

**DECREE No. 155/2005/ND-CP OF DECEMBER 15, 2005, PROVIDING FOR
CUSTOMS VALUATION OF IMPORTED AND EXPORTED GOODS**

THE GOVERNMENT

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

Pursuant to Import Tax and Export Tax Law No. 45/2005/QH11 of June 14, 2005;

Pursuant to Customs Law No.29/2001/QH10 of June 29, 2001, and Law No. 42/2005/QH11 of June 14, 2005, amending and supplementing a number of articles of the Customs Law;

At the proposal of the Finance Minister,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Governing scope and objects of application

1. This Decree provides for customs valuation for the purpose of calculating tax and making statistics on imported and exported goods.
2. Imported and exported goods are objects of application of this Decree.
3. Where the treaties to which Vietnam is a party contracting contain provisions different from those of this Decree, the provisions of such treaties shall apply.

Article 2.- Interpretation of terms

1. “Transaction value” means the total money amount actually paid or to be paid directly or indirectly by the buyer to the seller in order to buy imported goods, adjusted under the provisions of Article 13 of this Decree.
2. “Sale for export to Vietnam” means a commercial activity whereby goods are transferred from the seller to the buyer through Vietnamese border-gates or borders or from non-tariff zones into the domestic market, for the purpose of transferring the goods ownership from the seller to the buyer.
3. “The export date” used in the method of transaction value of identical imported goods and the method of transaction value of similar imported goods is the date when goods are loaded onto means of transport according to the bills of lading; for goods transported by land, the export date is the date of registration of the customs declaration.
4. “The first border-gate of importation” means the destination port stated in the bill of lading. For international transport by land, railway or river, the first border-gate of importation as the destination port indicated in the contract.
5. “Available information” means all information relating to the examination and determination of the dutiable value, supplied by customs declarants to customs offices or

gathered by customs offices by the time of examination and determination of the dutiable value. Such information must be archived, analyzed and managed at customs offices.

6. “Identical imported goods” mean goods which are the same in all aspects, including physical characteristics, quality and reputation; turned out in the same country, by the same producer or by another producer authorized by the former, which are imported into Vietnam.

7. “Similar imported goods” mean goods which, though not alike in all aspects, have the same basic characteristics, same raw materials or materials; the same function, and are interchangeable in commercial transactions; turned out in the same country, by the same producer or by another producer authorized by the former, and are imported into Vietnam.

8. “In the condition as imported” referred to in the method of determining dutiable value on the basis of the deductible value means goods whose shapes, characteristics, properties and/or utilities are not altered or whose value is not increased or reduced under any impact after importation.

9. The buyer and the seller shall have special relationships when:

- a/ They are employees or directors of one another’s enterprise;
- b/ They are partnership members, contributing capital in legally recognized businesses;
- c/ They are employer and employee;
- d/ The seller has the power to control the buyer and vice versa;
- e/ They are both controlled by a third party;
- f/ They both control a third party.

A person having the power to control another person as defined at Points d, e and f, Clause 9 of this Article is the person who can directly or indirectly restrict or instruct the other person.

g/ They have the following family ties:

- Husband and wife;
- Parents and children recognized by law;
- Grandparents and their grandchildren who have blood ties;
- Aunts, uncles and nephews, nieces who have blood ties;
- Siblings;
- In-law brothers, sisters.

h/ A third person who owns, controls or holds 5% or more of the voting shares of both parties;

i/ Parties associated in business with one other in that a party is the sole agent, sole distributor or sole transferer of the other party, shall be considered having a special

relationship if such relationship conforms with the provisions from Point a to Point h above.

Article 3.- The time for of customs valuation

The time of customs valuation is the date when the customs declarant registers the customs declaration of imported or exported goods.

Where the customs valuation is made by the customs office, the time of customs valuation shall be the date when the custom office conducts valuation according to the provisions of this Decree.

Article 4.- Principle and methods of customs valuation for tax calculation purpose

The customs value for the purpose of calculating tax on imported or exported goods (hereinafter called the dutiable value) shall be determined on the following principles and by the following methods:

1. For exported goods, the dutiable value is the sale price at the export border-gate (FOB price, DAF price), exclusive of insurance (I) and freight (F).
2. For imported goods, the dutiable value is the actual payable price up to the first border-gate of importation and determined by applying in a sequential order the dutiable value-determining methods specified in Articles 7 thru 12 of this Decree and stopping at the method by which the dutiable value can be determined.

Where customs declarants make written requests, the order of application of the dutiable value-determining methods specified in Article 10 and Article 11 can be interchanged.

3. The Finance Ministry shall base itself on the dutiable value-determining principles prescribed in Clause 2 of this Article to specify the examination and determination of the dutiable value of imported goods in the following cases:

a/ Imported goods have been exempt from tax and put to use in Vietnam but later permitted by competent state bodies for transfer or change of the previous tax exemption purpose;

b/ Imported goods are hired or borrowed goods;

c/ Imported goods are those brought overseas for repair or processing;

d/ Imported goods are warranty or sale promotion goods;

e/ Imported goods have no goods sale and purchase contracts, including:

- Goods sold, purchased or exchanged by border residents;
- Imported goods of passengers on entry, gifts, presents, moved assets in excess of duty-free limits;
- Imported goods of postal and express mail service-providing enterprises.

f/ Other peculiar imported goods.

Article 5.- Customs value for statistical purposes

1. Customs value for the purpose of making statistics on exported and import goods (hereinafter called statistical value) shall be determined on the following principles:

a/ For taxable goods, the statistical value shall be determined on the basis of the dutiable value already determined on the principles and by the methods specified in Article 4 of this Decree;

b/ For goods not liable to tax, not entitled to consideration of tax exemption, or for which the dutiable value cannot be determined under the provisions of Article 4 of this Decree, the statistical value shall be the value declared by customs declarants on the following principles:

- For imported goods, the statistical value shall be the sale price at the first border-gate of importation (CIF price);

- For exported goods, the statistical value shall be the sale price at the border-gate of exportation (FOB price, DAF price).

2. The Finance Ministry shall specify the collection, handling, use and archive of statistical values.

Article 6.- Price information, database

1. The dutiable value of imported goods shall be examined and determined on the basis of price database and available information.

2. The Finance Ministry shall specify the building, management and use of price database and available information.

Chapter II

METHODS OF DETERMINING THE DUTIABLE VALUE OF IMPORT ED GOODS

Article 7.- Method of determining the dutiable value on the basis of the transaction value of imported goods

1. The dutiable value of imported goods is the transaction value.

The transaction value is the total money amount which has been actually paid or shall be paid by the buyer directly or indirectly to the seller for the purchase of imported goods, adjusted in accordance with the provisions of Article 13 of this Decree.

The total money amount actually paid or to be paid by the buyer directly or indirectly to the seller for the purchase of imported goods shall cover the following items:

a/ The purchase price shown on the commercial invoice. Where the purchase price shown on the commercial invoice includes allowances for the imported goods lot in accordance with international trade practices, such allowances shall be deducted for determination of the dutiable value.

The Finance Minister shall specify the deduction of these allowances from the dutiable value.

b/ The money amounts which must be paid by the buyer but are not yet included in the purchase price shown on the commercial invoice, including:

- Advance payments, deposits for production, sale and purchase, transport, insurance of goods;
- Indirect payments to the seller such as: amounts paid by the buyer to a third party at the request of the seller; amounts paid by way of debt clearing.

2. Conditions for application of the method of determining the dutiable value on the basis of the transaction value:

a/ The buyer is not restricted in the right to dispose of or use the goods after the importation, except for the following restrictions:

- Restrictions on the purchase, sale and use of goods under the provisions of Vietnamese law;
- Restrictions on places for goods sale after the importation;
- Other restrictions which, however, do not affect the value of goods;

b/ The goods price or sale does not depend on the conditions or payments, for which the value of goods being valued cannot be determined;

c/ After sale of goods, the importer must not pay any additional amount from the proceeds from the disposal or use of the goods, excluding the adjusted amounts specified at Point d, Clause 1, Article 13 of this Decree;

d/ The buyer and the seller have no special relationship, or, if they have, such relationship does not affect the transaction value.

Where the customs office has grounds to deem that such special relationship does affect the transaction value, it must immediately notify such grounds in writing to the customs declarant.

The customs office shall create conditions for the customs declarant to supply more information in order to clarify that the special relationship between the buyer and the seller does not affect the transaction value. If past 30 (working) days as from the date of receiving the notice of the customs office, the customs declarant fails to supply additional information, the customs office shall determine the dutiable value according to the provisions of Clause 6, Article 15 of this Decree.

The special relationship between the buyer and the seller shall be considered not affecting the transaction value when the transaction value approximates to one of the following values of the goods lot exported to Vietnam on the same day or within 60 days before or after the exportation of the goods lot being valued:

- The transaction value of identical or similar imported goods sold to other importers having no special relationship with the exporter (the seller);
- The dutiable value of identical or similar imported goods, determined under the provisions of Article 10 of this Decree.

- The dutiable value of identical or similar imported goods, determined under the provisions in Article 11 of this Decree.

Article 8.- Method of determining the dutiable value on the basis of the transaction value of identical imported goods

1. For imported goods of which the dutiable value cannot be determined under the provisions of Article 7 of this Decree, their dutiable value shall be the transaction value of identical imported goods of which the dutiable value has been determined under the provisions of Article 7 of this Decree.

2. Identical imported goods must satisfy the following conditions:

a/ Identical imported goods lots are exported to Vietnam on the same day or within 60 days before or after the export date of the goods lots being valued;

b/ Identical import goods lots are traded on the same level or have been adjusted to the same level of wholesale or retail; have the same quantity or have been adjusted to the same volume with the goods lots being valued;

c/ Identical imported goods lots have the same transport distance and mode or have already been adjusted to the same transport distance and mode as the goods lots being valued.

3. Upon the application of the dutiable value-determining method specified in this Article, only if there are no goods lots turned out by the same producer shall the goods lots turned out by other producers be taken into account but in compliance with the provisions on identical imported goods.

4. If two or more transaction values of identical imported goods are determined upon the determination of the dutiable value under the provisions of this Article, the dutiable value shall be the lowest transaction value, after the price level is adjusted to the same conditions specified in Clause 2 of this Article.

Article 9.- Method of determining the dutiable value on the basis of the transaction value of similar imported goods

1. If the dutiable value of goods imported into Vietnam cannot be determined under the provisions of Articles 7 and 8 of this Decree, the dutiable value shall be the transaction value of similar imported goods of which the dutiable value has been determined under the provisions of Article 7 of this Decree.

2. Similar imported goods must satisfy the following conditions:

a/ Similar imported goods lots are exported into Vietnam on the same day or within 60 days before or after the exportation of the goods lots being valued;

b/ Similar imported goods lots are traded on the same level or have already been adjusted to the same level of wholesale or retail, have the same volume or have been already adjusted to the same volume of the goods lots being valued;

c/ Similar imported goods lots have the same transport distance and mode or have been adjusted to the same transport distance and mode as the goods lots being valued.

3. Upon the application of the dutiable value-determining method specified in this Article, only if there are no imported goods lots turned out by the same producer shall the goods turned out by other producers be taken into account, but the provisions on similar imported goods must be complied with.

4. If two or more transaction values of similar imported goods are determined upon the determination of the dutiable value under the provisions of this Article, the dutiable value shall be the lowest transaction value, after the price level is adjusted to the same conditions specified in Clause 2 of this Article.

Article 10.- Method of determining the dutiable value on the basis of the value the deductible

1. If the dutiable value of goods imported into Vietnam cannot be determined under the provisions of Articles 7, 8 and 9 of this Decree, it shall be the deductible value. The deductible value shall be determined on the basis of the sale price of imported goods, identical imported goods or similar import goods in the Vietnamese market minus (-) reasonable expenses incurred after the importation.

2. The sale prices of imported goods in the Vietnamese market shall be determined on the following principles:

a/ The sale prices of imported goods shall be the actual sale prices; if there is no actual sale price of imported goods being valued, the actual sale price of identical imported goods or similar imported goods in the condition as imported and sold in the domestic market shall be used as actual sale price;

b/ The importer and the domestic buyer have no special relationship;

c/ The sale price is calculated on the greatest quantity of goods sold and sufficient for the formation of the unit price;

d/ The goods are sold out (wholesaled or retailed) on the earliest day after the importation but before the expiration of 90 days (calendar days) after the date of importation of such goods lot.

3. Reasonable expenses incurred after the importation of goods:

a/ Where the importer purchases goods by mode of definitive purchase, the deductions shall include:

- Expenses for transport and expenses for insurance for goods when they are sold on the domestic market;

- Tax, charge and fee amounts payable to the state budget upon the importation and sale of goods, which, under the current provisions of law, can be accounted into sale turnover, cost prices and imports sale expenses;

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

- Sale profits earned after the importation of goods.

b/ Where the importer is the sale agent for a foreign trader, the deductible expenses shall be sale commissions.

Where the sale agent is authorized by the foreign trader to carry out some activities related to the post-importation sale in Vietnam outside the agency contract, the expenses incurred in Vietnam for these activities shall also be deducted within the limit of expenses agreed upon in the contract.

The post-importation expenses deducted under the provisions of Clause 3 of this Article must truthfully reflect general expenses and actual profits which are common in dealings in the goods concerned and compatible with the principles of Vietnam's accounting regime.

4. Imported goods going through further processing in the country shall also have their dutiable value determined on the principle specified in Clause 1 of this Article, minus the expenses for processing to add value to the goods.

The dutiable value- determining method specified in this Article shall not be applied when:

- The imported goods, after being processed, are no longer in the condition as imported;
- The imported goods, after being processed, still maintain their characteristics, nature and utilities as imported, but constitute only a part of the goods sold in the Vietnamese market.

Where the imported goods are no longer in the condition as imported after being processed but their value added by the processing can still be accurately determined, their dutiable value shall still be determined under the provisions of this Article.

5. The deduction of expenses and profits specified in Clauses 3 and 4 of this Article must be based on objective and quantifiable documents and figures. These figures must be recorded and reflected in accounting books in accordance with the provisions of law on accounting.

Article 11.- Method of determining the dutiable value on the basis of the computed calculation value

1. If the dutiable value of goods imported into Vietnam cannot be determined by the methods specified in Articles 7 thru 10 of this Decree, it shall be the computed value. Computed value shall include the following items:

a/ The cost or value of raw materials and materials, the cost of the stage of production or other processing of the production of imported goods;

b/ Expenses for and profits from sale of imported goods;

c/ Adjusted expenses defined at Points e and f of Clause 1, Article 13 of this Decree.

2. The determination of computed value must be based on the figures supplied by producers and in accordance with the accounting principles of the goods-manufacturing countries.

Article 12.- The deductive method of determining the dutiable value

1. If the dutiable value of goods imported into Vietnam cannot be determined by the methods specified in Articles 7 thru 11 of this Decree, it shall be determined by the deductive method.

The deductive method means the sequential and flexible application of the dutiable value-determining methods specified in Articles 7 thru 11 and the immediate stop at the method by which the dutiable value can be determined, provided that such application complies with the provisions of Clause 2 of this Article and must be based on the documents, figures and information available at the time of determining the dutiable value.

2. When the deductive method is applied, the following values must not be used to determine the dutiable value:

a/ The domestic market sale prices of goods of the same kind, which have been produced in Vietnam;

b/ The sale prices of goods in the domestic market of the exporting country;

c/ The sale prices of goods for export to another country;

d/ The costs production of goods, excluding those of imported goods specified in Article 11 of this Decree;

e/ The minimum dutiable price;

f/ Arbitrary prices;

g/ A valuation system permitting the use of the higher of two alternative values as the dutiable value.

Article 13.- Adjustments

1. Items to be added to the transaction value for determination of dutiable value:

a/ The following expenses which must be borne by the goods buyer but are not yet included in the transaction value:

- Buying commission, brokerage commission;

- Cost of packages, which are treated as being one with imported goods.

Packages treated as being one with goods are those which always accompany goods as a condition for preservation or use of such goods, classified together with the goods according to the current classification principles and goods codes.

- Cost of packing, including cost of materials and cost of labor.

b/ The value of goods and services which are supplied free of charge or at reduced cost by the buyer to the seller for production and sale of goods imported into Vietnam, not yet included in the price actually paid or to be paid:

- Raw materials, materials, components parts and similar details incorporated the imported goods;

- Tools, dies, molds and similar details used in the production of imported goods;

- Raw materials and materials consumed in the production of the imported goods;
- Technical designs, construction designs, implementation plans, art designs, model designs, plans and sketches made license fees for the overseas and necessary for the production of the imported goods.

c/ Royalties, license fees for the use of intellectual property rights related to imported goods, which must be paid by the buyer as a condition for purchase and sale of the imported goods;

d/ Proceeds collected by the buyer after the disposal or use of the imported goods and transferred in any forms to the seller of the imported goods;

e/ Expenses for transportation, loading, unloading and handling of goods related to the transportation of the imported goods to the border-gate of importation;

f/ Cost of insurance expenses for transportation of the imported goods to the border-gate of importation.

2. The following items shall be subtracted from the transaction value if they are already included in the purchase prices of imported goods:

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

b/ Expenses for transport and insurance in the country after the importation;

c/ Taxes, charges, fees payable to the state budget, which are incorporated in the purchase prices of imported goods;

d/ Payable interests related to the payment for purchase of imported goods, provided that the rates of payable interests are expressed in writing and compatible with the common credit interest rates applied by credit institution of the exporting countries at the time of signing of contracts;

e/ Discounts made before loading goods onto means of transport in the exporting countries, which are expressed in writing and submitted together with the customs declarations of imported goods.

3. The addition or subtraction of the expenses specified in Clauses 1 and 2 of this Article shall only be effected on the basis of objective and quantifiable data available in accordance with the provisions of law on accounting.

4. All items other than those specified in Clauses 1 and 2 of this Article must not be added or subtracted.

Chapter III

RIGHTS AND OBLIGATIONS OF CUSTOMS DECLARERS, RESPONSIBILITIES OF CUSTOMS OFFICES

Article 14.- Rights and obligations of customs declarants

1. Customs declarants shall have the following rights:

- a/ To request customs offices to keep secret supplied information relating to the dutiable value determination;
- b/ To request customs offices to inform and guide the dutiable value determination under the provisions of this Decree;
- c/ To prove the accuracy and truthfulness of the declared dutiable value;
- d/ To complain about customs offices' decisions on the dutiable value;
- e/ To request customs offices to notify them in writing of the dutiable value, the method and way of calculation used by customs offices to determine such value;
- f/ To request customs clearance for goods as provided for in Article 16 of this Decree.

2. Obligations of customs declarants:

- a/ To comply with the principle of accurate and truthful self-declaration and self-determination of the dutiable value; to be answerable to law for the accuracy and truthfulness of the declared contents and the results of determination of the dutiable value;
- b/ To supply truthful information and valid documents as well as lawful vouchers for use as the basis for determination of the dutiable value at the request of customs offices;
- c/ To submit to customs inspection of the dutiable value as provided for in this Decree.

Article 15.- Responsibilities and powers of customs offices

- 1. To guide customs declarants in determining the dutiable value under the provisions of this Decree.
- 2. To request customs declarants to submit or produce valid and lawful vouchers and documents related to the goods purchase and sale for proving the accuracy and truthfulness of the declared dutiable value of imported goods.

In case of rejecting the customs declarants' proof and explanation on the dutiable value, they must immediately notify in writing customs declarants of the bases and grounds therefor.

- 3. To send written notices to customs declarants on the dutiable value, the method and way of calculation used by customs offices for the dutiable value determination.
- 4. To keep secret information supplied by customs declarants and relating to the dutiable value determination, at the request of customs declarers and in accordance with the provisions of law.
- 5. To clear customs procedures at the request of customs declarants, based on the payment of a security sum under the provisions or Article 16 of this Decree.
- 6. To determine the dutiable value in the following cases:
 - a/ Customs declarants cannot determine the dutiable value by the methods specified in Articles 7 thru 12 of this Decree;
 - b/ Customs declarers make untruthful declaration of the dutiable value;

c/ Customs declarants do not or cannot explain the truthfulness and accuracy of the declared value at the request of customs offices.

7. To inspect the declaration and determination of the dutiable value of imported goods. To issue decisions on retrospective collection or refund of tax amounts due to the wrong determination of the dutiable value.

8. To gather, analyze and manage necessary information for use as the basis for inspection and determination of the dutiable value.

Article 16.- Delayed determination of dutiable value

1. In the course of determining the dutiable value of imported goods, if customs declarants have no adequate information for determination of the dutiable value, customs offices shall, at the customs declarants request, approve the customs clearance for goods, provided that customs declarants must pay a sum as security for the tax money of the goods lot in the form of security, collateral or other appropriate guarantee modes for the performance of their tax liabilities.

2. The Finance Ministry shall specify the levels, forms and procedures for payment of security sums defined in Clause 1 of this Article.

Chapter IV

COMPLAINTS, HANDLING OF VIOLATIONS

Article 17.- Complaints and settlement of complaints

Where customs declarants disagree with customs offices' decisions on the dutiable value, they shall still have to abide by such decisions while having the right to lodge complaints under the provisions of law on complaints.

Article 18.- Handling of violations

Organizations and individuals violating the provisions of this Decree shall, depending on the nature and seriousness of their violations, be administratively sanctioned or examined for penal liability under the provisions of law.

Customs officers and employees and other individuals who lack a sense of responsibility and violate the provisions of this Decree, causing damage to customs declarants, shall have to compensate for the damage under the provisions of law and, depending on the nature and seriousness of their violations, be disciplined or examined for penal liability according to the provisions of law.

Chapter V

ORGANIZATION OF IMPLEMENTATION

Article 19.- Responsibilities of agencies, organizations and individuals

1. The Finance Ministry shall guide and organize the implementation of this Decree.

2. The State Bank of Vietnam shall direct and guide credit institutions in supplying customs offices with adequate documents related to the settlement of imported and exported goods in service of the inspection and determination of the dutiable value.
3. Concerned ministries and branches shall have to coordinate with customs offices in combating trade frauds through transfer pricing.
4. Relevant business associations, organizations and individuals shall have to supply information on imported and exported goods at the request of customs offices.

Article 20.- Implementation provisions

1. This Decree takes effect 15 days after its publication in “CONG BAO” and replaces the Government’s Decree No. 60/2002/ND-CP of June 6, 2002, stipulating the determination of the dutiable value for imported goods on to the principles of the Agreement on Implementation of Article 7 of the General Agreement on Tariffs and Trade. The previous provisions contrary to this Decree shall all be annulled.
2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and presidents of provincial/municipal People’s Committees shall have to implement this Decree.

On behalf of the Government

Prime Minister

PHAN VAN KHAI