

The Vietnamese Land Law 2003 and significant renovations on land policy towards the Country's industrialization

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Key words: Land administration, land law, land policy, land user rights

SUMMARY

This paper is focused on the new Vietnam land legislation system, which has been approved by National Assembly in November 2003 and put into implementation since July 2004. Firstly, this paper gives an overview on Vietnam land administration history. Then, the paper presents the major renovations of the new land legislation system based on the Land Law 2003: (1) regime of the whole people ownership in which several rights allocated to land user, (2) the representative role of the State on the determination of land and the role of implementation of administrative management on land, (3) solving the historical remaining issues of land, (4) establishment of the new land finance system and land use market, (5) the rights and obligations of land users, (6) some regulations for strengthening efficiency of land management and land use. After one year of implementation, the new system of land legislation has brought enormous effects for poor people, investors, and the State.

SUMMARY

Bài báo này đề cập tới hệ thống pháp luật đất đai mới ở Việt Nam đã được Quốc hội thông qua vào tháng 11 năm 2003 và có hiệu lực thi hành từ tháng 7 năm 2004. Trước hết, bài báo điểu qua lịch sử về hệ thống pháp luật đất đai ở Việt Nam. Sau đó, bài báo trình bày những đổi mới chủ yếu của hệ thống pháp luật đất đai Việt Nam hình thành trên cơ sở Luật Đất đai năm 2003, bao gồm: (1) nội dung sở hữu toàn dân về đất đai ở Việt Nam trong đó một số quyền năng được giao cho người sử dụng đất, (2) vai trò của Nhà nước trong việc thực hiện quyền định đoạt về đất đai và quản lý hành chính về đất đai, (3) giải quyết những tồn tại lịch sử về đất đai, (4) hệ thống tài chính đất đai và thị trường quyền sử dụng đất, (5) quyền và nghĩa vụ của người sử dụng đất, (6) một số qui định làm tăng hiệu quả quản lý và sử dụng đất. Sau một năm thực hiện, hệ thống pháp luật đất đai mới đã mang lại những hiệu quả to lớn cho người nghèo, nhà đầu tư và Nhà nước.

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1. OVERVIEW ON LAND ADMINISTRATION HISTORY OF VIETNAM

Vietnam became independent in 1945. The first National Assembly passed the Constitution 1946 in which the State recognized and protected every land ownership regime including State ownership, common ownership, collective ownership, organization ownership, household ownership, and individual ownership. After 9 years of the resistance warfare against the French Colonialism and 3 years of reconstruction of the country, the National Assembly passed the Constitution 1959 in which the State recognized every land ownership regime however protected and encouraged the State ownership and collective ownership. After the reunification in 1975 and 5 years of reorganization of the country, the National Assembly passed the Constitution 1980 which stipulated that the State recognized only the whole people ownership regime on land, the people who were using land had the right to continue, the people who had demands on land use would be allocated with land by the State without any payment for land use, the State had the right to recover the land in case of necessity and allocate new land upon demand. This was a new concept on land ownership with its logic which was suitable for a centralized command economy. In such a policy context, land had no value and the State did not need to establish a land administration system.

In 1986, Vietnam started the “Renovation” process. The selected breaking point of the “Renovation” process was to shift from cooperative based agricultural production to household based one. Agricultural land was allocated without any payment to households for long term and stable use which is 20 years for annual crop land and 50 years for perennial crop land. The new land policy has led Vietnam to the World third leading rice exporter from a foodless country. This policy did concurrently require the present of land law and land administration system. In 1988, the first Land Law of Vietnam was passed by the National Assembly to legalize the allocation of land from cooperatives to households. In 1992, the new Constitution was passed by the National Assembly in which it's decided that the Vietnamese economy should develop as a market mechanism governing by the State and the whole people ownership on land should continue. The National Assembly advocated the establishment of a new land law which should be more suitable in order to facilitate the market economy development. In 1993, the second Land Law of Vietnam was passed by the National Assembly, which laid down three important renovations: firstly, the State granted 5 rights of exchange, transfer, lease, inheritance, mortgage to the residential and agricultural production land users; secondly, land had value and land price is defined by the State to regulate the economic relationship between the State and land users; thirdly, the State protected land use rights by issuing Land Tenure Certificates to land users. After two years of implementation it was reflected that this Law regulated the agricultural land fairly well but was not capable enough for industrial and service development land. The National Assembly passed the Law on Amendments and supplements to some articles of the Land Law for the first time in 1998 to provide better regulation for non-agricultural land and for the second time in 2001 to decentralize the administration power over land users who are households and individuals to the district level. In 2002, the State decided to conduct a comprehensive review

of the implementation of land legislation since 1993 and to develop a new Land Law in 2003. The National Assembly passed the Land Law 2003 in November 2003.

2. MAJOR RENOVATIONS IN THE LAND LAW 2003

2.1 Ownership regime

The Vietnamese Constitution stipulates that land belongs to the whole people ownership. In its nature, land ownership has separate characteristics which are different from ownership of other property. Many countries recognize private ownership of land but limit the determinative power of those private owners. Vietnam only recognizes the whole people ownership on land but the land users have been granted with several determinative rights as of the owner. The Land Law 2003 concretizes the regime of whole people ownership on land in Vietnam ensuring that land ownership regime shall not affect the role of land in economic development. The content of the whole people ownership on land includes: firstly, the State represents owner of whole people on land, implementing the determinative power on land by deciding land use planning, land use purpose, land use terms, land allocation and rent, land recovery; secondly, the State grants to land users who are using land for residential and economic purposes the rights to exchange, transfer, lease, donation, inheritance, mortgage, guarantee, contribution as capital. The State therefore has two functions, firstly representing owner of the whole people on land to exercise several determinative rights on land and secondly conducting administrative function on land. The Law needs to specify which government agencies shall exercise the determinative roles, and which shall exercise administrative functions. The Land Law 2003 defined that the National Assembly, Government, People's Committees of province and district conduct the determinative rights on land, and Land Administrative Organizations, People's Committees of commune, Land Titling Offices conduct the administrative function on land.

2.2 The State exercising the determinative power on land

2.2.1 The State decides land use planning

The Land Law 2003 provides regulation for an appropriate land use planning so that the land use planning should become a tool for land administration. In the Land Law 2003, the content of land use planning is reformed providing that the State only plans for major land use purposes including paddy land, agricultural production land, production forest land, protection forest land, specialized forest land, aqua-cultural production land, salt production land, non-agricultural land for State organizations use, non-agricultural land for public purpose use, non-agricultural land for national defense use, non-agricultural land economic development use, non-agricultural land for housing purpose use, unused land; land users have the right to select detail purposes of land use if using land for economic activities so that it fits with the market economy.

The Land Law 2003 provides detail regulation on preparing, submitting and approving land use planning as well as their adjustment. The preparation of land use planning should ensure the democracy by conducting public hearing to get comments from people at commune level and the approved land use planning should also ensure the openness by public announcement in the People's Committee Office and Web Site. As far as the urban land and land that is planned for urban development, People Committee of District level prepares land use planning for its subordinate administrative units to ensure synchrony during the urbanization. Land use planning for communal level shall be prepared in detail at land parcel and presented in the cadastral maps. As far as the implementation of land use planning, Land Law 2003

provides regulation on rejecting the planning that has been approved but for three years not implemented yet.

2.2.2 *The State management on land use purpose*

The State only manages the land use purpose in five cases which is different to the land legislation context in the past: firstly, shifting from high productivity paddy land to perennial or forest plantation and aqua-cultural production; secondly, shifting from land with forest to other purposes; thirdly, shifting from agricultural land to non-agricultural land; fourthly, shifting from non-agricultural land for non-economic purpose use to economic purpose use; fifthly, shifting from non-residential land to residential land. For other cases, land users have the right to change land use purposes within the same land category regulated by the land use planning and register the land use purpose changes at Land Titling Office.

2.2.3 *The State allocates land, rents land, and recovers land*

In the previous land legislation, the State allocates land (to households and individuals for agricultural production and residential purposes; to organizations that shall not use land for economic purposes), rents land (to organization that use land for economic purposes) for every project that uses land; if that land is being used by land users the State shall recover that land and compensate the land and attached real estate for the existing land users based on land price set out by the State. The implementation of those land allocation, land rent, land recovery has created an “ask-give” mechanism between the State and people who have land use demand. It leads to land corruption, land speculation in investment projects as well as claims from those who have land to be recovered. The Land Law 2003 has significant changes on mechanism for land allocation, land rent and recovery as follows:

a) The State allocates agricultural production land and production forest land to households, individuals without land use cost payment.

b) The State only recovers land from land users to allocate or rent for organizations which shall use that land for national or public benefits, national defense purposes, and for projects establishing industrial, economic and high-tech zones; urban areas, rural residential areas, and for investment projects with big capital, invested projects with 100% foreign capital (ODA or FDI).

c) Land allocated or rented by the State should go through land auction if the project has several potential investors.

d) The State makes compensation for the recovered land and attached real estate based on allocation of an other land or money defined with the market price of land; the recovered land users receive the supports from investors or the State for finding a new job; when the State recovers residential land and attached house, the land user receive a new house with the conditions better or at least equal to the old house.

e) In cases of the projects where the State does not recover the land, the investors shall negotiate with land users to have land for investment through land transfer, land lease or land contribution as capital.

f) The State economic organizations and every other local private economic entities and foreign economic entities are equal in access to land.

2.2.4 *Land use term and extension of land use term by the State*

The Vietnamese land legislation regulates land use term and its extension as follows:

a) Residential land has stable and permanent use term.

b) Annual agricultural production land, salt production land, aqua-cultural production land have 20 years term; perennial agricultural production land, production forest land have 50 years term; at the expiration of the term, the land users have the right to continue their usage but don't need to go through any extension procedures.

c) Land used for national benefit, public benefit, and national defense purpose has stable and permanent use term.

d) Land used for commercial projects has 50 years term, in case of specialty, the term can be 70 years; at the expire of the term, land users shall be eligible to extend their land use term after fulfilling extension procedures at provincial authority.

2.2.5 *Land area norm*

In the previous land legislation system, land area norm for annual agricultural land is 3 ha/1 household in the Mekong delta region, 2 ha/1 household in other regions; land area norm for perennial agricultural land, production forest land is 30 ha/1 household in the midland and mountainous areas, 10 ha/household in the delta regions; residential land is 400m²/ household in mountainous area, 200m²/ household in rural are, 100m²/ household in urban area; No regulated land area norm for industrial and services purposes use. The Land Law 2003 does not regulate land area norm for land use and regulates land area norm for land allocated by the State only. The allocated land area norm is kept at the same level of land area norm stipulated in the previous Land Law. In case interests of the poor farmers who don't have production land need to be protected, the Standing Committee of the National Assembly should provide further land regulations on limitation of land area which received from others in coming time.

2.3 **The State management on land**

2.3.1 *The contents of State management on land*

Land Law 2003 prescribes the following contents of the State management on land:

a) Promulgating legal documents on land administration, land use and arranging the implementation of these legislation: The National Assembly passes Land Law; the Government issues Decrees, Resolution guiding the implementation of the Land Law; the Ministry of Natural Resources and Environment provides detail regulation on land records, cadastral maps, Land Tenure Certificates, land statistics, current land use maps, land use planning maps; the Provincial People's Committees regulates land price, concretizes administrative procedures for land administration.

b) Investigating, surveying, evaluating and classifying land (conducted by Department of Natural Resources and Environment).

c) Managing approved land use planning (conducted by Department of Natural Resources and Environment when it comes to provincial land use planning; by Division of Natural Resources and Environment when it comes to district land use planning; Communal People's Committee when it comes to communal land use planning).

d) Managing land allocation, land rent, land recovery, land use purpose changes decided by the People's Committee who has authorization (conducted by Department of Natural Resources and Environment when it comes to local organizations, religious bases,

foreign individuals and organizations; by Division of Natural Resources and Environment when it comes to households, individuals, local communities).

e) Registering land use rights, compiling and managing land records, cadastral mapping (conducted by Provincial Land Titling Office for local organizations, religious bases, foreign individuals and organizations; by District Land Titling Office when it comes to households, individuals, local communities), managing the issuance of Land Tenure Certificate (conducted by Department of Natural Resources and Environment when it comes to local organizations, religious bases, foreign individuals and organizations; by Division of Natural Resources and Environment when it comes to households, individuals, local communities).

f) Conducting land statistics, inventories, current land use mapping (conducted by Department of Natural Resources and Environment, Division of Natural Resources and Environment, Communal People's Committee).

g) Managing land related finance (Department of Finance manages land prices to be applied for local organizations, foreign organizations and individuals; Department of Taxation manages tax duty to be applied for local organizations, foreign organizations and individuals; Division of Finance manages land price to be applied for households, individuals; Division of Taxation manages tax duty to be applied for households, and individuals).

h) Managing and developing land use market in the real estate market.

i) Managing, supervising the implementation of rights and obligations by land users.

j) Inspecting and examining the compliance with land legislation and treating violations of land legislations.

k) Resolving land disputes (for cases that have no legal documents of land use, Communal People's Committee conducts conciliation, District People's Committee conducts the first round dispute settlement for disputes among the land user group including households, individuals, local communities and Provincial People's Committee conducts the final round of dispute settlement, for other disputes, Provincial People's Committee conducts the first round dispute settlement and Ministry of Natural Resources and Environment conducts the final round of dispute settlement; for cases that have legal documents of land use, land disputes shall be settled by the court).

l) Resolving complaints on administrative decisions/actions on land (District People's Committee conducts the first round of settlement for complained administrative decisions/actions that have been made by district level, in case of unsatisfactory, the claimants can either log their complaints to the Provincial People's Committee or bring their complaints to administrative court; Provincial People's Committee conducts settlement for complained administrative decisions/actions that have been made by provincial level, in case of unsatisfactory, the claimants can bring their complaints to court only).

m) Administering land related public service such as cadastral surveying and mapping, land use planning, establishing land and real property auction (conducted by

Department of Natural Resources and Environment), land and real property valuation (conducted by Department of Finance).

2.3.2 Administrative procedures reform in land allocation, land rent, land recovery, land registration, land records establishment, Land Tenure Certificate issuance

The previous shortcomings of administrative procedures for land administration were due to the fact that people's committees at all levels created an administrative system which was lack of openness and transparency. Because of that situation, the application to land allocation, land rent, land registration, land records establishment, Land Tenure Certificate issuance became too complicated, causing inconveniences for the involved people and creating opportunities for corruption. The Land Law 2003 provides comprehensive regulation on public announcement of land use planning, introduction of investment areas, land registration, land records establishment, Land Tenure Certificate issuance, and land transaction registration when land users conduct their rights such as exchange, transfer, lease, inheritance, donation, mortgage, guarantee, contribution as capital. Provincial and District Land Titling Offices shall be established for receiving applications logged by land users and delivering the results on land administrative procedures, establishing and managing land records (including cadastral mapping), verifying the registration when the land users conducts their rights, providing land information, preparing documents for natural resources and environment authorities when allocating land, renting land and approving changes of land use purposes, issuing Land Tenure Certificate.

The Land Law 2003 accepts all the old documents of land use, land ownership and all the types of old land transaction contracts to issue the new Land Tenure Certificate when the considered land parcel has no land dispute. In the cases of current land users having no any old documents on their land, this Law accepts also all the current land users to issue the Land Tenure Certificate when this land parcel is used in purpose suitable to the approved land use planning and has no land dispute (the land user has no payment for land use when the land parcel was used before the effective day of Land Law 1993, the land user has to pay land use cost when the land parcel was used after the effective day of Land Law 1993). In the cases that land parcel in current use unsuitable to the approved land use planning, the land users will receive the compensation for land at the same level of the land users having Land Tenure Certificate if the land parcel was used before the effective day of Land Law 1993; the land users will receive the compensation for real property attached to land only and the money for support to find a new job.

The gender issue is completely solved in the Land Law 2003. The man and woman has equal rights on land and access to land. The name of wife and husband is equally written in the Land Tenure Certificate in the cases of agricultural land allocated by the State without payment and land is the joint property of wife and husband.

The Land Law 2003 prescribes that Land Tenure Certificate shall be issued for each land parcel according to a unified form for all types of land. Real property attached to land shall be recorded on the Land Tenure Certificate; the certification of ownership on the real property attached to land shall follow the Law of Real estate registration.

2.4 Solving the historical remaining issues of land

The land history in Vietnam is complicated. Long warfare caused changes to land parcels, land users. The Vietnamese State has implemented many land policies to facilitate land use equitableness. In the centralized command economic mechanism, land was not managed; land price was very low therefore the people did not pay much attention to land. In the past,

land legislation refrained from addressing land issues that relates to such complicated history, prescribed the recognition of legality of land if it is being used stably, delegated totally to the Provincial People's Committee to solve every reclaiming request of the old land. This led to inequitableness in solving the historical remaining issues of land.

The Land Law 2003 confronts the history to find a unified mechanism to address reclaiming requests of the old land. The State shall not return land if the use of land is based on implementation of the State land policies in the past. The State shall return the land in cases of changing land users due to civil relation, the State shall return both land and houses that the State organizations borrowed from the people. Since then reclaiming land cases has been decreasing considerably.

2.5 Land finance and land use market

System of land finance prescribed in the previous land laws is still not specific enough to become a fully-constituted or unified system. Land Law 2003 has separately prescribed an item about land finance and one about the land use market within the real estate market. Primarily innovative contents on land finance and land use market include the following:

a) Land is not only the natural resources but also land use is the property belonging to land users;

b) Setting the one land price system, the land price prescribed by the State that is equal to the land price on the market in normal condition;

c) Laying down systematically the sources of revenue from land for the state budget including land use cost (land users must pay the State when the land is allocated with payment for land use, when changing the land allocated by the State without payment for land use into the land allocated by the State with payment for land use, when changing the land rented by the State into the land allocated by the State with payment for land use); the rental cost; land use tax and income tax from transfer of land; penalty obtained from dealing with violation of land laws; compensation to the State for damage caused in the process of land management and land use; charges and fees in the process of land management and land use.

d) Government prescribes the framework of land price and methods for land valuation, and define the unified price of land located around the boundaries between provinces; Provincial People's Committees prescribe land price suitable to market price of land; land prices prescribed by Provincial People's Committees will be announced annually on the 1st of January.

e) Value of land not only is calculated for land used for commercial purpose but also for the case of land allocation by the State without land cost.

f) Residential land and land used for commercial purpose are allowed directly to participate in the real estate market; land rented by the State for commercial purpose use is allowed indirectly to participate in the real estate market (the buyer of property attached to land has right to rent this land by the State).

2.6 Rights and obligations of land users

Land Law 2003 has considered land use rights as the property of land users and land users have all rights to land use as the rights to property that are in conformity with the Civil Code. The users of land that is able to participate in the real estate market have 8 rights: exchange, transfer, lease, inheritance, donation, mortgage, guarantee, contribution as capital, including

residential land, agricultural production land, production forest land, aqua-cultural production land, salt production land, non-agricultural land used for commercial purpose (industrial productions and services), which are allocated by the State or received from other land users as follows:

a) Right of land exchange: Households, individuals using agricultural production land have the rights of exchanging the land between each other in order to speed up of the process of land consolidation; the State pays all the cost for land. The process of land consolidation has been carried out successfully in most of provinces in the delta areas. In the past, a household had from 15 to 25 small land parcels, but at present it has only from 3 to 5 larger land parcels.

b) Right of land transfer: Households, individuals has the right of transfer or receiving land transferred that is allowed directly to participate in the real estate market; right of transfer has some limited situations following: (1) high-productivity paddy land is allowed to transfer only for farmers who directly grow paddy; (2) protection forest land is allowed to transfer only for the people living in the same commune; (3) agricultural production land allocated second time by the State without land cost is only allowed to transfer to other person after 10 years of using land. Domestic investors have the right of land transfer and receiving land transferred for implementation of investment project with other investor after completion of infrastructure establishment. Overseas investors have the right of land transfer for implementation of investment project to other investor after completion of infrastructure establishment.

c) Right of land lease: Organizations, households, individuals have the right to lease the land which is allowed directly to participate in the real estate market. Economic organizations renting the land from the State to build infrastructure for industrial zone, economic zones, hi-tech zones are allowed to lease the land with attached infrastructure to the investors for productions and services.

d) Right of land donation: Households, individuals have the right of offering or giving land which is allowed directly to participate in the real estate market to other households, individuals, and the right of offering or giving the above land to organizations in the purpose of use for national interests, public benefits, national defence. Economic organizations have the right of offering or giving the above land to poor households, people, or to people accredited with the nation.

e) Right of land inheritance: Households, individuals have the right of inheritance to land as the same as other properties prescribed by Civil Code.

f) Right of land mortgage and land guarantee: Economic organizations, households, individuals have the rights of mortgage, guarantee by land in order to borrow money from credit organizations, economic organizations of Vietnamese legal entity, and other households, individuals.

g) Right of land contribution as capital: Economic organizations, households, individuals have the right of land contribution to business activities as capital.

h) People renting the land from the State or receiving land allocated by the State without land cost in order to carry out investment project for public benefits are allowed to the rights of transfer, inheritance, donation, mortgage, guarantee, contribution as capital for real property attached to land. People buying the property have the right to have this land rented or allocated without land cost from the State and this land must be used conformity with the previous purposes (land allowed indirectly to participate in the real estate market).

i) Land users have obligations to use the land effectively in conformity with land use purposes, to protect land, not damage land and conducting financial duty according to the legal regulations (including land use cost, land use rental, land taxes and charges, fees of cadastre, registration).

2.7 Regulations on strengthening efficiency of land management and land use

In the past, implementation of the laws in some locations has indicated that there are still many weaknesses. In many situations, the legal interests of land users has not been protected. Land Law 2003 has prescribed some measures to strengthen the efficiency in land management and land use as follows:

a) Government, all levels of People's Committees, all levels of Land Administration Organizations have to establish a "hot line point" including office, mail box, telephone number, fax number, e-mail addresses in order to receive petitions, discoveries about land violations by administrative bodies and land users, and then inform to competent agencies for settlement.

b) Government has regulations of disciplines toward the administrative officers which have harassed behaviour to people, or do not follow the administrative procedures in land management.

c) Government, all levels of People's Committees, all levels of Land Administration Organizations have to examine and inspect regularly the implementation of land law as well as timely to settle the persons who violate the land law.

d) Specifying in detail on the responsibilities toward Communal People's Committee chairmen, Communal Cadastral Officers to discover, prevent and deal with every land violations in their locality.

III. CONCLUSION

Land Law 2003 and decrees stipulated by Government (Decree 181 on Implementation of Land Law, Decree 182 on Administrative deal with land violations, Decree 188 on Stipulation of land price frame and methods of land valuation, Decree 197 on Compensation, support, re-settlement for land recovered by the State, Decree 198 on Stipulation of land use cost for land allocated by the State, Decree 242 on Stipulation of land rental for land rented by the State) establish new system of land legislation in Vietnam to ensure the following targets:

1. To meet the needs of land use for speeding up the process of industrialization, modernization of country; to harmonise the markets of real estate, labor forces and the finance in order to carry out successfully the shifting process of economic structures oriented to the industrial and service development, and also to settle the problems of poverty alleviation and environmental pollution for sustainable development.

2. To create an easier mechanism making land resources to become able investment capital through the rights of land mortgage, land guarantee, and land contribution as capital.

3. To eliminate completely the State subsidy system on the land, to put the land into market economy, to make land as component in the real estate market.

4. The State protects the legal interest of land users, especially the compensation for the farmers who has land recovered by the State for implementation of investment projects.

5. To establish land administration system closed to and served for the people with simple administrative procedures.

After one year of implementation, the new system of land legislation has brought enormous effects for poor people, investors, and the State.

REFERENCES

BIOGRAPHICAL NOTES

Prof. DrSc. Dang Hung Vo hold Mathematic University degree in 1969 at Hanoi University, Survey & Mapping University degree in 1975 at Mining & Geology Technical University of Hanoi, PhD. on Survey & Mapping in 1984 at Warsaw Technical University (Poland), DrSc. on Survey & Mapping in 1988 at Krakov Mining & Metallurgy Academy (Poland). Now, he plays two roles: 1) Chairman of Land Administration Faculty, Hanoi Natural Sciences University and 2) Vice Minister, Ministry of Natural Resources and Environment, where he is in charged of Land Administration and Survey & Mapping. He has had a lot of contributions for technology development in Survey & Mapping area and land policy reform in Land Administration area. Vietnamese people call him as the chief of architect of the new system of land legislation. In 2005, one of his scientific works on establishment of National Geodetic Reference System has got the highest Award for science & technology in Vietnam (Hochiminh Award) given by President of Vietnam.

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