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Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Ministry of Finance

No. 1398/PM
Vientiane Capital, 16 June 2010

**INSTRUCTION
OF THE MINISTER OF FINANCE
ON CUSTOMS VALUATION**

- Based on the Customs Law No. 05 /NA dated 20 May 2005;
- Based on the Prime Minister's Decree No. 362/PM dated 19 October 2007 on the implementation of the Customs Law;

The Minister of Finance instructs:

Article 1: Purpose

This Instruction sets out rules and principles on customs valuation of goods in accordance with Article 13 of the Customs Law No. 05/NA dated 20 May 2005 and Article 4 of the Prime Minister's Decree No. 362/PM dated 19 October 2007 on the implementation of the Customs Law.

In order to implement customs valuation of goods in accordance with this Instruction, Annex I of the Interpretative Notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994 of the World Trade Organisation shall apply.

Article 2: Explanation of Terms

The terms used in this Instruction have the meanings as follows:

- "customs value of imported goods" means the actual value of imported goods for the purposes of levying customs duties and other obligations;
- "country of importation" means country that imports the goods;
- "Production" includes cultivation, animal raising, fishery, production or manufacture, production or assembly with machine, and mining;
- "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation of the goods. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;
- "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;
- "goods produced by different persons" means they are not identical goods or similar goods which are produced by the same person as the goods being valued.

- "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.
- Persons shall be deemed to be related only if:
 - they are officers or directors of one another's businesses;
 - they are legally recognized partners in business;
 - they are employer and employee;
 - any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
 - one of them directly or indirectly controls the other;
 - both of them are directly or indirectly controlled by a third person;
 - together they directly or indirectly control a third person; or
 - they are members of the same family.

Article 3: Transaction value of goods

1. The General Agreement on Tariffs and Trade (GATT) 1994 of the World Trade Organisation (hereafter called the Agreement) establishes the transaction value as the basis for determining the value of imported goods for customs purposes.
2. The transaction value of imported goods shall be determined in accordance with the following methods as detailed in this Instruction: If the customs value cannot be initially determined under the provisions of 2.1 below, the customs value shall be determined by proceeding sequentially through Articles 4 to 9 of this Instruction:
 - 2.1. The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export and imported to Lao PDR, adjusted in accordance with the provisions of Article 10 of this Instruction;
 - 2.2. The transaction value of imported goods under Article 3 (2.1) shall be accepted, provided that:
 - a. There are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - are imposed or required by laws or by the public authorities in Lao PDR;
 - limit the geographical area in which the goods may be resold;
 - do not substantially affect the value of the imported goods.
 - b. The sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;
 - c. no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 10 of this Instruction;
 - d. the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of paragraph e and f below.
 - e. Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicates that the relationship did not influence the price of the goods.

- f. In a sale between related persons, the transaction value shall be accepted whenever the importer demonstrates that the declared value of the goods being valued closely approximates to one of the following values ascertained at or about the same time.
- the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in Lao PDR;
 - the deductive value for identical goods or similar goods;
 - the computed value for identical goods or similar goods.
- g. Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, or adjustments in accordance with the provisions of Article 10 of this Instruction and the cost incurred by the seller in sales in which the seller and the buyer are not related.

Article 4: Transaction value of identical goods

If the customs value cannot be determined under the provisions of Article 3 (2.2), the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods as follows:

1. Where no sale of identical goods is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value; and
2. Where the costs and charges referred to in Article 10 (2) of this Instruction are included in the transaction value an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

Article 5: Transaction value of similar goods

1. If the customs value cannot be determined under the provisions of Article 3 (2.2) or Article 4 (1) of this Instruction, the customs value of imported goods shall be the transaction value of similar goods sold for export and imported to Lao PDR at or about the same time as the goods being valued.
2. The provisions of paragraphs of Article 4 (1) and 4 (2) of this Instruction shall, *mutatis mutandis*, also apply in respect of similar goods.

Article 6: Determination of value when transaction value is not available.

If the value of imported goods cannot be determined under the provisions of Articles 3, 4 and 5 of this Instruction, the customs value shall be determined under the provisions of Articles 7, 8 and 9.

This is provided that at the request of the importer, and with the approval of the customs authority, the order of the application of Articles 7 and 8 may be reversed.

Article 7: Deductive value

1. Subject to the provisions of Article 3 of this Instruction, if the goods being valued or identical or similar imported goods are sold in Lao PDR, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of

imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in Lao PDR, subject to the following deductions:

- a. either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in Lao PDR of imported goods of the same class or kind;
 - b. the usual costs of transport and insurance and associated costs incurred within Lao PDR;
 - c. the customs duties and other taxes payable in Lao PDR by reason of importation or sale of the goods.
2. If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of paragraph 1 b and 1 c of this Article, be based on the unit price at which the imported goods or identical or similar imported goods are sold in Lao PDR, at the earliest date after importation but before the expiry of ninety days after such importation.
3. If neither the imported goods nor identical nor similar imported goods are sold in Lao PDR in the condition as imported, and at the request of the importer or if the customs authority considers appropriate, then;
- a. the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in Lao PDR;
 - b. in such determination, due allowance shall be made for the value added by processing and the deductions provided for in a, b and c of paragraph 1 of this Article.

Article 8: Computed value

Subject to the provisions of Article 3.2 of this Instruction, the value of imported goods shall be based on a computed value, which shall consist of the sum of:

- a. the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- b. an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Lao PDR;
- c. the cost or value of all other expenses that are necessary under the provisions of Article 10 of this Instruction.

Article 9: Residual value

Where the customs value of imported goods cannot be determined under the provisions of Articles 3, 4, 5, 6, 7 and 8, inclusive, the value shall be determined using reasonable means consistent with the principles and general provisions of this Instruction.

No customs value shall be determined under the provisions of this Article on the basis of:

- the selling price in Lao PDR of the goods produced in Lao PDR;
- a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- the price of the goods on the domestic market of the country of exportation;

- the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 8;
- the price of the goods for the export to a country other than Lao PDR;
- minimum customs values (reference price);
- arbitrary or fictitious values.

Article 10: Costs and services

1. In determining the transaction value of imported goods, there shall be added to the price actually paid or payable for the imported goods;
 - a. the following cost and services, to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:
 - commissions and brokerage, except buying commissions;
 - the cost of containers which are treated as being one for customs purposes with the goods in question;
 - the cost of packing whether for labour or materials.
 - b. the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:-
 - materials, components, parts and similar items incorporated in the imported goods;
 - tools, dies, moulds and similar items used in the production of the imported goods;
 - materials consumed in the production of the imported goods;
 - engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in Lao PDR and necessary for the production of the imported goods;
 - c. royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued;
 - d. the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
 - e. all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.
2. The cost of transport, loading, unloading and handling charges and the cost of insurance associated with the delivery of the imported goods at the place of importation to the extent that such payments are not included in the price actually paid or payable.
3. Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.
4. No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this Article.

Article 11: Determination and application of reference price

The Customs Department shall prepare and propose to higher authority to approve the minimum customs value [reference price] of sensitive and high risk goods to be maintained for

certain period which will eventually be transformed to the implementation of transaction value of goods in accordance with the provisions of this Instruction.

Article 12: Elaboration

The Customs Department shall issue additional regulations to elaborate this Instruction in details and to reflect the situation in each period.

Article 13: Implementation

Ministries, ministry-equivalent agencies, provinces, Vientiane Capital, departments within the Ministry of Finance, Customs Department and other relevant parties shall be informed and implement this Instruction according to their respective functions.

Article 14: Effectiveness

This Instruction is applicable to all imported goods, except controlled goods for import and export that are issued from time to time. Any other guidelines, notifications or regulations contradict to this Instruction shall be annulled. This Instruction enters into force ninety (90) days after it is signed.

Minister of Finance

[signed and sealed]

Somdy Douangdy