

MINISTRY OF FINANCE

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

No. 39/2015/TT-BTC

Hanoi, March 25, 2015

CIRCULAR

ON CUSTOMS VALUE OF IMPORTED GOODS AND EXPORTED GOODS

Pursuant to the Law on Customs No. 54/2014/QH13 dated June 23, 2014;

Pursuant to the Law on Tax administration No. 78/2005/QH11 dated November 29, 2006; the Law on the amendments to the Law on Tax administration No. 21/2012/QH13 dated November 20, 2012;

Pursuant to the Law on Intellectual property No. 50/2005/QH11 dated November 29, 2005, the Law on the amendments to the Law on Intellectual property No. 36/2009/QH12 dated June 19, 2009;

Pursuant to the Agreement on the implementation of 7 General agreement on Tariff and Trade;

Pursuant to the Decree No. 08/2015/NĐ-CP dated January 21, 2015 by the Government providing guidance on the implementation of the Law on Customs in terms of customs procedures and customs inspection, supervision and control;

Pursuant to the the Decree No. 83/2013/NĐ-CP dated July 22, 2013 by the Government detailing the implementation of a number of articles of the Law on Tax administration and the Law on the amendments to the Law on Tax administration;

Pursuant to the Decree No. 215/2013/NĐ-CP dated December 23, 2013 by the Government defining the functions, tasks, entitlements and organizational structure of the Ministry of Finance;

At the request of the Director of the General Department of Customs,

The Minister of Finance promulgates the Circular providing for customs value of imported goods and exported goods as follows:

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation and regulated entities

1. Scope of regulation: This Circular provides for customs value of imported goods and exported goods.

2. Regulated entities: Any organizations and individuals importing or exporting goods, customs authorities, customs officials and other relevant organizations and individuals.

Article 2. Interpretation of terms

In this Circular, these terms can be construed as follows:

1. “*Goods sale contract*” means an agreement on goods trading established in writings or in an equivalent form including telegram, telex, fax or informational message. According the contract, the seller shall deliver goods, transfer the ownership of goods to the buyer and collect payment; the buyer shall pay the seller the cost, receive goods and the ownership of goods according to the agreement; goods are transferred from the seller to the buyer, through checkpoint, Vietnam’s border or from free trade zone to inland market and vice versa.

“Seller” includes goods seller and service provider.

2. “*Purchase commission*” means an amount of money that the buyer pays his/her representative agent for purchasing the imported goods at the most reasonable costs.

3. “*Sale commission*” means an amount of money that the seller pays his/her representative agent for selling exported goods to the buyer.

4. “*Brokerage fee*” means an amount of money that the buyer or the seller or both the buyer and the seller pay to the broker for being intermediary in the transaction of imported goods trading.

5. “*Software*” means a set of data, programs or guidelines presented in form of commands, codes, coding schemes or any other forms that enables an information processing device to perform a specific task or to produce a specific outcome when it is installed in such device. In this Circular, the audio recordings, video recordings or pictures are not considered software.

6. “*Intermediate media*”, including floppy disk, CD, DVD, magnetic tape, magnetic card and other items that can store information, are used as a temporary storage medium or used for transferring software. Software is transferred, installed or integrated into data processing devices. Intermediate media does not include integrated circuits, chips, semiconductors and similar devices or components installed on such circuit boards or devices.

7. Values of goods are considered “*approximate*” with each other if the difference between them is affected by:

a) The nature of goods, characteristics of the industry;

b) The seasonality of goods;

c) Insignificant commercial difference.

Values shall be compared under the same trading conditions when determining the approximation.

8. "*Identical exported goods*" means exported goods that are similar to each other in every respect including:

a) Physical characteristics including the surface of product, materials, manufacturing methods, functions, uses and mechanical, physical and chemical properties;

b) Product quality;

c) Brand;

d) Being made in Vietnam by the same manufacturer or by an authorized manufacturer or franchisee.

9. "*Identical imported goods*" means exported goods that are similar to each other in every respect, including:

a) Physical characteristics including the surface of product, materials, manufacturing methods, functions, uses and mechanical, physical and chemical properties, having the same code in the List of Vietnam's imports and exports;

b) Product quality;

c) Brand;

d) Being made in the same country by the same manufacturer or by an authorized manufacturer or franchisee.

Imported goods that are basically the same with minor differences in appearance like color, size and shape that do not affect their value are also considered identical imported goods

Imported goods are not consider identical if in the process of manufacturing any of these goods, technical designs, construction designs, development plans, fine-art designs, drawings, charts, sketches or similar products or services, which are made in Vietnam and supplied free of charge by the buyer to the seller, are used.

10. "*Similar exported goods*" means goods which are not alike in every respect but have the same substantial characteristics, including:

a) Made of equivalent materials or by the same manufacturing method;

b) Having the same functions and uses;

c) Having equivalent quality;

d) Commercially interchangeable, for example, the buyer accepts goods in substitution for similar goods;

dd) Made in Vietnam by the same manufacturer or by an authorized manufacturer or franchisee.

11. *“Similar imported goods” means goods which are not alike in every respect but have the same substantial characteristics, including:*

a) Made of equivalent materials or by the same manufacturing method;

b) Having the same functions and uses;

c) Having similar quality;

d) Commercially interchangeable, for example, the buyer accepts goods in substitution for similar goods;

dd) Made in the same country, by the same manufacturer or by an authorized manufacturer or franchisee, imported into Vietnam.

Imported goods are not consider similar if, in the process of manufacturing of any of these goods, technical designs, construction designs, development plans, fine-art designs, drawings, charts, sketches or similar products or services, which are made in Vietnam and supplied free of charge by the buyer to the seller, are used.

12. *“Date of exportation”* means the day on which the bill of lading is issued. In case the bill of lading is unavailable, date of exportation shall be the day on which the customs declaration of imported goods is registered.

13. *“Imported goods of the same class or category”* means goods that have the same origin and belong to a group or a frame group of goods manufactured by the same industry or in the same domain, including identical imported goods and similar imported goods.

For example: Construction steel products, including steel rods, wound coils and sections (U, I or V shape) manufactured by the steel industry, are regarded as goods of the same category.

a) In the customs valuation based on the deductible value, “imported goods of the same class or category” may be goods imported from any other countries into Vietnam, regardless of their origin;

b) In the customs valuation based on the computed value, “imported goods of the same class or category” shall be goods imported that have the same origin as the one of goods receiving customs valuation.

14. “*Objective and quantifiable data*” means specific data of additions, deductions relating to the imported goods receiving custom valuation that are presented in the agreement or documents of the transaction parties.

Article 3. Rights and obligations of customs declarants; responsibilities and competences of customs authorities

1. Customs declarants shall declare and carry out customs valuation themselves according to the rule and methods for customs valuation prescribed in the Law on Customs No. 54/2014/QH13 dated June 23, 2014, the Decree No. 08/2015/NĐ-CP dated January 21, 2015 by the Government and this Circular; take legal responsibility for the accuracy and honesty of the declaration and the result of customs valuation; submit or present the documents at the request of the customs authority according to the provisions of Article 3 of the Circular pertaining to customs procedures; carry out supervision and inspection of customs procedures, import/export tax and tax administration for imported/exported goods; take advices to resolve the doubts of the customs authority relating to declared value; request the customs authority to make a written notification of dutiable values, basic and methods for customs valuation in case the customs value is determined by the customs authority.

2. When inspecting the declaration and customs valuation of exported goods and imported goods of a customs declarant, the customs authority may request the declarant to submit or present the documents relating to the methods of determining declared value according to the provisions of this Circular to prove the accuracy and honesty of such declared value;

3. The customs authority shall determine the customs value according to the rule and methods for customs valuation, value database and relevant documents mentioned in this Circular in the following cases:

a) The customs declarant could not determine the customs value by using the methods prescribed in this Circular;

b) The cases specified in clauses 2 and 5 Article 17 of this Circular.

Chapter II

CUSTOMS VALUATION

SECTION I: RULE AND METHODS FOR CUSTOMS VALUATION

Article 4: Rule and methods for customs valuation applicable to exported goods

1. Rule: The Customs value is the selling price of goods at exporting checkpoint exclusive of international insurance cost (I), international freight cost (F) and determined according to the methods provided in clause 2 of this Article.

2. Methods for customs valuation:

a) The selling price of goods at exporting checkpoint is determined according to the selling price agreed in the sale contract or others that have the similar legal value to such contract, commercial invoices and relevant documents about the exported goods.

b) If the customs value could not be determined according to the provisions of point (a) of this clause, the customs value is the value of identical/similar imported goods contained in the value database at nearest time from the day on which the exporting declaration of the goods receiving customs valuation is registered, converted into the selling price at exporting checkpoint. If there are more than one customs values of identical similar exported goods is determined, the lowest one shall prevail.

Article 5: Rule and methods for customs valuation applicable to imported goods

1. Rule: The Customs value is the buying price of goods at the first importing checkpoint, determined according to the methods provided in clause 2 of this Article.

2. Methods for customs valuation: The buying price at the first importing checkpoint is determined by applying successively 6 methods of customs valuation specified in Articles 6, 8, 9, 10, 11 and 12 until the customs value can be determined. Methods for customs valuation are based on one the following elements:

- a) Transaction value;
- b) Transaction value of identical imported goods;
- c) Transaction value of similar imported goods;
- d) Deductible value;
- dd) Computed value;
- e) Deductive logic.

If the customs declarant submit a written application, the method based on deductible value and the method based on computed value are interchangeable.

Article 6. Customs valuation according to transaction value (hereinafter referred to as transaction value-based method)

1. Transaction value is the actual or future payment for imported goods after being adjusted according to the provisions of Articles 13 and 15 of this Circular.

2. The actual or future payment for imported goods is the total amount that the buyer has paid (or is about to pay) directly or indirectly to the seller to purchase the imported goods, including:

- a) Buying price on the commercial invoice;

- b) The additions and reductions prescribed in Articles 13 and 15 of this Circular;
- c) The amounts payable by the buyer but not included in the buying price on the commercial invoice, including:
- c.1) Advance, deposit for the production, trade, transport and insurance of goods.
- c.2) Indirect payments to the seller (for example: amounts that the buyer pays to a third party at the request of the seller; or amounts paid by offsetting debts).
3. The transaction value will be applied if all of the following conditions are satisfied:
- a) The buyer does not have the right to dispose of or use the goods after the importation restricted, except for the following ones:
- a.1) The restrictions prescribed in Vietnam's laws such as the regulations that imported goods shall have Vietnamese labels, regulations that conditioned imported goods or imported goods shall receive inspection before be granted customs clearance;
- a.2) The restriction on places where goods may be sold after import;
- a.3) Other restrictions that do not affect the value of goods. These restriction above are one or multiple factors that is directly or indirectly related to the imported goods without leading to the increase or decrease of the actual price paying for such goods
- For example: A car seller requests a buyer not to sell or display an imported car before such model is announced.
- b) Price or the sale of goods does not depended on the conditions or the payment but the fact that they can not help determine the value of goods subject to customs valuation.
- For example: The seller fixes the selling price of imported goods provided that the buyer will buy a certain quantity of other goods; The price of the imported goods depends on the prices of other goods which will be sold by the importer to the exporter.
- In case the trade or price of the goods is dependent on one or several conditions but the buyer possesses objective and valid documents for the determination of the pecuniary impact of such dependence, this condition shall still be regarded as being satisfied. Upon the customs valuation, the money amount reduced due to the impact of such dependences must be added to the transaction value.
- c) After reselling, transferring or using the imported goods, except for the additions specified in point (e) clause 2 Article 13 of this Circular, the buyer is not required to additionally pay any sum from the money collected from the disposal of the imported goods;

d) The buyer and the seller have no special relationship; if any, such relationship does not affect the transaction value as prescribed in Article 7 of this Circular.

4. Determination of customs value of imported goods containing software

a) Customs value of imported goods being intermediate media carrying software is the actual or future payment for the imported goods, exclusive of the value of software used in the processing devices for the data they contain if the value of software is separate from the value of intermediate media;

b) Customs value is the actual or future payment for imported goods including the value of software and expense for writing or installing the software in the imported goods in any of the following cases:

b.1) On the commercial invoice, the value of software is separate from the value of the intermediate media;

b.2) The actual or future payment for software is related to the additions prescribed in Article 13 of this Circular;

b.3) Software is written, installed or integrated in imported goods other than intermediate media.

5. Documents for valuation using such method includes:

a) The sale contract;

b) Documents proving the special relationship not affecting the transaction value (if any);

c) Documents proving the amount that the buyer must pay but not included yet in the buying price stated in the commercial invoice (if any);

d) Documents proving the additions (if any);

dd) Documents proving the deductions (if any);

e) Documents proving the customs valuation according to the transaction value declared by the customs declarant.

Article 7. Special relationship

1. A seller and a buyer are regarded as in a special relationship in any of the following cases:

a) Both of them are employees or one is an employee and one is the director of another enterprise;

b) Both of them are general partner contributing capital to the same business that is legally recognized;

c) One of them is a person hiring the other;

d) One has the power to control the other;

dd) They are both controlled by a third party;

e) They both control a third party;

A person having the power to control another person as referred to in points (d), (dd) and (e) of this clause means a person who can directly or indirectly restrict or instruct such other person.

g) They have any of the following family ties: husband and wife, parents and children recognized by law, grandparents and grandchildren with consanguinity, aunts/uncles and nephews/nieces, siblings, brothers/sisters-in-law;

h) A third person owns, controls or holds at least 5% of the voting shares of both parties;

i) Parties associated in business with one another where one party is the sole agent, sole distributor or sole franchisor of the other party will be regarded as in a special relationship if the relationship is conformable with the provisions in the points from (a) to (h) of this Article.

2. The special relationship between the seller and the buyer does not affect the transaction value if it satisfies any of the following conditions:

a) The sale transaction between the buyer and the seller is carried out similarly to the sale transaction of the same imported goods in which buyer does not have special relationship with the seller. The customs authority shall inspect the way the relationship between the seller and the buyer is established and the way of negotiation of reach the declared price then come to the conclusion whether the declared value is influenced by special relationship or not;

For example:

- The sale price of the imported goods has been negotiated and agreed in the commercial contract in a way consistent with the normal pricing negotiation and agreement practices of that line or with the way the seller offers the goods price to other buyers who have no special relationship with the seller.

- Imported goods sale price is inclusive of overall costs and profit corresponding to overall costs profit from the sale of goods of the same class or category.

b) The transaction value is approximates to any of the following values of the goods exported to Vietnam on the same day or within 60 days before or after the date of exportation of the goods receiving recognition:

b.1) The customs value determined on the basis of the transaction value of identical/similar imported goods sold to other importers that have no special relationship with the exporter (the seller);

b.2) The customs value of identical/similar imported goods determined on the basis of the deductible value specified in Article 10 of this Circular;

b.3) The customs value of identical/similar imported goods determined on the basis of the computed value specified in Article 11 of this Circular.

3. The customs values prescribed in point (b) clause 2 of this Article are used for comparison purposes only and the customs value of identical/similar imported goods must be adjusted to the same condition with the imported goods receiving recognition as follows:

a) Adjustment to the same trading condition: The adjustment of the customs value of identical/similar imported goods to the same trading condition with the goods receiving recognition shall be conformable to the provisions of point (b) clause 2 Article 9 of this Article; or

b) Adjust the additions and reductions according to the provisions of Articles 13 and 15 of this Circular.

4. Procedures for declaration and inspection:

a) At the time the declaration is registered, if the seller and the buyer have a special relationship but not affect the transaction value, then the customs declarant shall fill both the declaration of imported goods and the declaration of customs value for the cases subject to customs value declaration;

b) On the basis of the available information, if the special relationship is suspected to affect the transaction value, the customs authority shall make a notification and hold a dialog enabling the customs declarant to explain and provide the information clarifying such special relationship to prove that such relationship does not affect the transaction value of the imported goods prescribed in clause 2 of this Article.

Article 8. Customs valuation according to the transaction value of identical imported goods

1. Applicable cases: If the customs value could not be determined based on the transaction value prescribed in Article 6 of this Circular, the customs value of the imported goods shall be determined according to the transaction value of the identical imported goods.

2. The customs valuation according to the transaction value of identical imported goods is carried out according to the provisions of Article 9 of this Circular, replacing the term “similar imported goods” with the term “identical imported goods”.

Article 9. Customs valuation according to the transaction value of similar imported goods

1. Applicable cases: If the customs value could not be determined by using the methods prescribed in Articles 6 and 8 of this Circular, the customs value of the imported goods shall be determined based on the transaction value applicable to the similar imported goods, in which the similar imported goods shall receive the approval of the customs authority for customs valuation according to the transaction value and have the same trading condition and condition of time of exportation as the ones of the imported goods receiving customs valuation as prescribed in clause 2 of this Article.

In case there is not any similar imported goods with the same trading condition as the one of the imported goods receiving customs valuation, a similar imported goods with different trading condition may be chosen and shall be adjusted to the same trading condition.

2. Conditions for choosing similar imported goods:

a) Conditions of time of exportation:

Similar imported goods shall be exported to Vietnam on the same day or within 60 days before or after the date of exportation of the goods receiving customs valuation.

b) Conditions of trading:

b.1) Conditions of commercial level and quantity:

b.1.1) Similar imported goods shall be at the same commercial level and in the same quantity as the ones of the imported goods receiving customs valuation;

b.1.2) In case there is not any imported goods specified in point (b.1.1) of this clause, a imported goods with the same commercial level but different quantity may be chosen and the transaction value of the similar imported goods shall be adjusted to having the same quantity as the imported goods receiving customs valuation;

b.1.3) In case there is not any imported goods specified in points (b.1.1) and (b.1.2) of this clause, a imported goods with different commercial level but the same quantity may be chosen and the transaction value of the similar imported goods shall be adjusted to being at the same commercial level as the imported goods receiving customs valuation;

b.1.3) In case there is not any imported goods specified in points (b.1.1), (b.1.2) and (b.1.3) of this clause, a imported goods with different commercial level and quantity may be chosen and the transaction value of the similar imported goods shall be adjusted to the same commercial level and quantity as the ones of the imported goods receiving customs valuation;

b.2) Conditions of the distance and modes of transport and insurance:

The similar imported goods shall have or be adjusted to have the same distance and mode of transport as the ones of the imported goods receiving customs valuation.

The significant difference in insurance cost shall be adjusted to the same insurance condition as the one of the imported goods receiving customs valuation.

c) When applying the customs valuation based on the transaction value of the similar imported goods, only if there is not any similar imported goods made by the same manufacturer or a manufacturer and an authorized manufacturer, goods made by another manufacturer with the same origin may be considered.

d) If multiple transaction values of similar imported goods are determined by using such method, the lowest transaction value after adjusting to the same trading condition with the goods receiving customs valuation shall be the customs value.

If during the customs procedures, the information for choosing identical/similar imported goods to the imported goods receiving customs valuation is not sufficient, the customs valuation prescribed in Articles 8 and 9 of this Circular shall be skipped.

3. Documents for customs valuation using such method (1 copy for each) includes:

a) The customs declaration of the similar imported goods;

b) The customs value declaration sheet of the similar imported goods, applicable to the cases subject to customs value declaration.

c) The contract on transport of similar imported goods (in case of adjustment of its cost);

d) The insurance contract of similar imported goods (in case of adjustment of its cost);

dd) A list of selling price of exported goods issued by the manufacturer or the overseas seller (in case of adjustment of quantity and/or commercial level);

e) Other documents relating to the customs valuation.

Article 10. Customs valuation according to the deductible value (hereinafter referred to as Deductive value-based method)

1. Applicable cases: If the customs value could not be determined by using the methods prescribed in Articles 6, 8 and 9 of this Circular, the customs value of the imported goods shall be determined by the deductible value-based method according to the selling unit price of imported goods, identical imported goods or similar imported goods on Vietnam's inland market according to the provisions of clause 2 of this Article after deducting the reasonable expenses and profits obtained from selling the imported goods.

This method is not applicable to the goods chosen for determining selling unit price in any of the following cases:

- a) The goods are not available on Vietnam's inland market or the trade of goods has not been recorded as prescribe in Vietnam's law on accounting;
- b) The goods are related to aid provided by any entities according to the provisions in point (d.1) clause 2 Article 13 of this Circular.

2. The selling prices of imported goods on Vietnam's market are determined according to the following rules:

- a) The selling prices of imported goods are the actual selling price of such goods on Vietnam's market. If the actual selling price of imported goods subject to customs valuation is unavailable, the actual selling price shall be determined according to that of identical or similar imported goods sold as imported on Vietnam's market.

Imported sold as imported are imported goods that are not changed in shape, characteristics, quality and uses nor have value increase or decrease after importation.

- b) The importer and the inland buyer do not have a special relationship as prescribed in Article 7 of this Circular;

- c) The selling price level shall be determined according to the highest sales and shall be sufficient to form the unit price. The selling price level according to the highest sales is the price at which the greatest number of goods is sold among the initial commercial selling transactions after importation;

- d) Goods shall be brought into market (wholesaled or retailed) on the earliest day after the importation and within 90 days (calendar days) after the day on which such goods are imported. The earliest day after the importation is the day on which goods are sold sufficiently to form the unit price (at least equivalent to 10% of the number of imported goods).

3. Conditions for choosing selling unit price on Vietnam's market:

- a) It shall be selling unit price of the imported goods receiving customs valuation or identical/similar imported goods that are sold in the condition as when imported;
- b) It shall be the unit price at which the greatest aggregate quantity of goods is sold, which is sufficient for establishing that unit price. Goods are sold on the earliest day after the importation and within 90 days after the day on which the goods receiving customs valuation is imported. The domestic buyer and the seller shall not have special relationship.

For example: Consignment A consists of many goods items, in which item B shall receive customs valuation using the deductible value-based method. The consignment A was imported on January 1st, 2014. A consignment consisting of an item is identical to item B that was imported earlier and sold to many domestic buyers at different prices and at different times as follows:

Unit price	Quantity per sale	Selling time	Total quantity
VND 900/pcs	50 pcs	28/3/2014	100 pcs
	30 pcs	15/1/2014	
	20 pcs	3/3/2014	
VND 800/pcs	200 pcs	20/1/2014	450 pcs
	250 pcs	12/2/2014	
	Total:		550 pcs

In the example above, the selling unit price chosen for deduction is VND 800/unit corresponding to the greatest sales (450 pcs) and sufficient for establishing the unit price. This unit price satisfies the conditions for choosing selling price, including:

- Having the greatest aggregate quantity (450) in the imported goods sold early after the importation.
- The sale time is not exceeding 90 days after the date of importation.

4. Deduction principle:

The determination of deductions shall be based on the accounting figures and documents that are lawful, available and conformable to the regulations and standards of Vietnam's accounting. The deductions shall be those allowed to be accounted as reasonable and lawful expenses of enterprises according to the Vietnamese law on accounting.

5. Deductions to be made from the sale unit price:

Deductions to be made from the sale unit price are reasonable expenses and profits from the sale of goods on Vietnam's market, including:

a) Costs of transport and insurance and expenses for other activities relating to the transport of goods after their importation, specifically as follows:

a.1) Costs of transport and insurance and expenses for other activities related to the transportation of goods incurred during the transportation from the first border gate to the warehouse of the importer or to the place of delivery in Vietnam's inland area;

a.2) Costs of transport and insurance and expenses for other activities related to the transportation of goods from the warehouse of the importer Vietnam's inland area to the place of sale, in case the importer bears such costs and expenses.

b) Taxes, charges and fees payable in Vietnam upon the importation and sale of the imported goods on Vietnam's inland market;

c) Commissions or general expenses and profits relating to the sale of the imported goods in Vietnam:

c.1) If the importer is a sale agent for a foreign trader, the commission shall be deducted. If such commission is inclusive of expenses specified at Points (a) and (b) of this clause, the deduction for such expenses shall not be made;

c.2) In case of importation by the mode of definitive purchase and sale, general expenses and profits shall be deducted: General expenses and profits shall be considered generally when determining the deductible value. The determination and distribution of general expenses and profits to imported goods shall be conformed with Vietnam's regulations and standards of accounting.

General expenses include direct and indirect expenses for the importation and sale of goods on the domestic market, such as expenses for marketing goods, expenses for storage and preservation of goods before sale, expenses for management of the importation and sale of goods.

Bases for determining deductions are data recorded and reflected on accounting records of the importer that conformable with the regulations and standards of Vietnamese accounting. These data shall be in accordance with those obtained from the trade of imported goods of the same class or category in Vietnam.

6. The customs value of goods imported through processing in Vietnam shall be determined according to the principle provided in clause 1 of this Article after deducting the expense of processing to increase the value of goods. The methods for customs valuation prescribed in this Article are inapplicable to the following cases:

a) The imported goods, after being processed, are no longer in the same condition as when imported and have the increase in value due to processing not identifiable;

b) The imports, after being processed, still maintain the same characteristics, nature and uses as when imported but such goods constitute only a part of the goods sold on the Vietnamese market.

7. Documents for customs valuation using such method includes:

a) The bill of sale or added-value invoice according to the regulation;

b) Agency contract, in case the importer is the selling agent of the exporter. Such contract shall specify the commission that the agent may earn and the costs that the agent shall pay;

c) The explanation of sales and the accounting records reflecting the costs mentioned in clause 5 of this Article;

d) The customs declaration sheet and the customs value declaration sheet of the goods chosen for deduction;

dd) Other necessary documents for inspection and customs valuation.

Article 11. Customs valuation according to the computed value (hereinafter referred to as computed value-based method)

1. Applicable cases: If the customs value could not be determined by using the transaction value-based method prescribed in Articles 6, 8, 9 and 10 of this Circular, the customs value of the imported goods shall be determined according to the computed value. The computed value of imported goods includes:

a) The direct expense for producing the imported goods: the cost price or value of raw materials, expense for the manufacturing or other processing for producing the imported goods. Such expense is inclusive of:

a.1) The expenses specified in points (a), (b) and (c) clause 2 Article 13 of this Circular;

a.2) The value of aid as prescribed in point (d.1) clause 2 Article 13 of this Circular;

a.3) The value of the aid prescribed in point (d.1) clause 2 Article 13 of this Article shall be included in the customs value only when the manufacturer bears the cost of such product.

b) General expenses and the profits from the sale of goods of the same class or category as those of imported goods receiving valuation and made in the exporting country for selling to Vietnam. The general profits and expenses shall be considered overall when determining the computed value.

General expenses include all direct and indirect expenses for the manufacture and sale for exportation of goods but not calculated according to the provisions of point (a) of this clause.

c) The cost of transport, cost of insurance and the costs relating to the transport of imported goods specified in points (g) and (h) clause 2 Article 13 of this Circular.

2. Basis for determining computed value:

Bases for determining deductions are data recorded and reflected on accounting records of the manufacturer unless such data are not conformed with those obtained in Vietnam. These such data shall be in accordance with those obtained from the manufacture and trade of imported goods of the same class or category that made in the country of exportation for exporting to Vietnam.

3. Any accounting records or other documents of the entities living outside of Vietnam's territory must not be inspected or examined for determining the computed value prescribed in this Article.

The verification of the information provided by the manufacturer serving the customs valuation prescribed in this Article may be carried out outside of Vietnam if agreed by the manufacturer. There shall be an advance notification of such verification to a competent agency of the relevant country for approval.

4. Documents for customs valuation using such method includes:

a) The explanation of the manufacturer about the expenses mentioned in points (a) and (b) clause 1 of this Article certified by the manufacturer and the accounting records and data conformable to such explanation;

b) The bill of sale of the manufacturer;

c) Documents about the expense mentioned in point (c) clause 1 of this Article.

Article 12. Deductive method

1. Applicable cases: If the customs value could not be determined by using the transaction value-based method prescribed in Articles 6, 8, 9, 10 and 11 of this Circular, the customs value of the imported goods shall be determined by the deductive method according to the documents and data that is objective and available at the time of customs valuation.

The customs value determined by the deductive method means the customs value determined by applying successively and flexibly the methods for customs valuation specified in Articles 6, 8, 9, 10 and 11 of this Circular according to the provisions of clause 2 of this Article until the customs value is determined.

2. When determining the customs value using such method, the customs declarant and the customs authority shall not use the following values for customs valuation:

a) The selling price on the domestic market of goods of the same kind made in Vietnam;

b) The selling price of goods in the domestic market of the exporting country;

c) The sale price of goods for exporting to a third country;

d) The manufacture costs of goods, excluding those used in the computing method;

dd) The minimum dutiable values;

e) The value determined by the customs authority unconformable with the principle and methods for customs valuation specified in this Circular or the value provided by the customs declarant before the trade of goods for importing goods to Vietnam;

g) The higher of the two alternative values as the customs value.

3. Some examples of flexible application of methods for customs valuation:

a) The application of the transaction value-based method of the identical/similar imported goods.

If there is no identical/similar imported goods exported to Vietnam on the same day or within 60 days before or after the date of exportation of the imported goods receiving customs valuation, identical/similar imported goods exported within a longer duration that does not exceed 90 days before or after the date of exportation of the goods receiving customs valuation may be chosen.

b) The deductible value-based method may be used for customs valuation in any of the following ways:

b.1) If no unit price is determined for deduction within 90 days from the date of importation, the sale unit price of goods sold in the greatest aggregate quantity within 120 days from the date of importation of the goods chosen for deduction may be chosen;

b.2) If there is no reselling unit price of the very imported goods or identical/similar imported goods to a person having no special relationship with the importer, the reselling unit price of goods for the buyer having special relationship with the importer may be chosen on condition that the special relationship does not influence the price in the sale transaction.

c) The customs value of the imported goods determined by the customs value of the identical imported goods already determined according to the deductible value or computed value.

d) The customs value of the imported goods determined by the customs value of the similar imported goods already determined according to the deductible value or computed value.

4. Apart from the cases specified in clause 3 of this Article, the flexible application of the methods for customs valuation shall be in accordance with the price database and shall be conformable to the regulations in clause 2 of this Article.

5. Documents: the documents relating to the customs valuation by applying flexibly the methods prescribed in Articles 6, 8, 9, 10 and 11 of this Circular.

Article 13. Additions

1. Additions can be made only when the following conditions are satisfied:

a) These additions shall be paid by the buyer and have not been included in the actual or future payment;

b) These additions shall be related to the imported goods;

c) There shall be objective and quantifiable data conformable with the relevant documents.

If the imported goods have additions without objective and quantifiable data to determine customs value, such value shall not be determined by the transaction value but the next method instead.

2. The additions:

a) The sale commission costs, the brokerage fees. If these costs include the payable taxes in Vietnam, such taxes may not be added to the customs value of imported goods.

b) Costs of packing associated with imported goods, including buying price of packaging and other costs relating to the trade and transport of packaging to the place of packaging and preservation of goods.

Containers, casks, racks used as a means to package for transporting cargos and used many times is not considered as packaging associated with goods so they are not the addition of costs of packaging associated with goods.

c) The packaging costs, including:

c.1) The cost for packaging materials including the buying price of packaging material and other costs relating to the trade and transport of packaging material to the place of package;

c.2) The cost for packaging staff, including the salaries and costs relating to the employment of staff for packaging the goods receiving customs valuation.

If the buyers have to bear the expenses on accommodation and transportation for workers during the packaging, such costs are also included in the cost for packaging staff.

d) The aid: The value of goods and services that the buyer provided free of charge or with discount are transferred directly or indirectly to the manufacturer or seller to produce and sell exported goods to Vietnam.

d.1) The aid includes:

d.1.1) Raw materials, component parts, accessories and their analogues added in imported goods;

d.1.2) Raw materials, materials, consumed fuel in the manufacture of imported goods;

d.1.3) Instruments, tools, dies, molds, models and similar products used for manufacturing imported goods;

d.1.4) Drawings, technical drawings, fine-art designs, development plans, construction designs, model designs, diagram, scheme or similar services, which are made in foreign countries and necessary for the manufacture of imported goods.

d.2) Valuation of the aid:

d.2.1) If the aid includes products and services bought from a person without special relationship to provide for the seller, the value of the aid is the buying price of such products/services;

d.2.2) If the aid includes products/services produced by the importer or a person with special relationship with the importer to provide for the seller, the value of the aid is the cost price of such products/services;

d.2.3) If the aid includes product/service made by an oversea-based manufacturing facility of buyer without documents to account separately for such product/service, the value of the aid is determined by distributing the total cost of production in the same period of such facility for the amount of the product/service produced;

d.2.4) The value of the aid rented by the buyer is the renting cost;

d.2.5) The value of the aid including used products is the remaining value of such products;

d.2.6) The products that were processed by buyers before handing over to the sellers for use in manufacturing the imported goods must include the added-value due to the process into the value of the aid;

d.2.7) If the aid is sold with discount by the buyer to the exporter, the value of such discount shall be added to the customs value;

d.2.8) If after the manufacture of imported goods, the manufacturer still obtain superfluous raw materials and waste from the aid, then the value of recovery from such superfluous raw materials and waste are subtracted from the value of the aid, if there is data showing the value of the waste or the superfluous raw materials.

The determined value of the aid includes the expenses related to the trade, transportation and insurance to the place where the imported goods are produced.

d.3) Distribution of value of the aid to the imported goods.

d.3.1) Rule for distributing value of the aid:

d.3.1.1) The value of the aid shall be completely distributed to the imported goods;

d.3.1.2) The distribution shall be legally recorded;

d.3.1.3) The distribution shall be conformable with the Vietnam's regulations and standards of accounting.

d.3.2) Methods for distributing value of the aid:

The customs declarant shall distributed himself/herself the aid for the imported goods by any of the following methods:

- d.3.2.1) Distribute the aid to the imported goods of the initial importation;
- d.3.2.2) Distribute the aid according to the quantity of manufactured goods up to the time of the initial importation;
- d.3.2.3) Distribute the aid to all of goods intended to be produced according to the sale agreement between the buyer and the seller (or the manufacturer);
- d.3.2.4) Distribute the aid according to the principle of descending or ascending;
- d.3.2.5) Apart from the methods above, the buyer may apply other methods for distribution (for example distribution by month/quarter/year), on the condition that the distribution shall be conformable to the legislation on accounting regime and shall be recorded.

dd) The copyright fees and the license fees specified in Article 14 of this Circular.

e) The sums that the importer shall pay, except for the proceeds from resale and use of imported goods shall be transferred directly or indirectly to the seller in any shape or form. Procedures for declaration and inspection:

e.1) For the case this sum is determined at the time the declaration is registered:

The customs declarant shall declare himself/herself at the corresponding criterion in the declaration of imported goods or the declaration of customs value, applicable to the case subject to customs value declaration;

e.1.2) The customs authority shall examine and process the result according to the provisions of Article 25 of the Circular on customs procedures; customs supervision and inspection; export/import taxes and tax administration for exported/imported goods.

e.2) For the case the sum is undetermined at the time the declaration is registered due to the dependence to post-export sales or other reasons specified in the goods sale contract or other documents of agreement:

e.2.1) At the time of registration of the declaration, the customs declarant shall declare clearly the reason for not determining the amount of money that the importer must pay after reselling, defining and using imported goods on the declaration of imported goods or the declaration of customs value applicable to the cases subject to customs value declaration. Within 5 days from the dated of actual payment, the customs declarant shall perform the declaration, calculate the payable tax for the sum actually paid on the supplementary declaration at post-customs clearance and pay the tax sufficiently according to the regulation;

e.2.2) The customs authority shall examine the documents relating to such amount of money and the declaration of the customs declarant according to the regulations in point (e.2.1) of this clause and shall handle as follows:

e.2.2.1) In case the customs declarant fails to perform the declaration or the payment declared is unconformable, the customs authority shall make the decision on penalty according to the legislation and request the customs declarant to complete the declaration. If the customs declarant fails to perform the declaration or supplement declaration according to the request, the customs authority shall carry out the customs valuation, define tax, collect sufficiently the tax and/or late payment interest (if any) according to the regulation;

e.2.2.2) In case the customs declarant fails to perform punctually the declaration according to the provisions of point (e.2.1) of this clause, the customs authority shall impose penalties according to the legislation.

g) Transportation costs and any costs relating to the transportation of imported goods to the first importing checkpoint, exclusive of costs for loading, unloading and arranging of goods taken from the transport vehicle to the first importing checkpoint.

If the costs of loading, unloading and arranging the goods taken from the transport vehicle to the first importing checkpoint are included in the international transport cost or in the actual or future payment, such costs will be deducted from the customs value of the imported goods if they satisfy sufficiently the conditions provided in clause 1 Article 15 of this Circular.

g.1) The value of such adjustments is determined according to the transport contract and the documents relating to the transport of goods;

g.2) In case the buying price does not include the cost of transport but the buyer fails to present the lawful transport contract or the documents relating to the transport of goods, thus the transaction value-based method shall not be applied;

g.3) In case there are multiple types of goods without specifications on the transportation contract or the documents relating to the transport of goods, thus the customs declarant shall applied any of the following methods for distribution:

g.3.1) Distribution on the basis of the transport price list of the person who in charge of transporting goods;

g.3.2) Distribution by weight or volume of goods;

g.3.3) Distribution according to the ratio of buying value of each type of goods to the total value of goods.

h) The insurance cost of the imported goods at the first importing checkpoint.

h.1) If the importer does not purchase insurance for goods, the insurance cost will not be added to the customs value;

h.2) The insurance cost for multiple goods without specifications shall be distributed according to the value of each type of goods.

i) The costs mentioned in points (g) and (h) of this clause are exclusive of payable added-value tax in Vietnam. If such tax is included in the transport cost, international insurance cost or in the actual or future payment, it will be deducted from the customs value of the imported goods if they satisfy sufficiently the conditions provided in clause 1 Article 15 of this Circular.

Article 14. Copyright fee and license fee

1. "Copyright fees" means an amount of money that the buyers must pay directly or indirectly to the subject of intellectual property rights, to be transferred the ownership or the right to use the intellectual property rights.

a) Intellectual property rights are the rights of organizations/individuals for an intellectual property, including copyrights and rights relating to copyrights, industrial property rights and plant variety rights.

a.1) Copyrights are the rights of organizations/individuals for the work they create or own;

a.2) Rights related to copyright are the rights of organizations and individuals for their performances, audio recordings, video recordings, broadcast and satellite signals carrying encrypted programs;

a.3) Industrial property rights are the rights of organizations/individuals for the inventions, industrial designs, layout designs of semiconductor integrated circuits, trademarks, trade names, geographical indications and trade secrets they create or own and the rights against unfair competition;

a.4) Rights for plant varieties mean the rights of organizations/individuals for the new plant varieties they create or discover and develop or enjoy the ownership.

Such rights above are exercised according to the provisions of the Law on Intellectual property.

b) Subject of intellectual property: mean the owners of intellectual property rights or any organization/individual that is transferred intellectual property rights by its owner.

2. "License fees" means an amount of money that the buyers must pay directly or indirectly to the subjects of intellectual property rights to perform some activities within the rights of industrial property rights.

3. Copyright fee and/or license fee shall be added to the imported goods only when these following conditions are satisfied:

a) The buyer pays the copyright fee and/or license fee for the use or transference of intellectual property rights relating to the imported goods receiving customs valuation according to clause 4 of this Article;

b) Copyright fee and/or license fee are paid directly or indirectly by the buyer as a condition for sale transaction of goods receiving customs valuation according to clause 6 of this Article and are specified in the sale contract, license contract or other agreement on transference of intellectual property rights;

c) The copyright fee and/or license fee have not been included in the actual or future payment of the imported goods receiving customs valuation.

4. The copyright fee and/or license fee are considered relating to imported goods if:

a) Copyright/license fee paid for the use of product brand associated with the documents relating to the agreement and payment of copyright/license fee if all of the following requirements are satisfied:

a.1) Imported goods are resold in the conditions as when imported on Vietnam market or have undergone simple processing after they are imported according to the provisions of clause 5 of this Article;

a.2) Imported goods are affixed trademarks when they are sold in Vietnam.

b) Copyright/license fee paid for the use of inventions, technical secrets or other intellectual property rights prescribed in the sale contracts, licensing contract or other agreements on transference of intellectual property rights if any of the following cases:

b.1) Inventions, technical secrets or other intellectual property rights are used for producing imported goods;

b.2) Imported goods are applied inventions, industrial designs or the rights belonged to other intellectual property rights;

b.3) Imported goods are machines or equipment produced to apply the inventions, technical secrets or other intellectual property rights.

Examples of imported goods satisfying the condition “relating to imported goods” are performed in Appendix I of this Circular.

5. Simple processing after the importation includes:

a) The maintenance of goods during the transportation and storage (air ventilation, spreading out, drying, freezing, pickling, inhalation of sulfur or adding other additives, removing broken parts and similar works);

b) Screening, selection, classification (including the arrangement), cleaning, painting, dividing into sections;

c) Changing the wrapping and dismantling or assembling the batches of goods; bottling, packaging, boxing and other simple packaging; simple activities like husking, grinding, cutting, tearing, bending and rolling;

d) Sticking labels or other similar marks on the products or wrapping of products;

dd) Simply mixing imported goods with other ingredients including diluting with water or other ingredients provided that the basic nature of the products shall remain unchanged;

g) Simply assembling the parts of product to form a finished product;

Simple assembly is to assemble spare parts together with assembly tools (screws, bolts, nuts) or rivets or by welding provided that these activities are simply assembly. The spare parts are not processed to be finished products regardless of the complexity of assembly methods.

h) Combination of works specified in points (a) to (g) of this clause;

i) Slaughtering animals without processing.

6. Copyright/license fee will be considered a condition for the trade of goods in any of the following cases:

a) The buyer shall only purchase the imported goods from the provider appointed by the intellectual property owner or the provider related to the intellectual property owner; or the goods must satisfy the technical standards at the request of the intellectual property owner; or

b) The buyer shall only purchase the imported goods when they pay the seller or the subject of intellectual property rights the copyright/license fees.

Examples of imported goods satisfying the condition “being a condition of imported goods sale transaction” are performed in Appendix I of this Circular.

7. These following cases may not be added to the customs value:

a) The amount of money that the buyer shall pay for the right to reproduce the imported goods or the art work in Vietnam (for example: if an item of goods is imported and used for producing a copy exactly the same as the original copy, then the amount of money paid for manufacturing goods according to the imported item is considered as the right to reproduce imported goods);

b) The amount of money that the buyer must pay for the right to distribute or resell the imported goods, in case such money is not considered as a condition for imported goods sale transaction.

If the amount of money the buyer pay for the right to reproduce, distribute or sell the imported goods is included in the actual price or future payment, such amount shall not be deducted from the customs value when determining the value of such imported goods.

8. Procedures for declaration and inspection:

a) For the case the copyright/license fees are determinable at the time the declaration is registered:

a.1) The customs declarant shall declare himself/herself the amount of copyright/license fees in the declaration of imported goods or the declaration of customs value, applicable to the case subject to customs value declaration;

a.2) The customs authority shall examine and process the result according to the provisions of Article 25 of the Circular on customs procedures; customs supervision and inspection; export/import taxes and tax administration for exported/imported goods.

b) If the copyright/license fee is undetermined at the time the declaration is registered due to the dependence to post-export sales or other reasons specified in the goods sale contract or the written agreement on the payment of copyright/license fees, the declaration and inspection shall conform to the following procedures:

b.1) At the time of registration of declaration, the customs declarant shall declare in the declaration of imported goods or the declaration of customs value the reason why the copyright/license fee is undetermined, applicable to the cases subject to customs value declaration. Within 5 days from the dated of actual payment, the customs declarant shall perform the declaration, calculate the payable tax for the copyright/license fees actually paid in the supplementary declaration at post-customs clearance and pay the tax sufficiently according to the regulation;

b.2) The customs authority shall examine the documents relating to the copyright/license fees and the declaration of the customs declarant according to the regulations in point (b.1) of this clause and shall handle as follows:

b.2.1) If the customs declarant fails to perform the declaration or the declared copyright/license fee is unconfirmable, the customs authority shall make the decision on penalty according to the legislation and request the customs declarant to complete the declaration. If the customs declarant fails to perform the declaration or supplement declaration according to the request, the customs authority shall carry out the customs valuation, define tax, collect sufficiently the tax and/or late payment interest (if any) according to the regulation;

b.2.2) In case the customs declarant fails to perform punctually the declaration according to the provisions of point (b.1) of this clause, the customs authority shall impose penalties according to the legislation.

9. For the case the copyright/license fee is determined according to the imported goods and other elements unrelated to the imported goods:

a) If there are figures enabling the separation between the copyright fee and the license fee relating to the imported goods, such value shall be added to transaction value;

b) In case the copyright fee and the license fee relating to the imported goods are inseparable, the customs value shall not be determined by the transaction value-based method but the next one instead.

Article 15. Deductions

1. Deductions can be made only when the following conditions are satisfied:

a) There shall be objective and quantifiable data conformable with the relevant documents which are lawful and available at the time of valuation;

b) These deductions shall be included in the actual or future payment;

c) The deductions shall be conformable with the Vietnam's legislation on accounting.

2. The deductions:

a) Costs for the activities arisen after the importation, including the cost for construction, architecture, installation, maintenance or technical assistance, technical consultancy, cost of supervision and similar costs;

b) The costs of transportation and insurance when the goods have been transported to the first importing checkpoint. If such costs are related to multiple goods without specifications, they shall be distributed according to the principle in points (g) and (h) Article 13 of this Circular;

c) The amounts of taxes, fees and charges payable in Vietnam included in buying price of imported goods. If the amounts of taxes, fees and charge concerning different goods without separation, they shall be distributed according to the rate of buying value of each type of goods.

d) Discount:

d.1) Deductions can be made only when the following conditions are satisfied:

d.1.1) The discount is any of the following cases:

d.1.1.1) Discount according to the commercial level of the goods sale transaction;

d.1.1.2) Discount according to the sales;

d.1.1.3) Discount according to the form and time of payment.

d.1.2) The discount is specified in writing before loading goods onto the transport vehicle in the exporting country;

d.1.3) There is objective and quantifiable data conformable with the documents for separating such discount from the transaction value. These documents are enclosed with the customs declaration sheet;

d.1.4) Payment is made through the bank using the L/C method or the TTR method for all the imported goods in the sale contract.

d.1.5) Actual and declared value about the imported goods, commercial level, form and time of payment is conformable to the Announcement about discount of the seller.

d.2) Application for consideration for discount:

d.2.1) The application for deduction for discount when the importation and payment for all the goods included in the contract is completed: 01 original copy;

d.2.2) The goods sale contract: 01 copy;

d.2.3) The form No. 01/GG/2015 in Appendix II of this Circular for the case goods included in a contract are imported with different trips (using different declarations): 01 original copy;

d.2.4) The seller's announcement about discount: 01 copy;

d.2.5) Documents proving the payment for all the goods included in the sale contract: 01 copy;

d.3) Procedures for declaration and inspection of the discount and competence in handling:

d.3.1) Responsibilities of customs declarant:

d.3.1.1) Declare the discount in the criterion "detail of value declaration" on the import declaration or in the corresponding criterion on the customs value declaration but not carry out the deduction for discount on the customs value declaration.

d.3.1.2) Calculate and pay the tax according to the value before the deduction for discount;

d.3.1.3) Apply for consideration for deduction according to the regulations in point (d.2) of this clause after the importation and payment for all the goods included in the sale contract.

d.3.2) Responsibilities of customs authority:

The customs authority receiving the application for deduction for discount from the customs declarant shall:

d.3.2.1) Examine the application and the enclosed documents;

d.3.2.2) Examine and compare the declared value and the actual one about the quantity, commercial level, form and time of payment with the Announcement about discount of the seller;

d.3.2.3) The Director of Customs Departments of provinces shall consider and decide to make deduction for the discount if the conditions specified in point (d.1) of this clause are satisfied. The value of the deduction shall be under 5% of the total value of goods and the declared value shall not be under the value of the reference price of the identical goods in the List of imported goods facing risk in value. Other cases of deduction shall be considered and decided by the Director of the General Department of Customs;

d.3.2.4) Settle the differential amount of tax due to the deduction for discount according to the regulation.

dd) Costs the buyer bears that relating to the marketing of imported goods, including:

dd.1) Costs for research and inspection of the market about the future imported goods;

dd.2) Costs for advertisement for the imported goods;

dd.3) Costs relating to the display and introduction of the products freshly imported;

dd.4) Costs for participating in commercial fair and exhibition of the new products;

e) Cost for examination of quantity and quality of goods before import. If such cost is agreed by the buyer and the seller and is included in the actual or future payment from the buyer to the seller, it shall not be deducted from the transaction value;

g) Cost for opening the L/C, remittance fee for the payment for the imported goods, if such cost is the payment from the buyer to his/her representative bank.

h) The interest in proportion to the interest rate according to the financial agreement of the buyer and relating to the purchase of imported goods: the deduction for the interest from the transaction value shall be made only if all the following conditions are satisfied:

h.1) Financial agreement is made in written;

h.2) Customs declarant can prove that at the time the financial agreement is implemented, the declared interest rate does not exceed the normal credit interest rate of the exporting country as well as the ceiling interest rate promulgated by the State bank of Vietnam.

Article 16. The distribution of the additions and the deductions

1. If the addition or deduction in customs value of goods is permitted but the types of goods whose customs value is increased or decreased are not specified in the sale contract, invoice, or relevant documents, then the customs declarant may choose any of the method specified in

clause 2 of this Article (except for the adjustment with specific regulation on distribution provided in Article 13 and 15 of this Circular) to distribute such adjustment for each type of goods provided that the value of the adjustment shall be totally distributed to the imported goods whose customs value is increased or decreased.

2. Methods for distribution: customs declarant may choose any of the following methods for distribution:

- a) Distribution according to the quantity;
- b) Distribution according to the weight;
- c) Distribution according to the volume;
- d) Distribution according to the value of the sale invoice.

Article 17. Customs value of exported/imported goods in special cases

1. Regarding the exported/imported goods without official price at the time of registration of customs declaration sheet, customs value is the provisional price declared by the customs declarant according to the relevant invoices and documents that is available at the time of valuation. When the official price is announced, customs value will be determined according to the method for valuation specified in clause 2 Article 4 and clause 2 Article 5 of this Circular. Procedures for valuation:

a) Provisional price:

a.1) Customs declarant: declare the provisional price on the custom declaration sheet at the corresponding item when registering and declare the time the official price will be determined at the item “phân ghi chú” (“notes”)

a.2) Customs authority: examine the provisional price and the time of determination of official price according to the provisions of Article 25 of the Circular on customs procedures; customs supervision and inspection; export/import tax and tax administration of exported/imported goods; supervise and expedite the customs declarant to declare the official price right at the time it is determined.

b) Official price:

b.1) Customs declarant: declare the official price on the modified declaration of post-customs clearance and pay the differential amount of tax (if any) within 05 working days from the day on which the official price is determined.

b.2) The customs authority: examine the declaration of the customs declarant, the time of determination of the official price, conditions for approval for such time according to the provisions in point (c) of this clause as follows:

b.2.1) Determine the customs value, define tax, collect sufficiently the tax and/or late payment interest (if any), issue decision on penalties for administrative violations applicable to the customs declarant who fails to declare or declare unconformably with the regulations on official price; issue decision on penalties for administrative violations applicable to the customs declarant who fails to declare conformably with the time regulated in point (b.1) of this clause;

b.2.2) Settle the differential amount according to the regulations on settlement of the surplus payment in the Law on Tax administration and the guiding documents applicable to the case that the amount of tax according to the official price is lower than the tax according to the provisional price;

c) If the official price is determined later than 90 days from the day on which the declaration is registered, the customs declarant shall fill the declaration sheet and submit the sale contract and the commercial invoice (01 copy) proving the time of determination of official price and be legally responsible for the accuracy of such time. The receiving agency shall request the Director of Customs Departments of provinces to examine, consider, decide and be responsible for the decision on the approval for the time of determination of the official price according to the documents and the actual condition of the exported goods.

d) Conditions for approval for the time of determination of official price:

d.1) Sale contract shall include the agreement about the time of determination of official price appropriate to the exported/imported goods according to international practice;

d.2) Time of determination of actual price shall be in conformity with the time of determination of official price according to the agreement included in the contract;

d.3) The official price shall be conformable with the actual or future payment for the exported/imported goods according to the payment invoices.

In case the time of determination of the official price is not satisfactory and the amount of tax according to the official price is higher than the tax that is paid according to the provisional price, thus the customs declarant shall pay the late payment interest for the differential amount.

2. Regarding the case that imported goods that were determined the non-taxable goods, goods eligible for tax exemption or consideration for tax exemption are used in Vietnam and received change in uses:

a) In case the imported goods are autos or motorbikes: customs value shall be determined on the basis of the remained usable value of goods according to the useful life in Vietnam (from the time of importation according to the customs declaration sheet to the time of determination of tax) and shall be specified as follows:

Useful life in Vietnam	Customs value = (%) declared value at the import time
------------------------	--

Not more that 6 months (183 days)	90%
From over 6 months (183 days) to 1 year (365 days)	80%
From over 1 year to 2 years	70%
From over 2 years to 3 years	60%
From over 3 years to 5 years	50%
From over 5 years to 7 years	40%
From over 7 years to 9 years	30%
From over 9 years to 10 years	15%
Over 10 years	0%

If the price declared at the time of importation of goods that are non-taxable or eligible for tax exemption or consideration of exemption is lower than the price in the price database at the same time, the price in the price database and the rates above shall be used for customs valuation.

b) Other imported goods: customs value is the actual or future payment at the time of transformation of uses and shall be determined according to the rules and methods for customs valuation specified in this Circular.

3. Customs value of the goods imported to Vietnam after being processed by a foreign party shall include the cost for processing and the value of raw materials used for the processing that are provided by the foreign party and specified in the processing contract and the adjustment specified in Articles 13 and 15 of this Circular. The value of materials exported from Vietnam for processing according to the processing contract shall not be included in the customs value of the processed products.

4. With regard to the imported goods that are sent to a foreign country for repair and are taxable objects when imported to Vietnam, customs value is the actual payment for repair of imported goods according to the documents relating to such activity.

5. With regard to goods that are imported without sale contract or commercial invoice, customs value is the declared value. If there is evidence proving that the declared value is unconformable, the customs authority shall determine the customs value according to the rules and methods for customs valuation specified in Articles 8 to 12 of this Circular.

6. Regarding surplus imported goods in comparison with the sale contract or commercial invoice:

a) With regard to surplus imported goods that are identical or similar to the imported goods included in the sale contract or commercial invoice: customs value of the surplus imported goods is determined according to the methods for customs valuation of the imported goods included in the sale contract;

b) With regard to surplus imported that are goods different from the imported goods included in the sale contract or the commercial invoice: customs value is determined according to the methods for customs valuation specified in Articles 8 to 12 of this Circular.

7. Regarding imported goods unconfirmable to the sale contract or the commercial invoice:

With regard to goods that are unconfirmable with the regulations on specifications: customs value is determined according to the actual payment for the imported goods. Goods unconfirmable with the regulations on specifications are the actual imported goods that have colors, sizes and shapes different from the description in the sale contract and such differences do not affect the actual payment.

b) With regard to goods unconfirmable to the sale contract or the commercial invoice other than those specified in point (a) of this clause: customs value is determined according to the methods for customs valuation specified in Articles 8 to 12 of this Circular.

8. Actual imported goods with quantity different from that specified in the commercial invoice due to the characteristics of goods and conformable to the conditions of delivery and payment in the sale contract or the commercial invoice: customs valuation shall be in accordance with the commercial invoice and the sale contract (the conditions of delivery, tolerance rate, natural characteristics of goods and conditions of payment). Customs value shall not lower than the actual payment written on the commercial invoice and relevant documents.

9. If imported goods are rented ones, customs value is the actual or future payment for renting, conformable with the documents relating to the rental of such goods.

10. Exported/imported goods in other special cases: Customs Departments of provinces shall report to the Ministry of Finance via the General Department of Customs for consideration and decision for specific cases conformable with the rules for customs valuation of exported/imported goods.

SECTION II: CUSTOMS VALUE DECLARATION SHEET

Article 18. Subjects of customs value declaration

Imported goods are subjected to customs value declaration, unless:

1. Non-taxable goods, goods eligible for tax exemption or consideration for tax exemption according to the provisions of the Law on Export and import tax;
2. Goods that are imported in the form of importing raw materials for the manufacture of exported goods;
3. Goods that are eligible for the transaction value-based method prescribed in clause 3 Article 6 of this Circular and have information declared sufficiently in the declaration of imported goods

of Vietnam Automated Cargo And Port Consolidated System and such system determines the customs value automatically;

4. Goods that are imported without sale contract or commercial invoice.

Article 19. The form of customs value declaration sheet

1. The form for customs value declaration according to the transaction value of the imported goods is prescribed in Article 6 of this Circular: The Form HQ/2015-TG1 and the instructions in Appendix III of this Circular.

2. The form for customs value declaration using the methods prescribed in Articles 8 to 12 of this Circular: The Form HQ/2015-TG2 and the instructions in Appendix III of this Circular.

Article 20. Principle of customs value declaration

1. The customs value shall be provided specifically for each item of declaration of imported goods in the customs value declaration sheet. The items declared in the customs value declaration sheet shall be numbered continuously and in accordance with the ordinal numbers of such items in the declaration of imported goods.

2. The customs value declaration sheet is an integral part of the declaration of imported goods and shall be enclosed with the declaration of imported goods during the customs procedures. The customs value declaration sheet shall be made in 02 copies, one is retained in the customs authority and the other is retained by the goods owners and shall be enclosed with the declaration of imported goods according to the legislation.

SECTION III: VALUE DATABASE

Article 21. Value database

1. Value database is any information related to the customs valuation of the exported/imported goods that is collected and classified by the customs authority. Customs value database is established focusly and constantly and is updated regularly, including:

- a) Customs price database management system;
- b) Lists of exported/imported goods facing risk in value enclosed with reference price.

2. Sources of information for establishment of value database:

a) Information from import/export documents: the available information on the import/export documents declared by the customs declarant or collected by the customs authority during the customs procedures and after customs clearance.

b) Information from the Lists of exported/imported goods facing risk in value as prescribed in this Circular;

c) Information about the implementation of the law of the enterprise: the information relating to the policy implementation of the enterprise in declaration and valuation, the number of violations and violation level that the customs authority collected and analyzed on the risk management system;

d) Other sources of information: information collected by the customs authority or provided by other relevant agencies that is verified.

3. Value database is used for:

a) Establishing the List of exported/imported goods facing risk in value;

b) Examining the customs value of exported/imported goods;

c) Serving the State management of import, export and other field.

4. The Director of the General Department of Customs is in charge of establishing the regulations on development, management and use of value database.

Article 22. Competence in development and modification; the rules on the use of the List of exported/imported goods facing risk in value and the reference price

1. The Director of the General Department of Customs is responsible for the development and modification of:

a) The items in the List of exported/imported goods facing risk in value on the basis of the risk assessment result according to the criteria prescribed in Article 24 of this Circular, professional information, information and data available in the information system of the Customs line at the time of assessment. The List of exported/imported goods facing risk in value shall reflect the information about the goods including code and name of goods.

b) The reference price of goods in the Lists of exported/imported goods facing risk in value on the basis of the information collected according to the regulations in Article 25 of this Circular.

2. The List of exported/imported goods facing risk in value and the reference price is the basis for the customs authority to compare and examine the declared value of the customs declaration during the customs procedures or when the goods have receive customs clearance according to the regulation. They shall not be used for imposing customs value and shall be used constantly for internal use in Custom line.

Article 23. Time limit and competence in development and modification of the List of exported/imported goods facing risk in value and the reference price enclosed therewith

1. The List of exported/imported goods facing risk in value and the reference price enclosed therewith shall be developed and modified biannually or in case of necessity on the basis of the consider of:

a) The proposals of organizations/individuals;

b) The suggestions of the Customs Departments of provinces and the agencies affiliated to the General Department of Customs according to the provisions of clause 2 of this Article.

2. Any Director of the Customs Departments of provinces is responsible for:

a) Updating the result of the examination of documents, the physical verification of goods, the consultations and determination of value, the result of post-customs clearance inspections, investigation against smuggle to the corresponding database system.

b) Pursuant to the result of examination of documents, the physical verification of goods and the investigation against smuggle, the turnover condition, the tax rate of export/import, the conditions of smuggle and commercial fraud then report to the General Department of Customs to:

b.1) Add reference prices for exported/imported goods in the List of exported/imported goods facing risk in value without reference price according to the Report proposing additions to the List of exported/imported goods facing risk in value (the Form No. 02/DMBX/2015 in Appendix II enclosed with this Circular) by collecting the information according to the regulations in Article 25 (except for point (h) clause 1) of this Circular;

b.1) Modify the reference prices in case of the fluctuation in declared price and the collected information that increase or decrease from over 10% in comparison with the reference price in the List of exported/imported goods facing risk in value according to the report proposing additions to the List of exported/imported goods facing risk in value (the form No. 03/DMSĐ/2015 in Appendix II enclosed with this Circular) by collecting the information according to the regulations in Article 25 (except for point (h) clause 1) of this Circular;

b.3) Add to the List of exported/imported goods facing risk in value and reference price the exported/imported goods satisfying any of the criteria specified in Article 24 of this Circular that have not been included in the List according to the Report proposing additions to the List of exported/imported goods facing risk in value by collecting the information according to the regulations in Article 25 (except for point (h) clause 1) of this Circular.

3. The agencies affiliated to the General Department of Customs update to the data system of the General Department of Customs according to the functions and tasks of management of the information specified in clause 1 Article 25 of this Circular.

4. The Export and Import Tax Department of provinces (affiliated to the General Department of Customs) shall supervise, expedite and direct the Customs Departments of provinces to update

the information and establish the Report proposing additions to the List of exported/imported goods facing risk in value according to the provisions of clause 2 of this Article.

Article 24. Criteria for developing and modifying the Lists of exported/imported goods facing risk in value

1. For the export:

- a) Goods with high export tax and export turnover;
- b) Goods with high frequency of violation pertaining to the customs value during the valuation;
- c) Goods facing risk that are declared unconformably with the actual transaction value so as for export tax fraud or tax evasion or to be eligible to added-value tax refund.

2. For the import:

- a) Goods with high import tax;
- b) Goods occupying high rate in total import turnover;
- c) Goods with high frequency of violation pertaining to the customs value during the valuation;
- d) Goods facing risk that are declared unconformably with the actual transaction value so as for import tax fraud or tax evasion;
- dd) Goods facing risk that are declared unconformably with the actual transaction value so as for dumping of goods into Vietnam's inland market.

Article 25. Sources of information for development and modification of the reference price enclosed with the List of exported/imported goods facing risk in value

1. The information from the customs authority:

- a) Information about import/export price of the identical/similar exported/imported goods that receive the approval of the customs authority for the customs value declared on the customs price data management information system;
- b) Information about the result of the examination of document, physical verification of goods, the consultancy and the result of the modification of goods carried out by the Customs Departments of provinces during the customs procedures that is daily updated to the customs price data management information system;
- c) Information about the result of the handling of complaints about customs value carried out by the Customs Departments of provinces, the General Department of Customs that is updated to the customs price data management information system;

d) Information about the result of the inspection after customs clearance about the customs value carried out by the post-clearance inspectorates that is updated to the enterprise management information system serving the post-clearance inspection and risk management;

dd) Information about the result of inspection and solution of the fraud of customs value carried out by the anti-smuggle force during the control and inspection that is updated to the information collection database system;

e) Information about the commercial fraud status, about the handling result of the violations during the classification in the risk management information system;

g) Information about the inspection carried out by the inspectorates or other customs forces before, during or after customs clearance;

h) Information from the report proposing the modification of the Customs Departments of provinces according to the provisions of clause 2 Article 23 of this Circular.

2. The information from outside the customs authority:

a) Information about the transaction price on the international market (applicable to the items with transaction price on the international market) posted on the website of the transaction market of such items;

b) Information about the declared price that is posted on the website of the regulatory bodies;

c) Information from specialist magazines and documents, applicable to the line of auto, motorbike, electronics, iron and steel, etc that is collected monthly by the customs authority;

d) Information about the offer prices on the Internet from the genuine websites or the websites associated with the genuine websites, the transaction price on the international market (applicable to the items with transaction price on the international market) posted on the website of the transaction market of such items;

dd) Information about the signs of commercial fraud in the value declaration provided for the customs authority by relevant organizations such as the market management authorities, police departments, commercial banks or by the Tax Ministries, regulatory bodies, tax agencies, Association, enterprises, organizations/individuals;

g) Information from the selling price on the domestic market of the goods identical/similar to the exported/imported goods, the relationship between the market selling price and the selling price of exported/imported goods that is collected periodically by the customs authority or provided by the tax agency (if any);

h) Information about the selling price of goods subject to export to Vietnam that is provided by the customs authorities of the exporting countries according to the agreement on bilateral or multilateral customs cooperation.

3. Such information shall be collected within at least 6 months from the day on which the decision on the promulgation of the applicable List of exported/imported goods facing risk in value is signed. When the information is collected, the Export and Import Tax Department of provinces shall analyzed and changed such information into the same trading condition and request the Director of the General Department of Customs to promulgate the List of exported/imported goods facing risk in value and the reference price enclosed therewith.

Chapter III

ORGANIZATION OF IMPLEMENTATION

Article 26. Effect

1. This Circular comes into effect from 01/4/2015.

These following Circulars and Decisions are annulled:

a) The Circular No. 205/2010/TT-BTC dated December 15, 2010;

b) The Circular No. 29/2014/TT-BTC dated February 26, 2014;

c) The Decision No. 30/2008/QĐ-BTC dated May 21, 2008;

d) The Circular No. 182/2012/TT-BTC dated October 25, 2012;

dd) The Decision No. 1102/QĐ-BTC dated May 21, 2008.

2. The determination and inspection of the customs declaration sheet registered from 01/01/2015 to the day before this Circular comes into effect shall be conformable to the guidance in the Circular No. 205/2010/TT-BTC dated December 15, 2010 and the Circular No. 29/2014/TT-BTC dated February 26, 2014 by the Minister of Finance.

3. During the implementation, if the relevant documents mentioned in this Circular and the appendixes enclosed with this Circular are modified or replaced, such modified or replaced documents are applied.

4. The customs valuation of exported/imported goods; inspection of customs value during the customs clearance procedures; inspection of post-clearance value of goods shall conform with the provisions of the Circular on customs procedures, customs supervision and inspection; export/import tax and tax administration applicable to exported/imported goods promulgated by the Minister of Finance.

Article 27. Responsibilities

1. The General Department of Customs shall cooperate with the Ministries, line association, the units affiliated to the Ministry of Finance to collect and exchange information about prices

serving the inspection and determination of customs value as prescribed in Article 25 of this Circular.

2. The Directors of Customs Departments of provinces are responsible for the collection and analysis of information and the establishment of report to the General Department of Customs on the development and modification of the List of exported/imported goods facing risk in value prescribed in clause 2 Article 23 of this Circular.

3. The customs authority, the customs declarant, the taxpayer and relevant organizations and individuals shall perform the customs valuation conformably with the regulations in this Circular. Difficulties that arise during the implementation of this Circular should be reported to the Ministry of Finance and the General Department of Customs for consideration./.

**PP. THE MINISTER
THE DEPUTY MINISTER**

Do Hoang Anh Tuan

*This translation is made by **LawSoft** and for reference purposes only. Its copyright is owned by **LawSoft** and protected under Clause 2, Article 14 of the Law on Intellectual Property. Your comments are always welcomed*