

MINISTRY OF FINANCE SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

No. 118-2003-TT-BTC Hanoi, 8 December 2003

CIRCULAR
PROVIDING GUIDELINES ON DECREE NO. 60-2002-ND-CP OF THE GOVERNMENT DATED 6 JUNE
2002 ON DETERMINING DUTIABLE VALUE
OF IMPORTED GOODS IN ACCORDANCE WITH THE PRINCIPLES IN THE AGREEMENT ON
IMPLEMENTATION OF ARTICLE 7 OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE

Pursuant to the *Law on Export and Import Duties*;

Pursuant to Decree No. 60-2002-ND-CP of the Government dated 6 June 2002 on determining dutiable value of imported goods in accordance with the principles in the Agreement on implementation of article 7 of the General Agreement on Tariffs and Trade;

The Ministry of Finance hereby provides the following guidelines on Decree No. 60-2002-ND-CP:

Chapter I
General Provisions

I. Applicable entities:

Goods imported with a commercial contract for which dutiable value shall be determined in accordance with the guidelines in this Circular shall comprise:

1. Goods imported by enterprises or parties to partnerships who fall within the governing scope of the *Law on Foreign Investment in Vietnam*;
2. Imported goods which originated in a country, territory or national alliance (as announced by the Ministry of Finance) with which Vietnam has agreed to determine dutiable value in accordance with the principles in the Agreement on implementation of article 7 of the General Agreement on Tariffs and Trade; and other imported goods as decided by the Prime Minister of the Government.

II. Dutiable value of imported goods and the point of time for determination:

1. *Dutiable value of imported goods* means the price of goods used to calculate import duty, determined when the goods arrive at an import bordergate for the first time.
2. The point of time for determination of dutiable value of imported goods shall be the date on which the customs declarant registers his declaration of imported goods. The customs declarant shall make his own determination of dutiable value on the stipulated form and shall submit it to the customs office together with the declaration of imported goods.
3. Where the customs office fixes dutiable value, it must notify the customs declarant thereof within the time-limit for conducting customs procedures in accordance with law.

III. Methods for determining dutiable value of imported goods and order of applicability:

1. Methods for determining dutiable value shall be:
 - 1.1 Method of the transaction price of imported goods.
 - 1.2 Method of the transaction price of identical imported goods.

- 1.3 Method of the transaction price of similar imported goods.
- 1.4 Method of deductible price.
- 1.5 Method of calculated price.
- 1.6 Other method(s).

The method of calculated price shall temporarily not apply, and the method of deductible price shall temporarily not apply to imported goods sold other than in their original state when imported, until further notice from the Ministry of Finance.

2. Order of applicability of methods for determining dutiable value:

The dutiable value of imported goods shall be determined by applying each method stipulated in clause 1.1 to clause 1.6 above in consecutive order (except for the methods temporarily inapplicable) and stopping at the [effective] method for determining dutiable value.

IV. Currency and exchange rate for determining dutiable value:

1. Dutiable value shall be fixed in Vietnamese dong.
2. The exchange rate for fixing dutiable value of imported goods shall be the average trading exchange rate on the interbank foreign currency market announced by the State Bank of Vietnam at the date of registration of the declaration of imported goods. If the State Bank does not announce an exchange rate or if the [announced] information does not reach the bordergate, then the exchange rate of the preceding day shall apply.

V. Interpretation of terms

In this Circular, the following terms shall have the meanings ascribed to them hereunder:

1. *Commercial contract* means an agreement in writing for the purchase and sale of goods in order to import them into Vietnam, pursuant to which the seller is obliged to deliver the goods and transfer ownership of them to the purchaser and to receive money; and pursuant to which the purchaser is obliged to pay money to the seller and receive the goods pursuant to the agreement between the two parties. The following shall also be deemed to be "in writing", namely a telegraph, telex, fax, e-mail or other electronic communication means.
2. *Special relationship between purchaser and seller* means the following relationships:
 - 2.1 The purchaser and seller are both members of another enterprise.
 - 2.2 They are co-owners of the one enterprise.
 - 2.3 They are employer and employee.
 - 2.4 The seller has the right to control the purchaser or vice versa.
 - 2.5 They are both controlled by a third party.
 - 2.6 They jointly control a third party.

A person shall be deemed to have the right to control activities of purchase and sale by another person when the former person may take action either directly or indirectly to restrict or to direct such other person.

- 2.7 They are both members of the one family and bound in the following blood relationships:
 - Husband and wife;
 - Parent and child;
 - Natural siblings;
 - Natural grandparent and grandchild;
 - Natural uncle or aunt and nephew or niece;
 - Parents-in-law and children-in-law;

- Brothers-in-law and sisters-in-law.

2.8 A third party either directly or indirectly owning, controlling or holding five per cent or more of the voting shares in each party.

Parties associated with each other in business when one of the parties is the exclusive agent, distributor or assignor for the other party shall be deemed to have a special relationship if such relationship conforms with the provisions in this clause 2.

3. *Commission on purchase of goods* means the sum of money which a purchaser pays to the agent representing such purchaser overseas in order to carry out the trading services of the purchase of imported goods.

4. *Commission on sale of goods* means the sum of money which a seller pays to the agent representing such seller in order to carry out the trading services of the sale of exported goods.

5. *Brokerage fees* means the sum of money which a purchaser or a seller or both must pay to a broker to take on an intermediary role for services being the purchase and sale of imported goods.

6. *Copyright payments and licence fees* means sum(s) of money which a purchaser must pay either directly or indirectly to the person holding copyright or licensed to use products for which ownership of intellectual rights has been registered. For example money paid for a patent, copyright design, trademark, right to use a trademark, author's copyright or manufacturing licence.

7. A price shall be deemed to be *approximately the same* as another price if the difference between the two prices for objective reasons effects:

- The nature of the goods, [or] the nature of the industry manufacturing goods.

For example VINA mobile phones model CA are sold at 300 USD per unit at the beginning of a month but because of technological changes the same model is sold at 250 USD per unit at the end of the month. In this case, on comparison, the two prices shall be deemed approximately the same.

- Calculation of seasonal nature of goods.

For example at the beginning of the season one kilogram of apples is sold at 1 USD, but in the middle of the season is sold at 0.8 USD. In this case, on comparison, the two prices shall be deemed approximately the same.

- In commercial terms the difference is insignificant.

When considering whether or not two prices are approximately the same, the same conditions on purchase and sale must be applied to both.

8. *Identical imported goods* means imported goods which are identical [to other imported goods] in every respect, including:

- Particular qualities such as the exterior of the product, its components, manufacturing method, functions, use purpose, physical and chemical form and so forth.

- Product quality.

- Prestige of the product trademark.

- The two products are manufactured in the same country by the same manufacturer or authorized

manufacturer.

Imported goods which basically satisfy the conditions for being deemed identical imported goods but which have insignificant external differences such as colour, size and pattern which do not effect the price of the goods shall still be deemed to be *identical imported goods*.

Imported goods shall not be deemed to be identical if the manufacturing process uses technical designs, execution designs, aesthetic designs, implementation drawings, design drawings, mock-ups, sketches or other similar service products made in Vietnam which the purchaser provides to the seller free of charge.

9. *Similar imported goods* means imported goods which although they are not identical [to other imported goods] in every respect, still have the following same basic features:

- They are made from equivalent raw materials or materials and by the same manufacturing method.
- They have the same functions and use purpose.
- The product quality is similar.
- They are interchangeable in commercial transactions, in other words a purchaser would agree to replace one set of goods with the other.
- They are manufactured in the same country by the same manufacturer or authorized manufacturer and then imported into Vietnam.

Imported goods shall not be deemed to be similar if the manufacturing process uses technical designs, execution designs, aesthetic designs, implementation drawings, design drawings, mock-ups, sketches or other similar service products made in Vietnam which the purchaser provides to the seller free of charge.

10. *Goods sold immediately after import* means goods which the importer sells to the first purchaser on the domestic market, as from the date of importation.

For example: After importation, importer A re-sells the goods to the first domestic purchasers being M, N and K at different commercial levels, after which M, N and K continue to re-sell to purchasers being E, F and G. In this case, the goods which A sells to M, N and K are *goods sold immediately after import*.

11. *Unit price of goods sold in the largest quantity after importation* means the unit price of goods sold immediately after importation in the largest accumulated number on the same date as importation of the goods whose dutiable value is being determined, or on the same day that identical or similar goods are imported, or on the earliest day after identical or similar goods are imported but no more than ninety (90) days after such goods are imported and no more than ninety (90) days from the date of importation of the goods whose dutiable value is being determined. In this case, the date of importation shall be the date on which the consignment of goods clears customs.

The earliest day after the date of importation of the goods whose dutiable value is being determined shall be the date on which goods are sold at a volume sufficient to form a unit price (a minimum of 10% of that line of goods in the imported consignment).

For example: The consignment chosen to determine the deductible price [of goods] imported on 28 January 2002. The first importer sells the imported goods to a number of domestic purchasers at different prices and at different dates as follows:

Unit price	Volume/times sold	Accumulated number	Date of sales
750 VND/item	500 items 300 items 500 items	1,300 items	30 April 2002
760 VND/item	200 items	200 items	28 January 2002
770 VND/item	350 items	700 items	28 February 2002
780 VND/item	300 items 500 items	800 items	29 March 2002
1,000 VND/item	300 items	600 items	27 April 2002
1,050 VND/item	100 items 300 items	400 items	20 April 2002
Total	4,000 items	4,000 items	

The largest quantity of goods sold in the above example is 800 items, with a corresponding price of 780 VND/item. In this example, the accumulated number of 1,300 items with a corresponding price of 750 VND/item may not be chosen because it does not satisfy the condition on date because the date of sale was in excess of 90 days after the date of importation.

12. *Goods sold must be in the same original state as when imported* means that once the goods have been imported nothing changes their form, characteristics, quality or utility, and nothing increases or reduces their value.
13. *Imported goods of the same grade or same type* means goods in the same group or general group of goods because they were manufactured by the same specialized industry or sector, including identical imported goods and similar imported goods.

For example: Steel construction products such as smooth steel, twisted steel and configured steel (in the shape of the letters U, I, V and so forth) which are manufactured by the steel industry are goods of the same type.

- In the deductible method, *imported goods of the same grade or same type* means goods imported into Vietnam from any country, irrespective of the country of origin.
- In the calculated method, *imported goods of the same grade or same type* must be goods imported into Vietnam from the same country of origin as the goods whose dutiable value is being determined.

14. *Information available at the customs office* means information relevant to determining dutiable value of imported goods which the customs office is responsible to gather, analyse, retain, update and manage to service checks of determinations of dutiable value, which information is available at the customs unit at the time of determination of dutiable value, comprising:

- Information from declarations of imported goods which have cleared customs at the customs unit where import procedures are being conducted;
- Information provided by the prices database system within the customs branch;
- Information updated from sources stipulated by the General Department of Customs.

15. *The same conditions on purchase and sale* includes the same conditions on the commercial grade, quantity, route of and method of transportation, and insurance.

16. *Review* means the customs office and the customs declarant exchange and provide information relevant to determining dutiable value, on request by the customs office.

Chapter II

Methods of Determining Dutiable Value of Imported Goods

I. Method of transaction price:

1. The price of imported goods must first and foremost be determined by the method of transaction price if the following conditions are satisfied:
 - 1.1 The purchaser has full rights to dispose and use the goods after they are imported. These conditions shall still be deemed to have been satisfied if the following restrictions exist:
 - 1.1.1 The purchase and sale of the goods must comply with the laws of Vietnam.
 - 1.1.2 The purchaser and seller agree on a place for sale of the goods after importation.
 - 1.1.3 Other restrictions which do not effect the value of the goods.
 - 1.2 The sale of goods or the price of goods does not depend on a number of conditions resulting in failure to determine the value of the subject goods whose dutiable value needs to be determined.

For example:

- The seller sets the price of imported goods on the condition that the purchaser will also purchase a fixed quantity of other goods as well.
- The price of imported goods depends on the price of other goods which the importer will re-sell to the exporter.
- The price of imported goods is formulated on the basis of a form of payment not directly related to the imported goods, for example when imported goods are goods sold as finished products which the seller provides to the purchaser on condition that the seller will re-accept a fixed quantity of finished products made from imported goods sold as such finished products.

If the purchase and sale of goods or the price of goods depends on one or more conditions but the purchaser has valid objective data to determine the monetary level of impact of such dependency, then these conditions shall still be deemed to have been satisfied. When determining dutiable value, then the sum reduced because of the impact of such dependency must be added to the trading price.

For example:

- The purchase price of goods A depends on the price of other goods which the importer re-sells to the exporter:

The exporter will agree to reduce the selling price to the importer of goods A by 2% if after putting the goods into production they produce goods B and 50% of goods B will be re-sold to the exporter at a price 1% less than the price for other purchasers. In this case, the transaction price may be agreed, and the 2% reduction must be added in order to determine the dutiable value of imported goods A.

1.3 After the re-sale, assignment or use of imported goods, the purchaser need not pay any monetary item from the sum collected and brought in from disposal of the imported goods, excluding any sum which must be added pursuant to clause 2.6 of section VII of this chapter.

1.4 The purchaser and seller do not have a special relationship, or if they do then such special relationship does not effect the transaction price. Clause 3 hereof provides for a consideration of the impact of a special relationship on the transaction price.

2. Determining dutiable value:

The dutiable value of imported goods shall be the transaction price, being the total sum the purchaser has paid or must pay either directly or indirectly to the seller in order to buy the imported goods, after adding or subtracting the adjusting items stipulated in section VII of this chapter.

The total sum the purchaser has paid or must pay either directly or indirectly to the seller in order to buy the imported goods, shall include the following items:

2.1 The purchase price set out in the commercial invoice.

A commercial invoice fixes the amount a purchaser must pay to buy imported goods.

If the purchase price set out in a commercial invoice includes items of reduction of price for an imported consignment of goods then these items shall be deducted when determining dutiable value, on condition that the price reduction is committed to writing before freight is arranged and that there are valid and legal vouchers for deducting such sum from the invoiced price and that such vouchers are submitted together with the declaration of imported goods.

For example:

- A first consignment of goods is imported on 1 July 2002, and the commercial invoice provides that the purchaser is entitled to a 3% discount and the commercial invoice is submitted together with the declaration of imported goods. In this case, the 3% discount shall be deducted in order to determine the dutiable value.

For example:

- Following on from the above example, the second consignment of goods imported on 1 September 2002 is entitled to a 5% discount, and the commercial invoice provides for an additional entitlement of a discount of 2% on the first consignment. In this case, the 5% discount on the second consignment shall be deducted in order to determine the dutiable value, but the additional 2% discount on the first consignment shall not be deducted in order to determine the dutiable value of the second consignment and also shall not be used in order to re-determine the dutiable value of the first consignment.

The main types of price reductions shall comprise:

(i) A reduction according to the commercial level of the transaction of purchase and sale of goods (commercial discount):

For example: An exporter has a system of commercial discounts:

- Direct sale to consumers, no discount.
- Sale to retailers, 3% reduction of unit price.
- Sale to wholesalers, 5% reduction of unit price.

(ii) A reduction according to the quantity of goods purchased and sold (quantity discount):

For example: An exporter has the following system of quantity discounts:

- *Purchase of from 1 to 50 products, no discount.*
- *Purchase of from 51 to 500 products, 5% reduction.*
- *Purchase above 500 products, 8% reduction.*

For example: An exporter has the following system of quantity discounts:

- *Purchase of from USD 50,000 to USD 100,000, 10% reduction.*
- *Purchase of from USD 100,000 to USD 500,000, 15% reduction.*
- *Purchase above USD 500,000, 23% reduction.*

(iii) A reduction according to the form and time of payment (payment discount):

For example: if the purchaser pays in cash he will receive a 3% discount on the invoice price, or if he pays immediately on delivery of the goods he will receive a 5% discount on the invoice price.

(iv) In addition to the above forms of price reduction, other forms of price reduction shall be considered for approval if they are consistent with international commercial custom and practice.

2.2 The sums a purchaser must pay which are not included in the purchase price set out in the commercial invoice, comprising:

2.2.1 Money paid in advance, or a deposit paid for manufacture, purchase and sale, freight or insurance of goods.

2.2.2 Indirect payments to the seller such as sums paid by a purchaser to a third party on request of the seller; or sums paid in the form of debt reduction.

3. Identifying the impact of a special relationship on the transaction price:

If the purchaser and seller have a special relationship, the transaction price shall not be immediately rejected but consideration shall be given to whether or not the essence of such special relationship effects the transaction price.

3.1 If the purchaser and seller have a special relationship but it does not effect the transaction price, then the customs declarant must declare this and shall be permitted to use the transaction price to determine dutiable value.

3.2 If based on information available at the customs office, the customs office suspects that a special relationship does effect the transaction price, then the customs office shall notify the customs declarant in writing. In this case, the customs declarant must prove that the special relationship does not effect the transaction price in order for the customs office to recognize application of the method of the transaction price.

3.2.1 In order to prove that the special relationship does not effect the transaction price, the customs declarant may show that the transaction price approximates one of the following dutiable values approved by the customs office, on condition that the dutiable values have been adjusted on the same conditions as the subject consignment as stipulated in clause 3.2.2 below:

3.2.1.1 The dutiable value by the method of the transaction price of identical imported goods or of similar imported goods which are exported into Vietnam on the same day or

within 30 days before or after the date of export of the subject consignment whose dutiable value is being determined, on condition that the purchaser and seller do not have a special relationship, or;

3.2.1.2 The dutiable value by the method of the deductible price of identical imported goods or of similar imported goods which are exported into Vietnam on the same day or within 30 days before or after the date of export of the subject consignment whose dutiable value is being determined, or;

3.2.1.3 The dutiable value by the method of the calculated price of identical imported goods or of similar imported goods which are exported into Vietnam on the same day or within 30 days before or after the date of export of the subject consignment whose dutiable value is being determined.

3.2.2 The contents of adjustment of the dutiable value of identical imported goods or of similar imported goods on the same conditions as the subject consignment whose dutiable value is being determined:

3.2.2.1 Adjustment to the same conditions on sale and purchase.

Adjustment of the dutiable value of identical imported goods or of similar imported goods to the same conditions on sale and purchase as the subject consignment whose dutiable value is being determined shall be implemented in accordance with the guidelines in clause 2.2 of section III of chapter II of this Circular.

3.2.2.2 Adjustment of additional or deductible items shall be implemented in accordance with the guidelines in section VII of this chapter.

For example:

The subject consignment does not have any brokerage fees whereas the identical imported goods do. In this case, the dutiable value of the identical imported goods must be adjusted to the same condition of not having any brokerage fees.

4. If there are extra imported goods compared with the [quantity specified in] the commercial contract, the dutiable value of the extra goods shall be determined in accordance with the dutiable value of the quantity of goods specified in the commercial contract.

5. If the specifications of the imported goods do not comply with the provisions in the commercial contract, then the dutiable value of such imported goods shall be determined in accordance with the next following method for determining dutiable value.

II. Method of the transaction price of identical imported goods:

Section III of this chapter provides guidelines on both the contents of the method of the transaction price of identical imported goods and the method of the transaction price of similar imported goods. The only difference between the two methods is the different definition of *identical imported goods* and *similar imported goods*.

III. Method of the transaction price of similar imported goods:

1. Determining dutiable value:

The dutiable value of imported goods shall be the transaction price of similar imported goods, on condition that the tax office has approved the dutiable value of the similar imported goods by the transaction method, with the same conditions on purchase and sale and with the same conditions on time

must have a date of export within the period AI (from 2/3/2003 to 14/4/2003). Similar imported goods which have a date of import [literal translation] within the period AB shall not be selected.

2.2 Conditions on purchase and sale:

2.2.1 Conditions on commercial level and quantity.

2.2.1.1 The similar imported goods must have the same conditions on commercial level and quantity as the subject imported goods whose dutiable value is being determined.

2.2.1.2 If a consignment of similar imported goods with the same conditions on commercial level and quantity as the subject imported goods whose dutiable value is being determined cannot be found, then another consignment of similar imported goods with the same conditions on commercial level but different conditions on quantity shall be selected, and then the transaction price of the similar imported goods must be adjusted as if the same conditions on quantity applied as to the subject imported goods whose dutiable value is being determined.

period for selecting conditions on time
of export

period for selecting conditions on
time of export

For example:

The subject consignment of imported goods is purchased and sold at the retail commercial level with 300 products, it is entitled to a quantity discount, and its unit price is 50 VND/unit but does not satisfy the conditions for application of the method of the transaction price.

The consignment of similar imported goods also has the retail commercial level with 700 products, it is entitled to a quantity discount, and its unit price after discount is 49 VND/unit and this unit price is approved for application of the method of the transaction price.

The system of quantity discount which the seller provided to the purchaser in the transaction of importation of the similar goods was as follows:

- Purchase of from 1 to 200 products, sale at listed price (70 VND/unit).
- Purchase of from 201 to 500 products, sale at 90% of listed price.
- Purchase of from 501 to 1,000 products, sale at 70% of listed price.
- Purchase of 1,001 or more products, sale at 60% of listed price.

The subject consignment of imported goods has a quantity of 300 products, therefore a discount must be applied to the similar imported goods as if 300 products of the similar imported goods were purchased, and the relevant discount is therefore 10% (100% less 90%) of the listed price. Accordingly the unit price of the similar imported goods after adjustment to the same quantity conditions is 63 VND/product (70 VND/product x 90%). So the dutiable value of the subject imported goods is 63 VND/product.

If in the above example the subject imported goods had not been entitled to a quantity discount, one must take the unit price for purchase of similar

imported goods at 100% of listed price, and the dutiable value of the subject imported goods will be 70 VND/product.

2.2.1.3 If a consignment of similar imported goods with the same conditions on commercial level and quantity cannot be found; and if a consignment of goods with the same conditions on commercial level but different conditions on quantity cannot be found; then another consignment of imported goods with different conditions on commercial level but the same conditions on quantity shall be selected, and then the transaction price of the similar imported goods must be adjusted as if the same conditions on commercial level applied as to the subject consignment of goods.

For example:

The subject consignment of imported goods whose dutiable value is being determined is entitled to a commercial level discount for wholesale at the price of 400 VND/ton but does not satisfy the conditions for application of the method of the transaction price.

The method of the transaction price shall apply to this consignment of similar imported goods of the same quantity but at the wholesale commercial level with a unit price of 500 VND/ton.

The system of quantity discount which the seller provided to the purchaser in the transaction of importation of the similar goods was as follows:

- Sale to a wholesaler at 90% of listed price.
- Sale to a retailer at 100% of listed price (500 VND/ton).

The subject consignment of imported goods whose dutiable value is being determined is at the wholesale commercial level. Therefore a discount must be applied to the similar imported goods as if they were sold and purchased at the wholesale commercial level. The wholesale unit price of the similar imported goods is 450 VND/ton (500 VND/ton x 90%). So the dutiable value of the subject imported goods is 450 VND/ton.

If in the above example there had been no entitlement to a commercial level discount at the wholesale level, one must take the unit price for purchase at 100% of listed price (500 VND/ton), and the dutiable value of the subject imported goods will be 500 VND/ton.

2.2.1.4 If a consignment of similar imported goods with the same conditions on commercial level and quantity cannot be found; and if a consignment of goods with the same conditions on commercial level but different conditions on quantity cannot be found; and if a consignment of goods with different conditions on commercial level but the same conditions on quantity cannot be found; then another consignment of imported goods with different conditions on both commercial level and quantity shall be selected, and then the transaction price of the similar imported goods must be adjusted to the same conditions on commercial level and quantity as apply to the subject consignment of goods.

2.2.1.5 If a consignment of similar imported goods is entitled to a commercial discount, a quantity discount and a payment discount to which the subject consignment of goods is not entitled, then these discounts shall not be

deducted from the transaction price. If a consignment of similar imported goods is not entitled to a commercial discount and a quantity discount to which the subject consignment of goods is entitled, then these discounts shall be deducted from the transaction price.

2.2.2 Conditions on route, method of freight and insurance:

The consignment of similar imported goods has the same route and freight method, or has been adjusted to the same route and freight method as the subject consignment whose dutiable value is being determined.

*For example:*The subject consignment of imported goods is transported by air. The consignment of similar imported goods is transported by sea, on CIF delivery conditions of 117.3 USD/goods unit, in which the price of goods C is 100 USD, insurance premium I = 0.3 USD, and freight F = 17 USD.

In this case, the freight costs of the similar imported goods must be adjusted to air freight conditions on the basis of the freight contract of the subject consignment or on the basis of a carriers price list. Supposing air freight costs are 23 USD/goods unit, then the transaction price of similar imported goods after adjustment to the same air freight conditions will be 123.3 USD/goods unit (100 + 0.3 + 23).

If there is a significant difference between insurance premiums then [the similar imported goods] may be adjusted to the same insurance conditions as the subject consignment.

2.3 When applying the method of the transaction price of similar imported goods, if one is unable to find similar imported goods manufactured by the same manufacturer or authorized manufacturer, only then shall consideration be given to goods manufactured by another manufacturer but they must still be from the same country of origin.

2.4 When determining dutiable value by this method and making the determination from two or more transaction prices of similar imported goods, then after making the adjustment to the same conditions on sale and purchase as the subject goods, the dutiable value shall be the lowest transaction price.

3. Data and information to be used to determine dutiable value by the method of the transaction price of similar imported goods:

3.1 When applying the method of the transaction price of similar imported goods, the customs declarant shall himself find a file on a consignment of similar imported goods which satisfy the conditions stipulated in clause 2 above as the basis for determining dutiable value.

The customs declarant shall lodge the following documents with the customs office:

3.1.1 Declaration of imported goods and declaration of price of similar imported goods (copy);

3.1.2 Freight contract or bill of lading of similar imported goods (copy, if there is an adjustment for these expenses);

3.1.3 Insurance contract or policy for similar imported goods (copy, if there is an adjustment for these expenses);

3.1.4 Commercial contract (copy); commercial invoice of similar imported goods (copy), price lists for selling export goods of the manufacturer or of the overseas seller (copy, if there is an adjustment for quantity or commercial level);

3.1.5 Other legal and valid files and vouchers which are necessary and relevant to a determination of dutiable value (if any).

3.2 When applying the method of the transaction price of similar imported goods, the customs office shall rely on information available at the customs office where the determination is being made and also on documents lodged by the customs declarant in order to determine dutiable value.

IV. Method of deductible price:

1. Determining dutiable value:

The dutiable value of imported goods shall be determined by the deductible price, which shall be the value determined from the unit selling price of the imported goods in the Vietnamese market after deducting reasonable expenses and profits received on sales of the imported goods.

2. Conditions for selecting unit selling price in the Vietnamese market:

2.1 The unit selling price in the Vietnamese market must be that of the subject imported goods whose dutiable value is being determined, but if no such unit selling price is available then the unit selling price of identical imported goods shall be taken and if that unit selling price is unavailable then the unit selling price of similar imported goods sold in the Vietnamese market shall be taken on condition that they are sold in their original state as when imported.

2.2 The unit selling price selected shall be the unit price of goods sold in the largest quantity after importation and sold to a domestic purchaser with whom there is not a special relationship.

3. Items which shall be deducted from the unit selling price:

3.1 Principles of deduction:

Any items which are deducted must be supported by available valid and legal accounting data and vouchers which have been entered into the accounting books in accordance with the accounting regime of Vietnam.

Any items which are deducted must be permitted to be accounted for within the scope of unit selling prices.

3.2 Deductible items:

3.2.1 Commission or profits and general expenses of conducting business in imported goods.

3.2.1.1 If the importer is the selling agent for a foreign business entity then the importer's commission shall be deductible.

If the selling agent is authorized by the foreign business entity to conduct a number of operations relevant to sale of goods after importation into Vietnam outside the agency contract, the expenses of such operations arising in Vietnam shall also be deductible within the scope of expenses agreed in the contract of authorization.

If commission already includes the expenses set out in clauses 3.2.2 and 3.2.3 below, such expenses shall not be additionally deductible.

3.2.1.2 If importation is by the method of definitive purchase and definitive sale,

then profits and general expenses of re-selling the imported goods shall be deductible.

General expenses shall include direct and indirect expenses servicing importation and sale of the goods in the Vietnamese market, for example marketing expenses, expenses of retaining and preserving the goods prior to sale, expenses of management of importation and sale of the goods and so forth.

General expenses and profits on sale of goods after importation shall be approved for deduction at a limit of 20% of turnover. Special lines of goods for which this deductible percentage is inappropriate shall move to the next method for determining dutiable value.

3.2.2 Freight, insurance premiums and expenses for other operations relevant to transportation of goods after importation, such expenses to comprise:

3.2.2.1 Freight, insurance premiums and other expenses relevant to transportation of goods from the bordergate to the warehouse of the importer or to the location for delivery of the goods within Vietnam.

3.2.2.2 Freight, insurance premiums and other expenses relevant to transportation of goods from the warehouse of the importer to the location for sale, if the importer must bear these expenses.

3.2.3 Taxes and fees payable in Vietnam on importation and sale of imported goods in the Vietnamese market.

4. The method of deductible price shall apply to goods which when sold are no longer in their original state as when imported.

If one is unable to find goods sold in their original state as when imported, the method of deductible price may apply to imported goods which are additionally processed or treated within Vietnam, in which case any costs of processing and treatment which are added to the price of the goods may be deducted.

This method shall not be applicable if after processing and treatment the goods are changed in terms of characteristics, features and use purpose and are not recognizable as the initially imported goods.

5. Vouchers to be lodged:

When the method of deductible price is used to determine dutiable value, the importer shall lodge the following vouchers:

5.1 Sale invoice on the form issued by the Ministry of Finance or on a form the Ministry permits to be used.

5.2 Contract of agency sale if the importer is the selling agent of the exporter, specifying agent's commission and any fees payable by the agent.

5.3 Valid and legal accounting data and vouchers (with written explanations) for general management expenses, other expenses and profits on sale of goods.

5.4 Tax receipts or tax notices regarding taxes paid or to be paid, and lists of fees paid or to be paid.

5.5 Declaration of imported goods for the consignment selected for the deductible [method].

5.6 Other data necessary to check the determination of dutiable value as requested by the tax office.

IV. Method of calculated price:

1. Determining dutiable value:

The dutiable value of imported goods shall be determined by the calculated price, which shall comprise the following items:

1.1 Manufacturing costs.

1.2 General expenses and profits from manufacturing and selling exported goods.

1.3 Items which must be added pursuant to section VII of this chapter (except for the items already mentioned in clause 1.1 above).

2. The determination of the calculated price shall be based on data provided by the manufacturer, consistent with accounting principles of the country which manufactured the imported goods.

3. Vouchers to be lodged:

When the method of calculated price is used, the importer shall lodge the following vouchers:

3.1 List of manufacturing costs, general expenses and profits from manufacturing and selling exported goods as certified by the manufacturer.

3.2 Vouchers for the expenses mentioned in clause 1.3 above.

V. Other method:

1. If the dutiable value cannot be determined by the methods stipulated in section I to section V of this chapter, it shall be determined by another method based on objective data and figures which are available at the time for determination of dutiable value and consistent with the provisions in Decree No. 60-2002-ND-CP and this Circular.

When the customs office applies this method, it must base itself on legal and valid files which the customs declarant provides or on information available at the customs office where the determination is being made.

2. When this method is applied to determine dutiable value, the customs declarant and the customs office shall not use the prices listed below in order to determine dutiable value:

2.1 Domestic market selling prices of goods of the same category already manufactured in Vietnam.

2.2 Selling prices of goods on the domestic market of the exporting country.

2.3 Selling prices of goods for export to another country.

2.4 Manufacturing costs of goods, except for manufacturing costs of goods used in the method of calculated price.

2.5 Minimum tax calculation price.

2.6 Various imposed prices or presumed prices.

2.7 Higher prices fixed from two or more transaction values of identical imported goods or similar imported goods.

3. Way of making use of this other method in order to determine dutiable value:

3.1 Use shall be made of the method of the transaction price of identical imported goods or of similar imported goods.

3.1.1 If there are no identical imported goods or no similar imported goods exported into Vietnam within 30 days before or after the date of export of the subject consignment whose dutiable value is being determined, then identical imported goods or similar imported goods exported into Vietnam within a longer period shall be selected but such period shall not be more than 60 days before or after the date of export of the subject consignment whose dutiable value is being determined.

3.1.2 If there are no identical imported goods or no similar imported goods from the same country of origin, then imported goods from another country shall be selected so long as they satisfy the other conditions for being deemed identical imported goods or similar imported goods.

3.2 Use shall be made of the method of deductible price in one of the following ways:

3.2.1 If a unit price used for the deductible [method] has not been fixed within 90 days of the date of importation, then the following shall be selected: the unit price of goods sold in the largest number within 120 days of the date of importation of the consignment selected for the deductible [method].

3.2.2 If there is no unit re-sale price for the imported goods or for identical imported goods or for similar imported goods to a person without a special relationship with the importer, then the re-sale price to a purchaser with a special relationship shall be selected on condition that such special relationship does not effect the selling price in the purchase and sale transaction.

3.3 The dutiable value of imported goods shall be fixed as equal to the dutiable value of identical imported goods already determined in accordance with the method of deductible price [or] the method of calculated price.

3.4 The dutiable value of imported goods shall be fixed as equal to the dutiable value of similar imported goods already determined in accordance with the method of deductible price [or] the method of calculated price.

VII. Items to be adjusted:

1. Principles of adjustment:

1.1 Items to be added shall only be adjusted when the following conditions are satisfied:

1.1.1 The items are payable by the purchaser but have not yet been included in the total sum paid or to be paid by the purchaser.

1.1.2 The items to be paid directly relate to imported goods.

1.1.3 If a consignment of imported goods has items to be added but there is no objective data to fix such items then the dutiable value shall not be determined in accordance with the method of transaction price but one must proceed to the next following method.

1.2 Items to be deducted shall only be adjusted when there are valid and legal vouchers for deducting

such items from the selling price and such documents are available at the time of determination of dutiable value.

2. Items to be added:

2.1 Commission on sale of goods and brokerage fees. If these items include taxes payable in Vietnam, the taxes shall not be added to the dutiable value of imported goods.

2.2 Costs of packaging imported goods, including:

2.2.1 Packaging of goods means all types of packaging which normally go with goods as a condition for preserving or using them and which are classified together with goods in accordance with principles of classification and current goods code numbers.

2.2.2 Costs of packaging of goods shall include costs of purchasing packaging, other costs related to sale, purchase and transportation of packaging to the place where the goods are wrapped and preserved.

2.2.3 All types of multiple use containers, tanks and brackets used as wrapping facilities to service the transportation of goods shall be deemed not to be packaging of goods and therefore shall not be included in the additional items for costs of packaging of goods to be added as stipulated in clause 2.7 below.

2.3 Costs of wrapping goods shall include:

2.3.1 Costs of wrapping materials including costs of purchasing them and other costs related to sale, purchase and transportation of wrapping materials to the place where the goods are wrapped.

2.3.2 Labour costs of wrapping including hire of labour and costs related to hire of labour for wrapping the subject goods whose dutiable value is being determined. If the purchaser must pay meals, accommodation and fares for labourers while goods are being wrapped then these costs shall also be included in labour costs of wrapping.

2.4 Value of goods and services the purchaser provides to the seller free of charge or at a reduced cost for manufacture and sale of goods exported to Vietnam (hereinafter referred to as the value of subsidized items).

2.4.1 Conditions for adding the value of subsidized items to the transaction price:

2.4.1.1 The subsidized goods and services are provided by the purchaser directly or indirectly to the manufacturer or seller free of charge or at a reduced cost.

2.4.1.2 The subsidized goods and services are used to manufacture the subject goods whose dutiable value is being determined.

2.4.2 Subsidized items shall include:

2.4.2.1 Constituent and accessory raw materials, sections and similar products incorporated in the imported goods.

2.4.2.2 Raw materials, fuel and power expended during the manufacturing process of imported goods.

2.4.2.3 Tools, instruments, framework, frame moulds, frame samples and other similar products used to manufacture the imported goods.

2.4.2.4 Design drawings, technical drawings, aesthetic designs, developmental designs, execution designs, sample designs, plans, outlines and similar services products which are made/provided overseas and used to manufacture the imported goods.

2.4.3 Determining value of subsidized items:

2.4.3.1 The value of subsidized items shall be determined as follows:

2.4.3.1.1 If subsidized goods and services are purchased from someone without a special relationship in order to provide to the seller then the value of the subsidized item is the purchase price of the goods.

2.4.3.1.2 If subsidized goods and services are manufactured by the importer or someone with a special relationship with the importer in order to provide to the seller then the value of the subsidized item is the prime cost of manufacturing such subsidized goods and services.

2.4.3.1.3 If subsidized goods and services are made by a manufacturing establishment of a purchaser which is situated overseas but there are no valid and legal data and vouchers in order to account separately for such subsidized goods and services, then the value of the subsidized item shall be fixed by apportioning total manufacturing expenses in each period of such establishment to the volume of subsidized goods and services which were manufactured.

2.4.3.2 Determining value of subsidized items in special cases:

2.4.3.2.1 Where a purchaser hires or borrows a subsidized item then its value shall be costs of hiring or borrowing.

2.4.3.2.2 Where a subsidized item is second hand goods then its value shall be the residual value of the goods. For example a purchaser sends the seller second hand machinery to mix raw materials for use during manufacture of export products; the price of the machinery on the invoice is 1,000 USD, then the residual use value when sending the machinery to the seller is 70% and the value of this subsidized item is 700 USD.

2.4.3.2.3 Where a purchaser processes subsidized goods before sending them to the seller for use during manufacture of imported goods, then added value due to such processing must be added to the value of the subsidized item. For example, continuing on from the former example, if the purchaser repaired an arm of the machinery before sending it to the seller and the

costs of the repairs was 100 USD, then the value of this subsidized item becomes 800 USD.

2.4.3.2.4 Where a purchaser sells a subsidized item at a reduced price to the exporter, then the reduced price factor must be added to the dutiable value.

For example, if the purchase price of a subsidized item is 500 USD, and the importer sells it to a manufacturer overseas for 300 USD for use during manufacture of import goods then the subsidized item to be added to the dutiable value is 200 USD.

2.4.3.2.5 If after the manufacture of import goods scrap and excess materials are collected from subsidized goods then the value of materials so collected shall be deducted from the value of the subsidized item.

The value of subsidized items shall include expenses relating to purchase and sale, insurance and transportation to the place of manufacture of import goods.

2.4.4 Allocation of subsidized items to import goods.

2.4.4.1 Principles of allocation of subsidized items:

2.4.4.1.1 The value of subsidized items must be fully allocated to import goods.

2.4.4.1.2 Valid and legal vouchers must be prepared for allocation.

2.4.4.2 Method of allocation of subsidized items:

The customs declarant shall himself allocate subsidized items to import goods in one of the following ways:

2.4.4.2.1 Method of full allocation to the total quantity of import goods in the initial consignment:

For example, subsidized item A valued at 1,000 USD is used to manufacture 2,000 products. On 31 December 2002, the date of the initial import consignment, the manufacturer has manufactured 500 products, the customs declarant may allocate all of the 1,000 USD to the 500 manufactured products.

2.4.4.2.2 Method of full allocation to the total quantity of manufactured goods pursuant to the purchase and sale agreement between the purchaser and the seller (or manufacturer).

For example, subsidized item A valued at 1,000 USD is used to manufacture 2,000 products pursuant to the agreement. The customs declarant may allocate all of the 1,000 USD to the 1,000 manufactured

products.

2.4.4.2.3 Total allocation to the initial consignment of imported goods.

For example, subsidized item A valued at 1,000 USD is used to manufacture 2,000 products. In the initial delivery of goods, the seller delivers 300 products to the purchaser. The customs declarant may allocate all of the 1,000 USD to the 300 products.

2.4.4.2.4 Allocation in accordance with the principle of gradual reduction or gradual increase:

For example, the subsidized item to be allocated is 6,000 USD, and the total number of products manufactured pursuant to an agreement between the purchaser and the seller is 3,000 products.

The customs declarant may choose the following method of allocation by gradual reduction: the initial consignment of imported goods is 1,000 products, value allocated is 3,000 USD; the second consignment of imported goods is 1,000 products, value allocated is 2,000 USD; and the final consignment of imported goods is 1,000 products, value allocated is 1,000 USD.

The customs declarant may choose the method of allocation by gradual increase: the partial value allocated to the initial consignment is 1,000 USD; the partial value allocated to the second consignment is 2,000 USD; and the partial value allocated to the final consignment is 3,000 USD.

2.4.4.2.5 The customs declarant may use other methods of allocation on condition they comply with the above-mentioned principles of allocation.

2.5 Copyright payments, licence fees:

2.5.1 Copyright payments and licence fees relating to the subject goods whose dutiable value is being determined must be added to dutiable value when the following conditions are satisfied:

2.5.1.1 Payment of copyright payments and licence fees is a condition of purchase and sale of the imported goods.

The customs declarant must submit to the customs office a sealed [and] certified true copy of the original agreement on payment of copyright payments and licence fees.

2.5.1.2 Copyright payments and licence fees must be paid by the purchaser directly or indirectly to the person holding copyright or to the licensed person.

The customs declarant must submit to the customs office a sealed [and] certified

true copy of the voucher or document showing payment of copyright payments and licence fees and of the permit from the person holding copyright or from the person with the right to issue the licence.

2.5.1.3 Copyright payments and licence fees are not yet included in the invoiced price of the subject goods whose dutiable value is being determined.

2.5.2 Copyright payments and licence fees need not be added to dutiable value in the following cases:

2.5.2.1 Fees payable by the purchaser for the right to reproduce imported goods or copy artistic products in Vietnam.

2.5.2.2 Fees payable by the purchaser for the right to distribute or re-sell imported goods if this payment is not a condition of the sale of the imported goods.

If fees payable for the right to reproduce, distribute or re-sell imported goods are already included in the selling price then they shall not be deducted from dutiable value of imported goods.

2.5.2.3 If copyright payments and licence fees are included at to one part in imported goods and another part is based on elements unrelated to imported goods and it is impossible to ascertain or divide the two elements or it is impossible to ascertain copyright payments pursuant to the financial agreement between the purchaser and the seller, then copyright payments and licence fees need not be added to dutiable value.

2.5.3 Bases for fixing copyright payments and licence fees:

2.5.3.1 The bases for fixing copyright payments and licence fees shall be payment vouchers for such fees or other valid and legal vouchers expressing the obligation to pay such fees.

2.5.3.2 If copyright payments and licence fees cannot be fixed at the time of importation because they belong to sales turnover after importation or for some other reason, then the transaction price shall still be accepted on condition the customs declarant provides a written undertaking to make an additional declaration of these fees in order to determine full dutiable value of the consignment of imported goods and to discharge [import] duty obligations. In such a case the customs office shall open a register and monitor this case.

2.6 All fees payable by the importer from sums collected after disposal or use of the imported goods must be transferred to the seller, for example:

The importer must pay a sum being a fixed percentage of turnover from sale or leasing out of goods after importation.

If on registration of the declaration of imported goods the customs declarant does not have data to fix specifically this item payable, then the dutiable value of such imported goods shall not be determined by the transaction price method but by the next following method.

2.7 Expenses of freight, loading and unloading, and transfer directly relevant to transportation of imported goods to the importation location. The value of these adjusting items shall be fixed on the basis of the freight contract or data and vouchers relating to transportation of

goods.

2.7.1 If a consignment of goods contains many different types and the vouchers for freight do not break down expenses for each type, the customs declarant shall allocate these expenses in the following order:

- (i) Allocation on the basis of the carriers price list.
- (ii) Allocation on the basis of volume of goods.
- (iii) Allocation on the basis of proportionate purchase price of each type over total value of the consignment.

2.7.2 If the purchase price does not include expenses of freight and the purchaser does not have valid and legal vouchers for them, then the transaction price method shall not apply.

2.8 Costs of insuring goods to importation location.

2.8.1 If the purchaser does not insure the goods then these costs shall not be added to dutiable value.

2.8.2 If insurance is taken out for one consignment of goods containing many different types of goods, costs shall be allocated according to the value of each type of goods.

If the expenses in clauses 2.7 and 2.8 above include VAT payable, then such tax shall not be added to dutiable value.

3. Items to be deducted:

If the transaction price includes the following items which are supported by valid and legal vouchers available at the time for determination of dutiable value, they shall be deducted in order to determine dutiable value:

- 3.1 Costs of activities arising after the date of importation including costs of construction, architecture, installation, maintenance, technical assistance, technical advice, costs of supervision and similar costs.
- 3.2 Costs of freight and insurance within Vietnam. If these costs cover many different types of goods, they shall be allocated on the principles set out in clauses 2.7 and 2.8 above.
- 3.3 Taxes, fees and charges payable in Vietnam which are included in the purchase price of imported goods. If these expenses relate to many different types of goods and the vouchers do not break down expenses for each type, the expenses shall be allocated as a percentage of the purchase price of each type over the total value of the consignment.
- 3.4 Interest payable on the purchase price of imported goods, on condition that the rate is specified in the contract for purchase and sale and that it is consistent with the common rate applied by credit institutions of the exporting country at the time of entering such contract.

Chapter III **Rights and Obligations of Customs Declarants,** **Responsibilities of Customs Offices**

I. Rights of customs declarants:

1. That the customs office retains confidentiality of commercial information supplied to it, including information on a purchaser, seller, agent, domestic purchaser, domestic re-selling price or manufacturing price of imported goods.
2. To request the customs office to guide determination of dutiable value and to provide written notice of the methods and basis it has used to fix dutiable value.
3. To provide proof of the accuracy and truthfulness of values declared if the customs office so requests.
4. To lodge complaints about decisions of the customs office fixing dutiable value.
5. To make a written request to the customs office to change the order of applicability of the method of deductible price and the method of calculated price.

II. Obligations of customs declarants:

1. To rely on the file of the consignment of imported goods and on principles and methods for determining dutiable value set out in this Circular to fully and accurately declare expenses relative to purchase and sale of imported goods, and to themselves fix the dutiable value on the stipulated form.
2. To submit declarations of dutiable value and copies of valid and legal vouchers used for determining same together with their declarations of imported goods. To submit data and provide information relevant to determining dutiable value on request by the customs office.
3. To submit to checks by the customs office and to co-operate in checking the contents of declarations.
4. To be liable for the accuracy and truthfulness of declarations and for the results of determinations of dutiable value of imported goods.
5. A declarant shall be responsible if there is no recipient at the address registered by the declarant in his declaration of imported goods when the post office delivers documents from the customs office to such address.

III. Rights and obligations of customs offices:

1. To retain confidentiality of commercial information relevant to declared values on request by declarants, unless the law requires provision of information to relevant agencies.
2. To guide declarants to comply with Decree No. 60-2002-ND-CP and this Circular.
3. To provide written notice of the methods and basis it has used to fix dutiable value on written request from declarants.
4. To provide declarants with the stipulated forms for declaration of dutiable value; to arrange printing, issuance and distribution of same.
5. To request declarants to submit vouchers relating to purchase and sale and payment for goods in order to prove the accuracy and truthfulness of declared values, and to compare copies with originals where appropriate.
6. To fix dutiable values.
- 6.1 The customs office shall fix dutiable values in the following cases:

6.1.1 The declarant relied on invalid, illegal or incomplete vouchers when determining dutiable

value.

- 6.1.2 The declarant failed to declare or declared incorrectly the price paid or payable or items adjustable pursuant to section VII of chapter II.
- 6.1.3 The declarant failed to comply with provisions on determining dutiable value in Decree No. 60-2002-ND-CP and this Circular.
- 6.1.4 The customs office doubts the accuracy and truthfulness of values declared and of vouchers used for determining same, notifies the declarant of such doubt so that the declarant can provide written proof or conduct a review, and:
 - 6.1.4.1 Within a time-limit of 30 days from the date the post office delivers the above notice, the declarant fails to provide such written proof, or
 - 6.1.4.2 The declarant fails to participate in the review or fails to explain items on request by the customs office.
- 6.1.5 The customs office suspects that a special relationship affects the transaction price, notifies the declarant of same so that the declarant can provide written proof, but within a time-limit of 30 days from the date the post office delivers the notice the declarant fails to provide such written proof.
- 6.1.6 The purchaser and the seller have a special relationship which the declarant fails to declare.

6.2 Bases and methods for fixing dutiable values:

The customs office shall rely on the file on the consignment of imported goods, information available at the customs office, and the methods set out in Decree No. 60-2002-ND-CP and this Circular in order to determine dutiable value.

6.3 Deferment of determination of dutiable value:

If the customs office lacks sufficient information to determine dutiable value within the time-limit for conducting customs procedures, it shall temporarily approve the value declared, so notify the customs declarant, and then within a time-limit of 15 days from the date of registration of the declaration of imported goods it shall officially determine dutiable value and notify the customs declarant so that any deficiency can be paid or excess refunded in accordance with law.

7. Checks of contents of declarations and of determinations of dutiable value by declarants:

- 7.1 The General Department of Customs shall specifically regulate these tasks for all level customs offices.
- 7.2 After checking that a determination of dutiable value by a declarant complies with this Circular, the customs office shall accept it in order to fix duty.
- 7.3 If the customs office remains suspicious but there are no grounds for concluding fraud by a declarant in his declaration, the customs office shall conduct a review with the declarant pursuant to section IV of this chapter.

IV. Reviews:

- 1. Cases which shall call for a review: A consignment of imported goods for which the customs office remains suspicious about the accuracy and truthfulness of values declared or of one of the vouchers, but there are no grounds for concluding fraud.

2. Time-limit for conducting a review: A review shall be conducted after a consignment of imported goods has cleared customs but within a time-limit of 15 days from the date the post office delivers a notice to the declarant. In necessary cases both parties may agree to change this time-limit but a final decision shall rest with the customs office.
3. Procedures for a review:
 - 3.1 The customs office shall prepare contents, data and vouchers for a review. The head of a Customs Division or higher level shall make a review decision.
 - 3.2 The customs office shall provide written notice to a declarant it manages about a review, advising contents of the review, time and location so that the declarant may prepare the relevant data.
 - 3.3. Conducting the review:
 - 3.3.1 The customs office and the declarant shall deal with each other/exchange opinions on contents of the review.
 - 3.3.2 The declarant shall provide information, data and vouchers to the customs office pursuant to the notice about the review sent to the declarant.
 - 3.4 On the termination of a review, both parties must sign minutes of the review which must contain all the contents of the review in accordance with the form in the Appendix to this Circular.
 - 3.5 Dealing with results of a review: Within 5 days after the date of termination of a review, the customs office shall deal with the results of the review and notify the declarant.
 - 3.5.1 If the review fails to take place because the declarant fails to appear as required by the notice and the declarant also fails to inform the customs office of the reason therefor, the customs office shall fix dutiable value and notify the declarant for implementation.
 - 3.5.2 If the declarant clarifies the truthfulness and objectivity of the items requested, then the value declared shall be approved.
 - 3.5.3 If the declarant fails to clarify the truthfulness and objectivity of the items requested, then the customs office shall fix dutiable value and notify the declarant for implementation.
 - 3.5.4 If the customs office remains suspicious about the truthfulness of the value declared but there are insufficient grounds for rescinding it, then the value declared shall still be approved. The file of the consignment shall be transferred to the appropriate section to check and clarify it.
 - 3.5.5 All of the review file shall be retained with the customs file set.
4. In addition to a review with a declarant, the customs office may seek opinions from other entities and agencies concerned in order to ensure the truthfulness and objectivity of the checking process.

Chapter IV Complaints and Dealing with Breaches

I. Complaints and resolving breaches:

1. Customs declarants shall have the right to lodge complaints about decisions fixing dutiable values with competent State bodies in accordance with law. Complaints must specify reasons and grounds. While awaiting resolution of a complaint, a customs declarant must comply with the decision of the customs office fixing the dutiable value.
2. *Competent State bodies* means:
 - 2.1 The head of the Customs Division in the place where the decision fixing the dutiable value was issued.
 - 2.2 The head of a provincial, municipal, or inter-provincial Customs Division.
 - 2.3 The General Director of the General Department of Customs.
 - 2.4 The Minister of Finance.
3. All level bodies competent to resolve complaints shall have the right to refuse jurisdiction if a complaint does not specify a reason or if it gives an unclear reason or if the complaint exceeds authority, and shall notify the complainant thereof.
4. If a complaint is not resolved, the competent body shall specify its reasons and notify the complainant in accordance with law.
5. Time-limits, complaint procedures, resolution of complaints and authority to resolve complaints shall be implemented in accordance with the laws on complaints and other relevant laws.
6. Customs declarants shall have the right to institute legal proceedings in accordance with law about decisions of customs offices fixing dutiable values.

II. Dealing with Breaches:

1. Any organization or individual who breaches the provisions of Decree No. 60-2002-ND-CP and this Circular shall, depending on the nature and seriousness of the offence, be dealt with in accordance with law.
2. Any customs official or other individual who lacks responsibility [and] breaches the provisions of Decree No. 60-2002-ND-CP and this Circular causing loss to taxpayers or to tax revenue must pay compensation for such loss and shall, depending on the nature and seriousness of the offence, be disciplined or criminally prosecuted in accordance with law.

CHAPTER V Implementing Provisions

1. The General Department of Customs shall organize a system of information on prices to service checking and determining of dutiable values within the customs branch.

Provincial, municipal, and inter-provincial Customs Divisions shall be responsible to collate, process, report and use information on prices pursuant to regulations of the General Department of Customs.

2. This Circular shall be of full force and effect fifteen days after the date of its publication in the Official Gazette. Any problems should be reported to the Ministry of Finance for resolution.

For the Minister of Finance
Deputy Minister
TRUONG CHI TRUNG

