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**LAO PEOPLE'S DEMOCRATIC REPUBLIC
PEACE INDEPENDENCE DEMOCRACY UNITY PROSPERITY**

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Ministry of Finance

No. 1537/MOF

Vientiane Capital, dated: 04 June 2012

**Instruction
of the Minister of Finance
on Customs Valuation of Imported Goods**

- Pursuant to Law on Customs No.04/NA, dated 20 December 2011, Chapter 2 Article 13 regarding the customs valuation of imported goods;

The Minister of Finance issues an instruction as follows:

**Section 1
General Provision**

Article 1. Objectives

This Instruction sets forth rules and methods for customs valuation to serve as the basis for the calculation of customs duties and other obligations on imported goods in a uniform manner throughout the country, aiming to ensure effective revenue collection for the state budget.

Article 2. Definition of Terms

Terms used in this Instruction shall have the following meanings:

1. "goods" means goods and passenger belongings as covered by the Customs Law;
2. "imported Goods" means goods imported into Lao PDR;
3. "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;
4. "produced" includes grown, manufactured and mined;
5. "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.

Goods shall not be regarded as "identical goods" if they were not produced in the same country as the goods being valued. The term: "identical goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, and plans and sketches for which no adjustment has been made under Article 10.1.2 (iv) because such elements were undertaken in Lao PDR. Goods produced by a different person shall be taken into account only when there are no identical goods, as the case may be, produced by the same person as the goods being valued;

6. "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar. Goods shall not be regarded as "similar goods" if they were not produced in the same country as the goods being valued. The term: "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 10. 1.2 (iv) because such elements were undertaken in Lao PDR. Goods produced by a different person shall be taken into account only when there are no similar goods, as the case may be, produced by the same person as the goods being valued.;
7. "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods;
8. "related persons" means persons who are related to each other in a purchase or sale of goods. Persons shall be deemed to be related only if:
 - 8.1. they are officers or directors of one another's businesses;
 - 8.2. they are legally recognized partners in business;
 - 8.3. they are employer and employee;
 - 8.4. any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
 - 8.5. one of them directly or indirectly controls the other;
 - 8.6. both of them are directly or indirectly controlled by a third person;
 - 8.7. together they directly or indirectly control a third person; or
 - 8.8. they are members of the same family.

Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Instruction if they fall within the criteria of paragraph 8.

Article 3. General Rules for the Application of Methods of Customs Valuation

The methods of customs valuation of imported goods are set out in a sequential order of application in Article 4 through 9 of this Instruction.

If the customs value cannot be determined under Articles 4, 5 and 6, the customs value shall be determined in accordance with Article 7 or, when the customs value cannot be determined under that Article, under the provisions of Articles 8. The importer may request that the order of application of Articles 7 and 8 of This instruction be reversed.

Section 2 Methods of Customs Valuation

Article 4. Customs Valuation by the Transaction Value

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to Lao PDR adjusted in accordance with the provisions of Article 10 of this Instruction, provided:
 - 1.1. that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - i. are imposed or required by laws and regulations of Lao PDR;
 - ii. limit the geographical area in which the goods may be resold; or
 - iii. do not substantially affect the value of the goods;
 - 1.2. that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
 - 1.3. that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 10; and
 - 1.4. that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2 of this Article.
2. In determining whether the transaction value is acceptable for the purposes of paragraph 1 of this Article, the following provisions shall be applied:
 - 2.1. the fact that the buyer and the seller are related within the meaning of Article 2.8 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the

importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

- 2.2. In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph I whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:
- i. the transaction value in sales to unrelated buyers of identical or similar goods for export to the Lao POR;
 - ii. the customs value of identical or similar goods as determined under the provisions of Article 7;
 - iii. the customs value of identical or similar goods as determined under the provisions of Article 8;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 10.1.5 loaned costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

- 2.3. The tests set forth in paragraph 2.2 are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2.2.

Article 5. Customs Valuation by the Transaction Value of Identical Goods

1. If the customs value of the imported goods cannot be determined under the provisions of Article 4, the customs value shall be the transaction value of identical goods sold for export to Lao POR and exported at or about the same time as the goods being valued.

In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in Article 10.1.5 of this Instruction are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 6. Customs Valuation by the Transaction Value of Similar Goods

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 4 and 5 of this Instruction, the customs value shall be the transaction value of similar goods sold for export to Lao PDR and exported at or about the same time as the goods being valued.

In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in Article 10.1.5 of this Instruction are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 7. Customs Valuation by the Deductive Method

1. If the imported goods or identical or similar imported goods are sold in Lao PDR in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:
 - 1.1. either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in Lao POR of the same class or kind;
 - 1.2. the usual costs of transport and insurance and associated costs incurred within Lao POR;
 - 1.3. where appropriate, the costs and charges referred to in Article 10.1.5; and
 - 1.4. the customs duties and other national taxes payable in Lao POR by reason of the importation or sale of the goods.

If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in Lao PDR in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in Lao PDR in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Lao PDR are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1 of this Article.

Article 8. Customs Valuation by the Computed Method

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:
 - 1.1. the cost or value of materials and fabrication or other processing employed in producing the imported goods;
 - 1.2. an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Lao PDR;
 - 1.3. The cost of transport, loading, unloading and handling charges associated with the delivery of these goods to the place of importation and the cost of insurance.
2. Customs Administration may not require or compel any person not resident in Lao PDR to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the Customs Administration under this Article with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 9. Customs Valuation by the Fall-Back Method

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 4 through 8, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Instruction and on the basis of data available in Lao PDR.
2. No customs value shall be determined under the provisions of this Article on the basis of:
 - 2.1. the selling price in Lao PDR of goods produced in Lao PDR;

- 2.2. a system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - 2.3. the price of goods on the domestic market of the country of exportation;
 - 2.4. the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;
 - 2.5. the price of the goods for export to a country other than Lao PDR;
 - 2.6. minimum customs values; or
 - 2.7. arbitrary or fictitious values.
3. If the importer requests for explanation on the method used for the valuation of his/her goods, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 10. Adjustments

1. In determining the customs value under the provisions of Article 4 of this Instruction, there shall be added to the price actually paid or payable for the imported goods:
 - 1.1. the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - i. commissions and brokerage, except buying commissions;
 - ii. the cost of containers which are treated as being one for customs purposes with the goods in question;
 - iii. the cost of packing whether for labour or materials;
 - 1.2. the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods in Lao PDR, to the extent that such value has not been included in the price actually paid or payable:
 - i. materials, components, parts and similar items incorporated in the imported goods;
 - ii. tools, dies, moulds and similar items used in the production of the imported goods;
 - iii. materials consumed in the production of the imported goods;
 - iv. engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Lao PDR and necessary for the production of the imported goods;
 - 1.3. royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

- 1.4. the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- 1.5. the cost of transport, loading, unloading and handling charges associated with the delivery of these goods to the place of importation and the cost of insurance, to the extent that such costs have not been included in the price actually paid or payable;
2. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.
3. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Section 3 Miscellaneous Provisions

Article 11. Currency

The exchange rate of foreign currencies for KIP shall be based on the bank's selling rate in effect at the time of importation which shall be the time of submission of the customs declaration to the Customs Administration.

Article 12. Confidentiality

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the Customs Administration who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 13. Appeal

Importer or person liable for the payment of customs duties and obligations shall have the right to appeal in regard to a determination of customs value in accordance with the procedures as set out in the Law on Customs No.04/NA, dated 20 December 2011. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision as well as any rights of further appeal shall be provided in writing to the appellant.

Article 14. Publication of Legislation

Laws, regulations, judicial decisions and administrative advance rulings of general application with regard to the customs valuation shall be published in conformity with Article X of GATT 1994 of World Trade Organization.

Article 15. Release of Goods from the Customs Checkpoint or Customs Warehouse before the Final Determination of Customs Value

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in accordance with the guarantee rules as set out in the Law on Customs No.04/NA, dated 20 December 2011.

Article 16. Rights to Obtain Explanation on Customs Valuation

The importer shall have the right to an explanation from the Customs Administration as to how the customs value of the importer's goods was determined, by submitting a written request to the Customs Administration who shall reply in writing within thirty days of the receipt of such request within thirty days from the receipt of such request.

Section 4 Final Provisions

Article 17. Implementation

Customs Department shall issue detail instructions on the implementation of Customs Valuation in compliance with this Instruction.

Article 18. Effectiveness

This Instruction is effective from the date of its signing and replaces Instruction of the Minister of Finance No. 1398/MOF, dated 16 June 2010.

**Minister of Finance [Signed and sealed]
Phouphet Khamphouvong**