

**CIRCULAR No. 14/2006/TT-BTC OF FEBRUARY 28, 2006, GUIDING THE IMPLEMENTATION
OF VIETNAM'S PARTICULARLY PREFERENTIAL IMPORT TAX RATES FOR
IMPLEMENTATION OF THE ASEAN'S AGREEMENT ON COMMON EFFECTIVE
PREFERENTIAL TARIFFS (CEPT)**

Pursuant to June 14, 2005 Law No. 45/2005/QH11 on Import Tax and Export Tax and the Government's Decree No. 149/2005/ND-CP of December 8, 2005, detailing the implementation of the Law on Import Tax and Export Tax;

Pursuant to the Government's Decree No. 154/2005/ND-CP of December 15, 2005, detailing a number of articles of the Customs Law regarding customs procedures, inspection and supervision;

Pursuant to the Government's Decree No. 77/2003/ND-CP of July 1, 2003, defining the functions, tasks, powers and organizational structure of the Ministry of Finance;

In furtherance of the Protocol on the Socialist Republic of Vietnam's accession to the Agreement on Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA) (hereinafter referred to as the CEPT/AFTA Agreement), concluded on December 15, 1995, in Bangkok;

The Ministry of Finance hereby guides the implementation of Vietnam's particularly preferential import tax rates for implementation of the ASEAN's CEPT/AFTA Agreement as follows:

I. Scope and conditions of application

1. To be eligible for the application of Vietnam's particularly preferential import tax rates for implementation of the CEPT/AFTA Agreement (hereinafter referred to as the CEPT rates for short), imports must fully meet the following conditions:

a/ Being on Vietnam's list of goods and their particularly preferential tax rates for implementation of the CEPT/AFTA Agreement, promulgated by the Finance Minister.

b/ Being imported into Vietnam from the ASEAN member countries, including:

- Brunei Darussalam;
- The Kingdom of Cambodia;
- The Republic of Indonesia;
- The Lao People's Democratic Republic;
- Malaysia;
- The Federation of Myanmar;
- The Republic of Philippines;
- The Republic of Singapore; and,
- The Kingdom of Thailand;

c/ Satisfying the ASEAN-origin requirements, with certificates of ASEAN origin - Form D (abbreviated to form-D C/Os), as specified in Section III of this Circular, except imported goods lots with the total value (at FOB price) not exceeding USD 200 each, for which form-D C/Os are not required. Particularly for imported goods with form-D C/Os affixed with "FOR CUMULATION

PURPOSES ONLY” stamp as specified in the Trade Minister’s Decision No. 151/2005/QĐ-BTM of January 27, 2005, the CEPT rates shall not apply.

d/ Being transported directly to Vietnam from countries of exportation being the ASEAN members as provided for in the Trade Minister’s Decision No. 1420/2004/QĐ-BTM of October 4, 2004.

2. Goods from non-tariff areas (including processed goods), when being imported into the domestic market and eligible for the CEPT rates, must meet the conditions set at Items a and c, Point 1, Section I of this Circular.

II. Applicable import tax rates

1. Import tax rates applicable to imported goods eligible for the CEPT rates as provided for in Section I of this Circular shall be the CEPT rates applicable in each year, which are correspondingly specified in the CEPT rate column for that year in Vietnam’s list of goods and their particularly preferential tax rates for implementation of the CEPT/AFTA Agreement, promulgated by the Finance Minister.

2. Where the preferential import tax rate (MFN tax rate) of a goods item specified in the Preferential Import Tariffs is adjusted to be lower than the CEPT rate, the import tax rate applicable to such goods item shall be the MFN tax rate.

If the MFN tax rate of such goods item specified in the Preferential Import Tariffs is adjusted to be higher than the CEPT rate, the applicable import tax rate shall be the CEPT rate.

3. Where goods imported by enterprises for production and/or assembly of mechanical, electric or electronic products meet both the conditions for application of the CEPT rates and the conditions for application of import tax rates based on the localization rate under current regulations, the enterprises may choose either to apply the tax rates based on the localization rate or the CEPT rates, specifically as follows:

Where enterprises choose to apply the tax rates based on the localization rate, upon importation of incomplete details or detail assemblies, the enterprises must apply a single tax rate based on the localization rate to the whole list of imported details or detail assemblies, though there are details eligible for the CEPT rates on the list.

Where enterprises choose to apply the CEPT rates, incomplete details or detail assemblies which are eligible for the CEPT rates shall enjoy such CEPT rates; other details and detail assemblies shall enjoy MFN tax rates or ordinary tax rates.

4. The CEPT rates applicable to complete knocked-down details and components imported for assembly of mechanical, electric or electronic products are as follows:

Complete knocked-down details (detail assemblies) or components (component assemblies) with form-D C/Os shall be eligible for the CEPT rates of complete goods items if they meet the conditions for application of the CEPT rates specified in Section I of this Circular. For other knocked-down parts or components without form-D C/Os, the MFN or ordinary tax rates set for complete goods items shall apply.

For application of the CEPT rates, goods owners must present one or several separate commercial invoices for details (detail assemblies) or components (component assemblies) with form-D C/Os.

The CEPT rates shall apply at the time of tax calculation according to the provisions of law on import tax and export tax. Procedures for import tax finalization with customs offices shall comply with current regulations.

Principles for classification of complete and incomplete knocked-down components shall comply with the Finance Ministry's Circular No. 85/2003/TT-BTC of August 29, 2003, guiding the classification of goods according to the list of imported and exported goods, the Preferential Import Tariffs, the Export Tariff and relevant documents guiding the classification of goods.

5. CEPT rates applicable to automobile CKD component sets:

a/ Enterprises which choose to apply the CEPT rates set for automobile CKD component sets or the CEPT rates set for each component or spare part to certain types of automobile must make written registration at the local customs office which they find the most convenient and follow the registered contents till the end of December 31, 2006.

Where enterprises choose to apply the CEPT rates set for automobile CKD component sets, parts and spare parts of automobile CKD component sets imported from many sources (countries of origin) or in many different shipments shall be eligible for the CEPT rates set for automobile CKD component sets, provided that one or several separate commercial invoices must be presented for parts or spare parts applied for the CEPT rates, apart from the conditions specified in Section I of this Circular. Other parts and spare parts of automobile CKD component sets imported from many sources or in many different shipments, which fail to meet the application conditions specified in Section I of this Circular, shall enjoy MFN or ordinary tax rates set for automobile CKD component sets.

The CEPT rates shall be applied to automobile CKD component sets imported from different sources or in different shipments at the time of tax calculation according to the provisions of law on import tax and export tax. Procedures for import tax finalization with customs offices shall comply with current regulations.

b/ From January 1, 2007, enterprises may apply the CEPT rates only to each automobile component or spare part specified in Vietnam's list of goods and their particularly preferential import tax rates for implementation of the CEPT/AFTA Agreement, promulgated by the Finance Minister, but not to automobile CKD component sets specified at Item a, Point 5, Section II of this Circular.

6. The CEPT rates applicable to goods processed in non-tariff areas and imported into the domestic market shall be the CEPT rates of imported processed goods items specified in Vietnam's list of goods and their particularly preferential tax rates for implementation of the CEPT/AFTA Agreement, promulgated by the Finance Minister.

7. Where goods owners fail to present form-D C/Os at the time of customs declaration registration:

a/ For goods owners that have well observed tax law as specified in Part C of the Finance Ministry's Circular No. 113/2005/TT-BTC of December 15, 2005, guiding the implementation of import tax and export tax, taxes shall be calculated at the CEPT rates according to taxpayers' commitments and declarations.

Where goods owners fail to present form-D C/Os within the time limit set at Item b, Point 5, Section III of this Circular, customs offices shall re-calculate taxes for the goods owners and sanction their violations according to current regulations.

b/ For goods owners that have not well observed tax law as provided for in Part C of the Finance Ministry's Circular No. 113/2005/TT-BTC of December 15, 2005, guiding the implementation of import tax and export tax, taxes shall be temporarily calculated at the MFN tax rates. When enterprises present form-D C/Os within the time limit set at Item b, Point 5, Section III of this Circular, customs offices shall re-calculate import tax at the CEPT rates for the goods owners.

8. In case of changes in the goods items in legal documents promulgated by the ASEAN countries for implementation of the CEPT/AFTA Agreement which affect Vietnam's right to apply the CEPT rates as provided for in Section I of this Circular, the Ministry of Finance shall provide appropriate guidance on a case-by-case basis.

III. C/Os and examination of C/Os

1. The rules for goods to be recognized as having the ASEAN origin are defined in the Regulation on grant of Vietnam's certificates of ASEAN origin - Form D, promulgated together with the Trade Minister's Decision No. 1420/2004/QĐ-BTM of October 4, 2004, Decision No. 151/2005/QĐ-BTM of January 27, 2005, Decision No. 2281/2005/QĐ-BTM of August 30, 2005, Decision No. 3188/2005/QĐ-BTM of December 30, 2005, and other relevant decisions.

2. C/Os must bear signatures and seals compatible with the official specimen signatures and seals of the following agencies of ASEAN member countries, which are competent to grant form-D C/Os:

- In Brunei Darussalam: The Ministry of Foreign Affairs and Foreign Trade;
- In the Kingdom of Cambodia: The Ministry of Trade;
- In the Republic of Indonesia: The Ministry of Trade;
- In the Lao People's Democratic Republic: The Ministry of Trade;
- In Malaysia: The Ministry of Foreign Trade and Industry;
- In the Federation of Myanmar: The Ministry of Trade;
- In the Republic of Philippines: The Ministry of Finance;
- In the Republic of Singapore: The Customs; and,
- In the Kingdom of Thailand: The Ministry of Trade.

3. Form-D C/Os for goods imported from non-tariff areas into the domestic market must bear signatures and seals compatible with the official specimen signatures and seals of regional import and export management offices or management boards authorized to grant form-D C/Os by the Trade Ministry.

4. Form-D C/Os shall be valid for 06 months after the date of signing by competent agencies of countries of exportation being the ASEAN members.

5. Regulations on presentation of form-D C/Os:

a/ The time for presenting form-D C/Os to customs offices shall be the time of customs declaration registration.

b/ Where form-D C/Os cannot be presented at the time of customs declaration registration for plausible reasons, heads of Customs Sub-Departments shall decide to extend the time limit for submission thereof up to 30 days from the date of customs declaration registration.

c/ Where form-D C/Os are presented within the time limit set at Item a or b, Point 5, Section III of this Circular, but such C/Os have expired due to *force majeure* circumstances or for other plausible reasons beyond the exporters' control, heads of Customs Sub-Departments shall decide on the acceptance of such C/Os.

6. In case of suspicion of truthfulness or accuracy of form-D C/Os, customs offices may:

a/ Request the re-examination of form-D C/Os: Customs offices shall send their requests for certification to the countries of exportation' agencies competent to grant such C/Os.

b/ Stop the application of the CEPT tax rates and temporarily collect taxes at the MFN or ordinary tax rates. Request importers to provide additional documents (if any) to prove the goods' ASEAN origin within 365 days after form-D C/Os are submitted to customs offices. When having enough documents to evidence the goods' ASEAN origin, customs offices shall carry out procedures for returning to the importers the differences between the tax amounts temporarily collected at the MFN or ordinary tax rates and those calculated at the CEPT rates.

Pending the availability of re-examination results, continue carrying out the procedures for the release of goods according to general import regulations.

Order and procedures for requesting the re-examination shall comply with the provisions of the Regulation on the grant of Vietnam's certificates of ASEAN origin - Form D, promulgated together with the Trade Minister's Decision No. 1420/2004/QD-BTM of October 4, 2004, Decision No. 151/2005/QD-BTM of January 27, 2005, and other relevant decisions.

IV. Other provisions

Tax bases, tax collection, payment, exemption, reduction, refund and retrospective collection, handling of violations, and other matters shall comply with the provisions of the Law on Import Tax and Export Tax and current guiding documents.

V. Organization of implementation

This Circular takes effect 15 days after its publication in "CONG BAO"; to annul the Finance Ministry's Circular No. 42/2005/TT-BTC of May 31, 2005, guiding the implementation of the Government's Decree No. 48/2005/ND-CP of April 8, 2005, and Circular No. 45/2005/TT-BTC of June 6, 2005, guiding the implementation of the Government's Decree No. 78/2003/ND-CP of July 1, 2003, Decree No. 151/2004/ND-CP of August 5, 2004, Decree No. 213/2004/ND-CP of December 24, 2004, and Decree No. 13/2005/ND-CP of February 3, 2005.

Any difficulties or problems arising in the course of implementation should be promptly reported to the Finance Ministry for appropriate additional guidance.

For the Minister of Finance

Vice Minister

TRUONG CHI TRUNG