

VIETNAM CUSTOMS VALUATION

(Asia-Pacific Tax Report of White & Case, Autumn2002)

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As member of a number of international organizations, such as the Association of South East Asian Nations ("ASEAN"), Asia Pacific Economic Co-operation ("APEC") and the World Customs Organization ("WCO"), and a signatory to various international conventions on customs. Vietnam customs is under pressure to make substantive legislative and procedural changes within a scheduled timetable. Against this back ground. Vietnam customs is compelled to adopt international standards for its customs business and especially in the field of valuation. In June 2002, Vietnam introduced new regulations on custom valuation for imported goods that attempts to achieve compliance with Article VII of the General Agreement of Tariffs and Trade ("GATT"). Considering that Vietnam is not obligated to do this at present, this is a positive move.

However, Vietnam elected to maintain two types of customs valuations, namely: (a) Custom valuation based on minimum values or contractual prices, and (b) Customs valuation designed in line with the GATT principles.

Contractual Prices

Dutiable prices of imports will be the actual buying prices paid (including payments of freight and insurance) if the following three conditions are met:

- A sale contract must be concluded specifying name, quantity and price of a good;
- Payment is made through bank; and
- The importer uses the tax credit method to pay VAT.

Where goods are bought by deferred payment or at a discount, the deferred interest or the discount will not be included in or added to the purchase price for the purposes of calculating import duties if such deferred interest or discount is clearly set in a sale contract. In addition, an agreement on a discount must be made in writing prior to delivery of goods to the buyer. The discount to be deducted from the dutiable price shall no exceed 10% of the total value of goods set out in a sale contract.

Custom Valuation based on Minimum Values

Whilst Vietnam has said that it is no longer using the Brussels Definition of value, it is maintaining a key element of that system, the right to impose a minimum value. If two systems of valuation were not enough for the importer to cope with. Vietnam also maintains two systems for the imposition of minimum values on certain imports. The Ministry of Finance ("MOF") is responsible for establishing a set of minimum values and the other is set by the General Department of Customs ("GDC").

If an importer imports into Vietnam of any of the following commodities, then the MOF will set a minimum value for the calculation of duty on the goods regardless of the fact that the importer has legitimate contract price:

- Assorted drinks (including commodity items in Chapter 22 of the current Import Tariff of Vietnam);
- Tires, pneumatic inner tubes and fenders of various kinds (used for automobiles, motorcycles and bicycles);
- Walling and flooring tiles; sanitary ware (toilet sinks, urinals, wash basins, bath-tubs);
- Flat glass, white, colored, light-reflecting mirrors and glass, water flasks (non-electric); vacuum inner flasks;
- Motors, generators (other than those used for automobiles, motorbikes and other special-use vehicles such as bulldozers, crane trucks);
- Electric fans (except for industrial fans under subheading No. 84145900 of the Import Tariff of Vietnam);
- Motorcycles and component sets thereof; and
- Tobacco material

Imports that are not subject to minimum values set by the MOF may still attract a minimum value as set by the GDC. However only those goods that meet the following requirements will be subjected to the GDC's minimum values:

- Goods whose contractual price cannot be accepted as a result of not meeting the required criteria as outlined earlier in this article: or
- Goods whose contractual price is accepted however that contractual price 70% lower than those fixed by the GDC.

There are a further two exceptions to the application of minimum dutiable prices fixed by the MOF or the GDC where contractual prices are used. Those exceptions include goods imported by foreign invested enterprises and imports which serve as materials and raw materials for direct production and assembly.

Transaction Value under GATT

In June this year, Government Decree 60/2002/ND-CP promulgated new regulations on the determination of customs value for imported goods. This formally brought into effect from 1 July 2002 the system of valuation in accordance with Article VII of the GATT.

Whilst this is a positive move, the scope of goods to which it can be applied has been restricted. The valuation provisions are to be applicable only to goods listed in Vietnam's Common Effective Preferential Tariff Scheme ("CEPT") list and to those goods imported from countries to which Vietnam is committed to implement the GATT.

Like the Agreement on Implementation of Article VII of the GATT, the customs valuation regulations adopted six methods of determining value of imported goods. The primary method of customs valuation is defined as "... the actual prices already paid or to be paid for goods sold for export to Vietnam including (or excluding) certain adjustments." As with Article VII of the GATT,

the Vietnam legislation details the following alternative methods of determining the customs value where the primary method cannot be applied:

- Method of determining the customs value in accordance with the transaction value of identical imported goods;
- Method of determining the customs value in accordance with the transaction value of similar imported goods;
- Method of determining the customs value in accordance with the deducted value (comprising of selling price in the Vietnamese market less reasonable cost and profit derived after importation);
- Method of determining the customs value in accordance with the calculated value (comprising of cost and profit for producing imported goods but subject to a number of adjustment like the transaction value); or
- Method of assumption. (Fallback Method)

Customs valuation should be made at the same time a customs declaration for imported goods is registered with the customs declaration for imported goods is registered with the customs agencies. The customs valuation must be computed in Vietnamese Dong (VND). The exchange rate for determining the customs value of imported goods is an average exchange rate of the inter-bank rates announced by the State Bank of Vietnam on the date of registration of customs declaration. However, Vietnam reserves not to apply: (a) the deducted value in case of further processing products in the country of import; and (b) the method of determining the customs value in accordance with the calculated value. Furthermore, in order to protect domestic production, Vietnam reserves the right not to apply custom valuation under GATT to certain goods and commodities and the MOF is authorized to issue a list of protected goods. Until now, this list has not been issued.

Rights and Obligations

The new valuation regulations also provide under Chapter III Article 12 some rights and obligations applicable to the importer and to Customs. In respect to the importer the legislation provides the Rights to:

- Request the customs offices to keep secret the already supplied information related to the determination of values;
- Request the customs offices to guide and notify the determination of values according to the provisions of the legislation; and
- Prove the accuracy and truthfulness of the already declared values and protest against the customs offices decisions on values according to the provisions in Article 14 of decree No. 60/2002/ND-CP.

The Obligations of the Importer pursuant to Decree are “to determine the taxable value and to fully and accurately fill in contents of declaration forms for the imported goods values, and to take full responsibility before the law for the accuracy and truthfulness of the declared contents and results of the taxable value calculation as declared.” This again highlights the responsibility that the owner has to get things right in terms of the declarations and the values they declare. Whilst we have not highlighted the penalties in this article, we know that Vietnam like so many other countries in this regions have heavy penalties for any customs offences.

What is also interesting is Chapter V Article 16, 2 in which states that the State Bank of Vietnam shall direct and guide credit institutions in fully supplying documents related to the liquidation of import or export goods lots in service of inspection and determination of tax calculation values. For an importer this would appear to give the Customs the right to seek an obtain full co-operation in getting all documents relating to an importation that are held by any financial institution in Vietnam.

Customs Planning

The minimum dutiable price system is primarily based on the pre-set prices by the MOF or GDC that do not reflect the market price of goods. The list of minimum dutiable prices has not been updated on a regular and timely basis. This can be a somewhat cautious benefit to the importer since the lists of minimum dutiable prices has not been tailored in detail like the import-export tariff schedule. The result is that, when an importer introduces a new model or range of a particular product, the Customs officer will most likely apply the minimum value applicable to the previous range of products.

For those in the trade who are aware of this fact, the value of new products is often set at a price very close to, but just below, the minimum. This allows the importer some market benefit until such time as the value is properly evaluated by the state and a minimum value is set for that new model. The state cannot then seek back duties for previous imports, as they are the ones who are obligated to ensure the list of values is updated regularly. Importers and exporters however, should be aware that Vietnam Customs does undertake Post Entry Audits and, if during these audits, revenue leakage is found and any intent to defraud the revenue is identified, then the importer will face claims for duty and taxes retrospectively plus it will face severe penalties.