

management over the application of safeguard measures

1. The Government shall perform the unified State management over the application of safeguard measures.

2. The Ministry of Trade shall be responsible to the Government for performing the unified State management over the application of safeguard measures; organize the application of safeguard measures after consulting the concerned ministries and ministerial-level agencies.

3. The ministries, the ministerial-level agencies and the People's Committees of the provinces and centrally-run cities shall, within the ambit of their respective tasks and powers, have to coordinate with the Ministry of Trade in managing the application of safeguard measures.

Chapter VII

COMPLAINTS AND HANDLING OF VIOLATIONS

Article 30.- Complaints

1. Complaints related to the process of investigation and application of safeguard measures must be addressed to the Ministry of Trade.

2. The Ministry of Trade shall have to settle complaints within 30 days after receiving the written complaints; in special cases, this time limit may be prolonged but must not exceed 60 days.

3. Where the time limit prescribed in Clause 2 of this Article has expired but the Ministry of Trade has not yet settled the complaints or the complaining organizations or individuals disagree with the complaint-settling decisions of the Ministry of Trade, these organizations or individuals may initiate lawsuits at court according to the provisions of law.

Article 31.- Settlement of disputes and handling of violations

The settlement of disputes and handling of violations shall comply with the provisions of the Vietnamese law and the international treaties which Vietnam has signed or acceded to.

Chapter VIII

IMPLEMENTATION PROVISIONS

Article 32.- Implementation effect

This Ordinance takes effect as from September 1, 2002.

Article 33.- Implementation guidance

The Government shall specify and guide the implementation of this Ordinance.

*On behalf of the Standing Committee
of the National Assembly*

Chairman
NGUYEN VAN AN

THE GOVERNMENT

**DECREE No.60/2002/ND-CP OF JUNE 6, 2002
PRESCRIBING THE DETERMINATION OF TAX
CALCULATION VALUES OF IMPORT GOODS
ACCORDING TO THE PRINCIPLES OF THE
AGREEMENT IMPLEMENTING ARTICLE 7 OF
THE GENERAL AGREEMENT ON TARIFFS
AND TRADE**

THE GOVERNMENT

*Pursuant to the Law on Organization of the
Government of December 25, 2001;*

Pursuant to the Law on Export Tax and Import Tax;

Pursuant to Article 71 of the Customs Law;

At the proposal of the General Director of Customs,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Scope and objects of application

1. This Decree prescribes the determination of tax calculation values of import goods according to the principles of the Agreement implementing Article 7 of the General Agreement on Tariffs and Trade (hereinafter referred to as GATT-based tax calculation values for short).

2. Goods imported under commercial contracts and originating from countries or international organizations, to which Vietnam has committed to apply GATT-based tax calculation values, shall be subject to the application of tax calculation values prescribed in this Decree.

3. Basing himself/herself on the commitments of the Socialist Republic of Vietnam State with foreign countries and international organizations as well as Vietnam's practical conditions, the General Director of Customs shall coordinate with the concerned ministries and agencies in proposing to the Prime Minister for decision the scope and objects of application of tax calculation values prescribed in this Decree.

4. Tax calculation values of import goods other than those specified in Clauses 2 and 3, Article 1 and Clause 1, Article 18 of this Decree shall comply with the provisions of the current legislation on export tax and import tax.

Article 2.- Time and methods of determining tax calculation values

1. Time of determining tax calculation values of import goods shall be the date the customs declarers register their customs declarations of import goods.

2. The methods of determining tax calculation values of import goods prescribed in Articles 5 through 10 of this Decree shall be applied one after another until a certain one is accredited effective for determining such tax calculation values.

In cases where customs declarers request, the order for applying the methods of determining tax calculation values prescribed in Articles 8 and 9 of this Decree may interchange.

Article 3.- Exchange rates used in the determination of tax calculation values

1. Tax calculation values shall be in Vietnam dong.

2. Exchange rates used in the determination of tax calculation values of import goods are average transaction rates on the inter-bank foreign currency market, announced by the State Bank of Vietnam at the time of registering import goods declarations. In cases where the State Bank does not announce the exchange rate or information cannot reach the border-gates within the announcing day, the tax calculation exchange rate of the preceding day shall apply.

Article 4.- Interpretation of terms and expressions

In this Decree, the following terms and expressions shall be construed as follows:

1. Transaction values means the actual prices already paid or to be paid for goods sold for export to Vietnam.

2. Identical import goods are those identical in all aspects, including their physical, qualitative and prestigious characteristics; they are made in the same country, by the same manufacturer or another manufacturer authorized by the former, and imported into Vietnam.

3. Similar import goods are those which, though being not identical in all aspects, have all the same basic features, are made of equivalent raw materials and materials, have the same functions, are interchangeable in commercial transactions, and made in the same country, by the same manufacturer or another manufacturer authorized by the former, and are imported into Vietnam.

4. The special ties between the purchaser and the seller are their relationships when:

a/ They are both members of another enterprise;

b/ They are co-owners of an enterprise;

c/ They are employer and employee;

d/ The seller has the right to control the purchaser or vice versa;

e/ They are both controlled by a third party;

f/ They are members of one family and bound together in the following relationships:

- Husband and wife;

- Parents and children;

- Blood siblings;

- Grandparents and grandchildren, by blood;

- Uncles, aunts and nieces, nephews, by blood;
 - Parents-in-law and sons-in-law, parents-in-law and daughters-in-law;
 - Brothers-in-law, sisters-in-law.
- g/ A third party that owns, controls or holds 5% or more of the voting shares of each involved party.

Chapter II

METHODS OF DETERMINING TAX CALCULATION VALUES OF IMPORT GOODS

Article 5.- Method of determining tax calculation values according to transaction values of import goods

1. Tax calculation values of import goods are transaction values after being readjusted according to the provisions in Article 11 of this Decree.

2. Conditions for application of the method of determining tax calculation values according to transaction values:

a/ The purchaser has the full right to dispose and use goods after the importation. If there exist the following restrictions, this condition shall be considered satisfied:

- The sale, purchase and use of goods comply with Vietnamese law provisions.
- The purchaser and the seller have agreed upon the place(s) for goods sale after the importation.
- Other restrictions which do not affect the value of goods.

b/ The goods sale or goods prices do not depend on several conditions that lead to the failure in determining the values of goods whose tax calculation values should be determined.

c/ After reselling goods, the importer does not have to pay any additional money amount from the proceeds from the goods disposal or use, excluding readjusting amounts prescribed in Article 11 of this Decree;

d/ There are not special ties between the purchaser and the seller or these ties, if any, do not affect the transaction value. The identification of special ties' impact is prescribed in Clause 3 of this Article.

3. Identification of special ties' impact on transaction values:

a/ In cases where the purchasers declare that they

have special ties with the sellers but such special ties do not affect the transaction values, the condition prescribed at Point d, Clause 2 of this Article shall be deemed satisfied.

b/ In cases where the customs office has grounds to believe that the special ties have impact on the transaction values, it shall have to promptly notify such in writing to the customs declarers, so that the latter can disprove it by evidencing that the transaction value is approximate to one of the following values of the goods lots exported to Vietnam on the same day or within 30 days before or after the exporting date of the goods lot whose value is being determined:

- Transaction values of identical or similar import goods, which are sold to other importers who have no special ties with exporters (sellers);

- Tax calculation values of identical or similar import goods determined according to the provisions in Article 8 of this Decree.

- Tax calculation values of identical or similar import goods determined according to the provisions in Article 9 of this Decree.

If past 30 days after receiving notices from the customs office the customs declarers fail to disprove, the customs office shall comply with the provisions at Point b, Clause 4, Article 13 of this Decree.

Article 6.- Method of determining tax calculation values according to the transaction values of identical import goods

1. If tax calculation values of goods imported into Vietnam cannot be determined according to Article 5 of this Decree, they shall be the transaction values of identical import goods, whose tax calculation values have already been determined according to Article 5 of this Decree.

2. Identical import goods must satisfy the following conditions:

a/ The identical import goods lot is exported to Vietnam on the same day or within 30 days before or after the export date of the goods lot currently subject to the tax calculation value determination;

b/ The identical import goods lot is traded at the same level (wholesale or retail) or already readjusted to the same trading level; has the same quantity or already been readjusted to the same quantity as the goods lot currently subject to the tax calculation value determination;

c/ The identical import goods lot is transported over the same distance and by the same transportation mode, or has already been readjusted to the same transport distance and mode as the goods lot currently subject to the tax calculation value determination;

3. When applying the method of determining tax calculation values prescribed in this Article, only if there is not any other lot of import goods manufactured by the same manufacturer, can goods made by other manufacturers be considered, provided that such goods satisfy the conditions of identical import goods.

4. Upon determining the tax calculation values prescribed in this Article, if two or more transaction values of identical import goods are determined, the tax calculation value shall be the lowest transaction value, after readjusting the price to under the same conditions prescribed in Clause 2 of this Article.

Article 7.- Method of determining tax calculation values according to the transaction values of similar import goods

1. If tax calculation values of goods imported into Vietnam cannot be determined according to Articles 5 and 6 of this Decree, they shall be the transaction values of similar import goods, whose tax calculation values have already been determined according to Article 5 of this Decree.

2. The similar import goods must satisfy the following conditions:

a/ The similar import goods lot is exported to Vietnam on the same day or within 30 days before or after the export date of the goods lot currently subject to the tax calculation value determination;

b/ The similar import goods lot is traded at the same level (wholesale or retail) or already readjusted to the same trading level; has the same quantity or already been readjusted to the same quantity as the goods lot currently subject to the tax calculation value determination;

c/ The similar import goods lot is transported over the same distance and by the same transportation mode, or has already been readjusted to the same transport distance and mode as the goods lot currently subject to the tax calculation value determination;

3. When applying the method of determining the tax calculation values prescribed in this Article, only if there is not any other lot of import goods manufactured

by the same manufacturer, can goods made by other manufacturers be considered, provided that such goods satisfy the conditions of similar import goods.

4. Upon determining the tax calculation values prescribed in this Article, if two or more transaction values of similar import goods are determined, the tax calculation value shall be the lowest transaction value, after readjusting the price to under the same conditions prescribed in Clause 2 of this Article.

Article 8.- Method of determining tax calculation values according to the deductible values

1. If tax calculation values of goods imported into Vietnam cannot be determined according to the provisions in Articles 5, 6 and 7 of this Decree, they shall be the deductible values. The deductible values shall be determined on the basis of selling prices of import goods on the Vietnamese market minus (-) reasonable expenses and goods sale profits generated after the importation.

2. The selling prices of import goods on the Vietnamese market shall be determined according to the following principles:

a/ The selling prices of import goods are actual selling prices; in cases where there exist no actual selling prices of import goods subject to tax calculation value determination, the actual selling prices of identical import goods or similar import goods, which are in the original state as when they are imported and sold on the domestic market, shall serve the determination of actual selling prices;

b/ There are not special ties between importers and the domestic purchasers;

c/ The selling price level is calculated on the largest quantity of sold goods;

d/ The goods are sold (on wholesale or retail) within 90 days after the importation of such import goods lot.

3. Reasonable expenses and goods sale profits generated after the importation:

a/ In cases where importers purchase goods by the mode of definitive purchase and sale, the deductible amounts shall include:

- Freight and insurance for goods when they are sold on the domestic market;

- Taxes, fees and charges to be remitted into the State budget upon the importation and sale of import

goods, which, under the current law provisions, may be accounted into sale turnover, cost prices and expenses for sale of import goods;

- General management expenses related to the sale of import goods;

- Profit from the sale of import goods after the importation.

b/ In cases where importers are sale agents for foreign traders, deductible expenses shall be sale commissions.

In cases where sale agents are authorized by foreign traders to perform some operations related to the sale of import goods after the importation in Vietnam outside agency contracts, the expenses for such operations which arise in Vietnam shall also be deducted within the expenses agreed upon in the contracts.

4. Import goods, through further processing or preparation in the country, can have their tax calculation values determined according to the principles prescribed in Clause 1 of this Article, while the processing or preparation costs which increase goods values shall be deducted therefrom.

In cases where, after the further processing or preparation, the properties, characteristics and utility of import goods alter to the extent that they can no longer be recognized as original import goods, the method of determining tax calculation values prescribed in this Article shall not apply.

5. The determination of reasonable expenses and goods sale profits specified in Clause 3 of this Article must be based on available objective data and conform with the Vietnamese accounting rules.

Article 9.- Method of determining tax calculation values according to calculation values

1. If tax calculation values of goods imported into Vietnam cannot be determined according to the methods prescribed in Articles 5 through 8 of this Decree, they shall be calculation values. The calculation values shall be determined to include the following amounts:

- a/ Costs and profits of the manufacture of import goods;

- b/ Readjusting expenses prescribed in Clause 1, Article 11 of this Decree.

2. The determination of calculation values must be

based on data supplied by the manufacturers and conform with the accounting rules of countries where goods are made.

Article 10.- Reasoning methods

1. If the tax calculation values of goods imported in Vietnam cannot be determined according to the methods prescribed in Articles 5 through 9 of this Decree, they shall be determined by appropriate methods on the basis of documents and objective data available at the time of determining tax calculation values and compliant with the provisions of this Decree.

2. When applying the reasoning methods, the following values shall not be used in determining the tax calculation values:

- a/ Domestic market selling prices of goods of the same category already manufactured in Vietnam;

- b/ Selling prices of goods on the domestic market of the exporting country;

- c/ Selling prices of goods for export to another country;

- d/ Production costs of goods, except for production costs of import goods specified in Article 9 of this Decree;

- e/ Minimum tax calculation prices;

- f/ Various presumptive prices;

- g/ Higher transaction values of identical import goods or similar import goods when two or more different values are determined.

Article 11.- Readjusting amounts

1. Amounts to be added to transaction values for determining the tax calculation values:

- a/ The following expenses, which are borne by goods importers but have not yet been accounted into transaction values:

- Commissions and brokerage charges, except goods purchase commission;

- Expenses for package attached to goods;

- Packing expense, including materials and labor costs.

- b/ Values of goods and/or services already provided by purchasers to sellers free of charge or with discount, for the purpose of manufacture, consumption and distribution to import goods lots, including:

- Raw materials and materials for manufacturing import goods, components, spare parts and similar details constituting them;

- Tools, molds, casts and similar details used for manufacturing import goods;

- Fuels and powers consumed in the manufacture of import goods;

- Technical designs, blueprints, fine-art designs, prototype designs, schemes and outlines drawn up in foreign countries for the manufacture of import goods.

c/ Copyright royalties, licensing fees for use of intellectual property rights related to import goods paid by purchasers as conditions of the sale and purchase of import goods;

d/ Money amounts earned by importers after disposing and/or using import goods, which are transferred in any form to import goods sellers;

e/ Transport freight, goods loading, unloading and forwarding charges related to the transport of import goods to importing border-gates;

f/ Expense for goods insurance to importing border-gates.

2. The following amounts shall be subtracted from the transaction values if they have already been included in purchasing prices of import goods:

a/ Expenses for activities arising after the importation of goods, including expenses for construction, architecture, installation, maintenance or technical support;

b/ Transport freight and inland insurance cost arising after the importation;

c/ Taxes, fees and charges to be remitted into the State budget, which are included in import goods purchasing prices;

d/ Payable interests related to the payment for import goods purchase, provided that payable interest rates are specifically stated in purchase-sale contracts and compatible to the common credit interest rates applied by credit institutions of exporting countries at the time of signing the contracts;

e/ Price discounts given before loading goods onto transport means in the exporting countries, listed in writing and submitted together with customs declarations of import goods.

3. The addition or subtraction of the expenses specified in Clauses 1 and 2 of this Article shall be

made only on the basis of available objective data.

4. It is prohibited to add or subtract any other expenses than those specified in Clauses 1 and 2 of this Article.

Chapter III

RIGHTS AND OBLIGATIONS OF CUSTOMS DECLARERS, RESPONSIBILITIES OF THE CUSTOMS OFFICES

Article 12.- Rights and obligations of customs declarers

1. Rights of customs declarers:

a/ To request the customs offices to keep secret the already supplied information related to the determination of tax calculation values;

b/ To request the customs offices to guide and notify the determination of tax calculation values according to the provisions of this Decree;

c/ To prove the accuracy and truthfulness of the already declared tax calculation values and complain about the customs offices' decisions on tax calculation values according to the provisions in Article 14 of this Decree.

2. Obligations of customs declarers:

a/ To fully and accurately fill in contents of declaration forms of import goods' tax calculation values; to determine by themselves tax calculation values and take responsibility before law for the accuracy and truthfulness of the declared contents and results of the tax calculation value determination;

b/ To submit and produce documents for use as basis for inspecting and/or determining the tax calculation values at the requests of the customs offices;

c/ To be subject to the customs offices' inspection of tax calculation values as prescribed in this Decree.

Article 13.- Responsibilities and powers of the customs offices

1. The General Department of Customs shall issue declaration forms of import goods' tax calculation values, specifying declaration contents to suit each method of determining tax calculation values prescribed in this Decree. The provincial/municipal and inter-

provincial Customs Departments or the border-gate Customs Sub-Departments shall issue tax calculation value declaration forms to customs declarers; and guide customs declarers to declare and determine import goods' tax calculation values according to the provisions of this Decree.

2. To request customs declarers to submit or produce documents related to the goods purchase and sale to prove the accuracy and truthfulness of the already declared import goods' tax calculation values.

In cases where customs declarers fail to prove the accuracy and truthfulness of tax calculation values, they must promptly notify such in writing to the customs declarers.

3. To keep secret information supplied by customs declarers related to the determination of tax calculation values at the requests of customs declarers.

4. The customs offices shall have the right to determine tax calculation values in the following cases:

a/ Customs declarers fail to determine tax calculation values by one of the methods prescribed in Articles 5 through 10 of this Decree within the time limit for customs procedure clearance;

b/ Customs declarers have no documents to prove or fail to prove the accuracy and truthfulness of the already declared tax calculation values within 30 days after receiving the customs offices' notices;

c/ Customs declarers wrongly determine tax calculation values or the tax calculation value determination is made at variance with the provisions of this Decree.

5. To inspect the declaration and determination of values to serve as basis for calculating taxes on import goods.

Chapter IV

COMPLAINTS AND HANDLING OF VIOLATIONS

Article 14.- Complaints and settlement thereof

1. In cases where customs declarers have grounds to believe that the customs offices' decisions on tax calculation values are wrong, they may lodge complaints to the directors of the Customs Sub-Departments that have determined tax calculation

values. Pending the settlement, the customs declarers shall still have to abide by such customs offices' decisions.

2. If disagreeing with complaint-settling decisions of the directors of the Customs Sub-Departments, the customs declarers may further lodge their complaints directly to the directors of the provincial/municipal or inter-provincial Customs Departments. If disagreeing with complaint-settling decisions of the directors of the provincial/municipal or inter-provincial Customs Departments, the customs declarers may further lodge their complaints to the competent State agencies according to the provisions of law.

Customs declarers may initiate lawsuits at courts according to the provisions of law.

3. The time limit and procedures for settling complaints and the complaint-settling competence shall comply with the provisions of the legislation on complaints and other relevant law provisions.

Article 15.- Handling of violations

Organizations and individuals that violate this Decree shall, depending on the nature and severity of their violations, be administratively sanctioned or examined for penal liability according to the provisions of law.

Customs officers and employees and other individuals who show irresponsibility or violate the provisions of this Decree, thus causing damage to customs declarers, shall have to pay compensations therefor according to the provisions of law and, depending on the nature and severity of their violations, be disciplined or examined for penal liability according to the provisions of law.

Chapter V

ORGANIZATION OF IMPLEMENTATION

Article 16.- Responsibilities of the State management agencies

1. The General Department of Customs shall assume the prime responsibility and coordinate with the concerned ministries and agencies in gathering information and building up a database in service of the determination of tax calculation values according to the provisions of this Decree, and devising measures

against trade frauds through prices.

2. The State Bank of Vietnam shall direct and guide credit institutions in fully supplying documents related to the liquidation of import or export goods lots in service of the inspection and determination of tax calculation values.

Article 17.- Provisions on preservation

1. Clause 4, Article 8 and Article 9 of this Decree shall be preserved from implementation. Basing itself on international commitments and practical conditions of Vietnam, the General Department of Customs shall coordinate with the concerned ministries and agencies in proposing the Government to amend, supplement or annul the provisions in this Clause.

2. To preserve the application of the restrictions on minimum tax calculation prices of a number of import goods items in order to protect the State's interests and domestic production. Basing itself on the above-said principle and the current goods export and import management mechanism, the Ministry of Finance shall coordinate with the concerned ministries and agencies in promulgating the list of import goods subject to minimum tax calculation prices mentioned in this Clause.

Article 18.- Implementation provisions

1. This Decree takes effect as from July 1, 2002.

Import goods on Vietnam's commodity list for the implementation of the Common Effective Preferential Tariffs Agreement of the ASEAN shall have values calculated according to the provisions of this Decree.

2. In cases where the Agreement on Implementation of Article 7 of the General Agreement on Tariffs and Trade is amended and/or supplemented, and such amendments and/or supplements are not contrary to the basic principles of Vietnamese laws and international treaties which Vietnam has signed or acceded to, the amended and/or supplemented contents of such Agreement shall apply. The General Department of Customs shall propose the Government to amend and supplement this Decree to make it compatible with the amended and supplemented content of the Agreement.

3. The General Department of Customs shall study and compile documents guiding the implementation of this Decree, to be signed for promulgation by the Minister-Director of the Government Office according to the provisions of the Prime Minister's Decision No. 40/2002/QĐ-TTg of March 18, 2002 on competence to sign

the promulgation of legal documents for exercising the State management over branches and fields managed by the agencies attached to the Government.

4. The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government and the presidents of the People's Committees of the provinces and centrally-run cities shall have to implement this Decree.

On behalf of the Government
Prime Minister
PHAN VAN KHAI

THE PRIME MINISTER

DECISION No. 69/2002/QĐ-TTg of June 6, 2002 promulgating the Working Regulation of the State Steering Committee for population relocation and resettlement under Son La hydro-electric power plant project

The State Steering Committee for population relocation and resettlement under Son La hydro-electric power plant project is tasked to:

- Direct the formulation of the resettlement and sedentarization model in order to draw experiences and propose solutions on mechanisms and policies for the management and implementation of population relocation and resettlement suitable to each locality.

- Direct ministries, branches and local administrations, and coordinate with mass organizations and people in paying relocation and resettlement compensation to households under Son La hydro-electric power plant project.

- Guide, urge and examine the implementation of population relocation and resettlement by ministries, branches and localities, and propose policies and solutions thereto, stabilizing production and people's life.

- Periodically report to the Prime Minister on the