specified in this Circular.

The customs authority shall not determine that a special relationship affects the transaction value if the following conditions are satisfied:

- The customs authority has checked and accepted that the special relationship does not affect the transaction value;
- The transaction value of the imported goods being inspected for value remains unchanged compared to the transaction value of the identical imported goods of which the transaction values have been previously checked and accepted.

(b) Price of lost or damaged goods:**Are there any special provisions or practical arrangements concerning the valuation of lost or damaged goods?**

The regulations on customs value of Viet Nam do not have specific provisions on determining the value in case of loss or damage of goods. Valuation in this case requires specific records of the lost or damaged shipment.

2. How has the provision of Article 4 to allow the importer an option to reverse the order of application of Articles 5 and 6 been implemented?

According to Article 5 of Circular No. 39/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Clause 4, Article 1 of Circular No. 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance, if the customs declarant requests in writing, the order of application of the deducted value method and the calculated value method are interchangeable. In fact, so far in Viet Nam, there has been no case where an importer has requested in writing to apply this regulation.

3. How has Article 5.2 been implemented?

Article 10 of Circular No. 39/2015/TT-BTC dated 25 March 2015 of the Ministry of Finance stipulates that if the customs value cannot be determined by the methods specified in Articles 6, 8, and 9 of the Circular, the customs value of imported goods shall be determined according to the deducted value method, based on the selling unit price of imported goods, identical imported goods or similar imported goods on the Vietnamese domestic market according to the provisions of Clause 2 of this Article and minus (-) reasonable expenses and profits earned after selling imported goods. This method shall not apply if the goods selected to determine the selling unit price fall in one of the following cases:

- a) The goods have not been sold on the domestic market of Viet Nam or the sale of goods has not been recorded on accounting documents and books in accordance with the provisions of Vietnamese law on accounting;
- b) It is related to the assistance amount provided by any person as prescribed at Point d.1 Clause 2 Article 13 of this Circular.

4. How has Article 6.2 been implemented?

In fact, this method has not emerged in Viet Nam.

5. Questions concerning Article 7:**(a) What provisions have been made for making value determinations pursuant to Article 7?**

Article 12 of Circular No. 39/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Article 7 of Circular No. 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance stipulates valuation in accordance with Article 7 of the Agreement and are in full compliance with the Agreement.

(b) What is the provision for informing the importer of the customs value determined under Article 7?

The Customs authority shall give feedback to the customs declarant about the method of determining the value through the VNACCS/VCIS system and the Notice of customs valuation according to the form No. 04/TGHQ in Appendix II specified in Article 3. Circular No. 39/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Clause 2, Article 1 of Circular No. 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance.

(c) Are the prohibitions found in Article 7.2 delineated?

Already specified in Article 12 of Circular No. 39/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Clause 7, Article 1 of Circular No. 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance. Specifically: When determining the customs value by this method, the declarant and the customs authority must not use the following values to determine the customs value:

- The selling price on the domestic market of Viet Nam of the same goods manufactured in Viet Nam;
- The selling price of goods in the domestic market of the exporting country;
- The selling price of goods for export to another country other than Viet Nam;
- Cost of goods production, except for the case where the cost of production of imported goods is used to determine the calculated value in the calculated value method;
- Reference prices in the List of imported goods subject to customs value risks;
- The value declared by the customs declarant when there are no goods trading activities to import goods into Viet Nam;
- Use the higher of the two alternative values as the customs value.

6. How have the options found in Article 8.2 been handled? In the case of f.o.b. application, are ex-factory prices also accepted?

The options found in Article 8.2 of the Agreement are specified in Articles 5 and Clause 2, Article 6 of Circular No. 39/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Clauses 4 and 5, Article 1 of Circular No. 60/2019/TT-BTC dated 30 August 2019 and Article 13 of Circular No. 39/2015/TT-BTC dated 25 March 2015 of the Ministry of Finance. Accordingly, the costs of international insurance, international transportation, the cost of loading goods on the means of transport are the items that must be added to the customs value, but do not include the costs of loading, unloading goods from the means of transport to the first port of entry.

Thus, in case imported goods are shipped under FOB or EXW terms, when determining the customs value, related costs up to the first port of entry must be added to the value specified in Article 13, Circular No. 39/2015/TT-BTC dated 25 March 2015 of the Ministry of Finance.

7. Where is the rate of exchange published, as required by Article 9.1?

The taxable rate is specified in Clause 3, Article 21 of Decree No. 08/2015/ND-CP dated 21 January 2015 as amended and supplemented in Clause 9, Article 1 of Decree No. 59/2018/ND-CP dated 20 April 2018 of the Government.

8. What steps have been taken to ensure confidentiality, as required by Article 10?

The General Department of Customs has issued Decision No. 1929/QĐ-TCHQ dated 20 July 2020 on the use and management of the customs value database, which requires the confidentiality of importers' information.

9. Questions concerning Article 11:**(a) What rights of appeal are open to the importer or any other person?**

Clause 1, Article 7 of the Law on Complaints stipulates that when there are grounds to believe that an administrative decision or administrative act is illegal and directly infringes upon his/her lawful rights and interests, the complainant shall make a first-time complaint to the person who has made the administrative decision or to the agency whose person has committed an administrative act or shall initiate an administrative lawsuit at the Court in accordance with the Law on Administrative Procedures.

(b) How is he to be informed of his right to further appeal?

Clause 1, Article 7 of the Law on Complaints stipulates that in case the complainant disagrees with the first-time settlement decision or the complaint is not resolved within the prescribed time limit, he/she shall have the right to make a second-time complaint to the direct superior of the person having competence to settle the first-time complaint or shall initiate an administrative lawsuit at the Court in accordance with the Law on Administrative Procedures.

In case the complainant disagrees with the second-time complaint settlement decision or the time limit expires but the complaint has not been settled, he/she shall have the right to initiate an administrative lawsuit at the Court in accordance with the Law on Administrative Procedures.

10. Provide information on the publication, as required by Article 12, of:**(a) (i) the relevant national laws;**

Customs Law.

(ii) the regulations concerning the application of the Agreement;

Decree No. 08/2015/ND-CP dated 21 January 2015 as amended and supplemented in Decree No. 59/2018/ND-CP dated 20 April 2018 of the Government.

(iii) the judicial decision and administrative rulings of general application relating to the Agreement;

Tax Management Law;

Decree No. 126/2020/ND-CP dated October 19, 2020 of the Government;

Decree No. 08/2015/ND-CP dated 21 January 2015 as amended and supplemented in Decree No. 59/2018/ND-CP dated 20 April 2018 of the Government;

Circular No. 39/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Circular No. 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance;

Circular No. 38/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Circular No. 39/2018/TT-BTC dated 20 April 2018 of the Ministry of Finance;

Circular No. 06/2021/TT-BTC dated 22 January 2021 of the Ministry of Finance.

(iv) general or specific laws being referred to in the rules of implementation or application.

None.

(b) Is the publication of further rules anticipated? Which topics would they cover?

Clause 1, Article 12 of the Law on Promulgation of Legal Documents stipulates that a legal document may only be amended, supplemented, replaced or annulled by a legal document of the same state agency that has issued the document, or the enforcement is suspended or cancelled in writing by a competent state agency or person. A document amending, supplementing, replacing, annulling or suspending the implementation of another document must clearly identify the title of the revised document, the part, chapter, section, subsection, article, clause, point in the document being supplemented, replaced, annulled or suspended of enforcement.

A written annulment of a legal document must be published in the Official Gazette or posted according to regulations.

Concurrently, in Clause 1, Article 151 of the Law on Promulgation of Legal Documents, it is stated that the effective date of all or part of a legal document is specified in that document but not earlier than 45 days from the date of approval or signing for promulgation of legal documents by central state agencies.

Therefore, if there are problems in the actual implementation of the current document, the competent authority of Viet Nam will amend, supplement or replace the legal documents on customs value and must publicize according to regulations, and the effective time is specified in that document.

11. Questions concerning Article 13:

(a) How is the obligation of Article 13 (last sentence) being dealt with in the respective legislation?

It is stipulated in Article 32 of Decree No. 08/2015/ND-CP dated 21 January 2015 as amended and supplemented in Clause 15, Article 1 of Decree No. 59/2018/ND-CP dated 20 April 2018 of the Government.

(b) Have additional explanations been laid down?

Article 33 of Circular 39/2018/TT-BTC dated 20 April 2018 of the Ministry of Finance specifically stipulates the release of goods pending consultation and customs valuation.

12. Questions concerning Article 16:

(a) Does the respective national legislation contain a provision requiring customs authorities to give an explanation in writing as to how the customs value was determined?

Vietnamese law, in Article 3 of Circular No. 39/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Clause 2, Article 1 of Circular No. 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance, has stipulated that the customs declarant has the right to request the customs authority to notify in writing the customs value, the basis and the method used to determine the customs value in case the customs value is determined by the customs authority, and when the customs authority determines the customs value, the customs valuation shall be based on the principles and order of customs valuation methods, the customs value database, the relevant documents and documents specified in this Circular and shall issue a written notice of customs valuation according to form No. 04/TGHQ in Appendix II attached to this Circular.

(b) Are there any further regulations concerning an above-mentioned request?

None.

13. How have the Interpretative Notes of the Agreement been included?

The interpretative notes specified in Appendix I of the Agreement have been specified in Circular No. 39/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Circular No. 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance; Decree No. 08/2015/ND-CP dated 21 January 2015 as amended and supplemented in Decree No. 59/2018/ND-CP dated 20 April 2018 of the Government.

14. How have the provisions of the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods been implemented?

Interest charges under a financing agreement have been specified at Point h, Clause 2, Article 15 of Circular No. 39/2015/TT-BTC dated 25 March 2015 of the Ministry of Finance.

15. For those countries applying paragraph 2 of the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, how have the provisions of this paragraph been implemented?

Vietnamese law stipulates the determination of value for software in Article 6 of Circular No. 39/2015/TT-BTC dated 25 March 2015 as amended and supplemented in Clause 5, Article 1 of Circular No. 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance. Specifically: In case the imported goods are carrier media containing application software for data processing equipment, the customs value is the actual price already paid or payable of the carrier media, excluding the value of the application software if, on the commercial invoice, the value of the application software is separated from the value of the carrier media.
