

**NOTIFICATIONS UNDER ARTICLE 22 OF THE CUSTOMS  
VALUATION AGREEMENT**

The following communication, dated 25 February 2010, is circulated at the request of the delegation of Cambodia.

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The Permanent Mission of the Kingdom of Cambodia has the honor to submit the notification, as required by various WTO Agreements and Cambodia's accession commitments, on customs valuation. Specifically, the Kingdom of Cambodia is submitting Articles 18 to 24 of the Law on Customs which was adopted by the National Assembly on the 22nd June 2007 and ratified by the Senate as to its entire form and legality on the 10th July 2007; and Prakas No. 387 on "Customs Valuation of Imported Goods", including the Annex to the Prakas.

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**THE CUSTOMS LAW**

**CHAPTER III: TARIFF CLASSIFICATION, ORIGIN AND CUSTOMS VALUE**

**Article 18**

Tariff classification, origin and customs value of imported goods specified on Customs declarations, shall be declared in accordance with the following rules.

**(a) Tariff Classification and Origin**

- Any person, importer or his agent, who completes a customs declaration of imported goods shall declare the tariff classification and origin of those goods for the calculation of duty and tax. Customs shall verify the tariff classification and origin of the imported goods.
- Any person, importer or his agent, who completes a customs declaration of imported goods, must comply with the provisions of Articles 51 and Article 52 of this Law.
- Customs may require from any person, importer or his agent, proof, by declaration or the production of necessary documents required by Law and existing regulations, of the correctness of the declaration, and may refuse to release the goods until such evidence is provided.
- Customs may, within 3 years of the date of registration of any customs declaration, following an audit, investigation, inspection or examination of the imported goods, re-determine the declared tariff classification or origin by issuing a Notice. This notice shall also state the reason for the re-determination of the tariff classification or origin.

- When an audit, investigation, inspection or examination undertaken under this Article finds any fraudulent activity, a notice may be issued for the goods under investigation within a period no longer than 10 years from the original date of registration of the customs declaration.
- All additional duties and taxes and any other fees and penalties owed as a consequence of the Notice, shall be paid to Customs.
- Any refund of duty, taxes, fees and penalties overpaid by any person, importer or his agent as a consequence of the Notice shall be refunded by Customs.

**(b) Customs Value**

- Any person, importer or his agent, who completes a customs declaration shall declare the customs value of the imported goods as specified in the provisions of Article 21 of this Law, for the assessment of duty and tax. Customs shall verify the declared customs value of the imported goods.
- Any person, importer or his agent, who makes a registered declaration of imported goods must comply with the provisions of Article 51 and Article 52 of this Law.
- Any person, importer or his agent is responsible for declaration of the accurate customs value for the payment of duties and taxes and must disclose all information, invoices and other documentation to enable Customs to verify and accurately determine the customs value of the imported goods.
- Customs may require from any person, importer or his agent, proof, by declaration or the production of required documents required by Law and existing regulation, of the correctness of the declaration, and may refuse to release the goods until such evidence is provided.
- Customs may, within 3 years of the date of registration of any customs declaration, following an audit, investigation, inspection or examination of the imported goods, re-determine the declared customs value by issuing a Notice. This Notice shall also state the reason for the re-determination of the customs value.
- Customs may amend the declared customs value if the declared customs value is not consistent with the provision of Article 21 of this Law or the declared customs value is not correct for any other reason.
- When an audit, investigation, inspection or examination undertaken under this Article finds any fraudulent activity, the Notice may be issued for the goods under investigation, within a period no longer than 10 years from the original date of registration of the customs declaration.

**(c) Voluntary declaration of additional duties and taxes or other fees payable**

- A person, importer or his agent may make a voluntary declaration to Customs of additional duties, taxes or fees owing in respect of imported goods, without penalties or fines if such a declaration is made to Customs within one year of the date of registration of the original customs declaration.

**(d) Exporters and exported goods**

The provisions of Paragraph (a) and Paragraph (c) of this Article apply also to exported goods.

**Article 19**

For the purposes of import and export, goods are classified and, unless otherwise exempted by this Law or any other Law of the Kingdom of Cambodia, duty and tax are calculated in accordance with the Customs Tariff.

The Minister of Economy and Finance shall by Prakas determine provisions in respect of the classification of goods.

**Article 20**

For imports, applicable duties and taxes are collected according to the origin of the goods.

The origin of natural products is the country where they were extracted from the soil or harvested.

Goods manufactured in a single country, with no contribution from materials from another country, originate in the country where they are manufactured.

The procedures that the Customs Administration follows in determining the origin of goods produced in one country that use products harvested, extracted from the soil, or manufactured in another country are determined by Prakas of the Minister of Economy and Finance.

Imported goods benefit from the favourable treatment assigned to their origin only if the origin and direct transport of the goods from the country of origin to the importing country is properly demonstrated. The Minister of Economy and Finance may issue the Prakas establishing the conditions under which proof of origin must be submitted and cases where it is not required.

The country of provenance is the country from which the goods were sent directly to the customs territory.

**Article 21**

The customs value of imported goods shall be determined in accordance with the following rules:

- (a) The customs value of imported goods shall be the transaction value. That is, the price actually paid or payable for goods when sold for export to Cambodia, subject to the provisions contained in Prakas issued under sub-paragraph (h) of this Article.
- (b) If the customs value of the imported goods cannot be determined under the provision of sub-paragraph (a) of this Article, the customs value shall be the transaction value of identical goods.
- (c) If the customs value of imported goods cannot be determined under the provisions of sub-paragraph (a) and sub-paragraph (b) of this Article, the customs value shall be the transaction value of similar goods.
- (d) If the customs value of imported goods cannot be determined under the provisions of sub-paragraph (a), sub-paragraph (b), and sub-paragraph (c) of this Article, the customs value of the imported goods shall be based on a deductive method.
- (e) If the customs value of imported goods cannot be determined under the provisions of sub-paragraph (a), sub-paragraph (b), sub-paragraph (c), and sub-paragraph (d) of this Article, the customs value of imported goods shall be based on a computed method.

- (f) The order of application of sub-paragraph (d) and sub-paragraph (e) of this Article may be reversed at the request of the importer.
- (g) If the customs value of the imported goods cannot be based on the provisions of sub-paragraph (a) sub-paragraph (b) sub-paragraph (c) sub-paragraph (d) and sub-paragraph (e) of this Article, the customs value shall be determined by using reasonable means consistent with the principles and the provisions as referred to in subparagraphs (a) (b) (c) (d) and (e) of this Article on the basis of available data in the Customs Territory subject to certain limitations.
- (h) The Minister of Economy and Finance shall issue a Prakas to determine all matters related to the determination of customs value.

## **Article 22**

The customs value of exported goods shall be the value of the goods at the point of exit.

This customs value is determined by adding to the price of the goods, expenses for transport as well as all expenses needed to carry out the export operation up to the frontier, excluding export taxes payable upon exit, domestic taxes and similar levies, for which the exporter has been given a receipt.

## **Article 23**

The customs value of imported and exported goods shall be declared in riel currency.

When an amount is expressed in a currency other than Cambodian currency, the exchange rate to be applied is the rate determined by the National Bank of Cambodia.

When the exchange rate is not on the list of exchange rates of the National Bank of Cambodia, Customs may determine the rate.

The exchange rate to be applied is the exchange rate in use on the date the Customs declaration is registered.

Exchange rates are publicly displayed by Customs.

## **Article 24**

Any person, importer or his agent, who is dissatisfied with the reasons for or the correctness of the re-determination of the tariff classification, origin or customs value as provided in the Notice issued under the provisions of sub-paragraph (a) or sub-paragraph (b) of Article 18 of this Law may object to the decision by writing to the Director of Customs within 30 days of the date the importer or his agent receives the Notices of the re-determination of the tariff classification, origin or the customs value.

In circumstances where the customs value is subject to appeal, the goods shall be released without the payment of duties and taxes when the importer provides sufficient security to cover the duties and taxes.

The Director of Customs shall make the decision on the objection referred to in the first paragraph of this Article within sixty (60) days after the objection is received; otherwise, the objection shall be deemed as accepted and the security returned as appropriate.

Any person who objects to any decisions made by the Director of Customs under the first paragraph of this Article may file a written appeal to the Customs Tariff Committee.

The organization and functioning of the Customs Tariff Committee shall be determined by Anukret.

An importer or exporter has the right to appeal to the competent court against any decision of the Customs Tariff Committee within a period of thirty (30) days from, the date of receiving notification of that decision.

**KINGDOM OF CAMBODIA**  
**Nation Religion King**

**Ministry of Economy and Finance**  
**No. 387 MEF.BK**

**Phnom Penh, 22 May 2008**

**Prakas on**  
**Customs Valuation of Imported Goods**

**Senior Minister,**  
**Minister of Economy and Finance**

- Having Seen the Constitution of the Kingdom of Cambodia;
- Having Seen Reach Kram No NS/RKT/0704/124 dated 15 July 2004 on the Appointment of the Royal Government;
- Having Seen Reach Kram No 02/NS /94 dated 20 July 1994 promulgating the Law on the Establishment and Organization of the Council of Minister;
- Having Seen Reach Kram No 02/NS/RKM/0196/18 Dated 24 January 1996 promulgating the Law on the Establishment of the Ministry of Economy and Finance;
- Having Seen Reach Kram No NS/RKM/0707/017 dated 20 July 2007 promulgating the Law on Customs;
- Having Seen Anukret No. 04 ANKR.BK dated 20 January 2000 on the Establishment and Organization of the Ministry of Economy and Finance;
- Pursuant to the priority task of the Ministry of Economy and Finance;

**HEREBY DECIDES**

**Chapter I**

**Definitions**

**Praka 1**

For the purposes of this Prakas:

**Brokerage** means a cost or an amount charged by brokers or middlemen working to promote a transaction and often not clearly labelled as representatives of either party. A brokerage charge is only included to the extent that it relates to the sale being valued.

**Buying commission** means a fee paid or payable by the buyer to the buyer's agent for the service of representing the buyer overseas in respect of the purchase of the goods.

**Computed value** means the value determined in accordance with Chapter VII of this Prakas.

**Deductive value** means the value determined in accordance with Chapter VI of this Prakas.

**Fee** means any cost, charge, payment or amount paid or payable in respect of a debt.

**General expenses** means the direct and indirect costs, charges, and expenses of producing and selling goods for export to Cambodia.

**Goods of the same class or kind** means imported goods that:

- (a) Are within a group or range of imported goods produced by a particular industry or industry sector that includes identical goods or similar goods in relation to the goods being valued; and
- (b) For the purposes of:
  - i) Chapter VI, were exported from any country; and
  - ii) Chapter VII, were produced in and exported from the country in and from which the goods being valued were produced and exported.

**Identical goods** means imported goods that:

- (a) Are the same in all respects, including physical characteristics, quality, and reputation, as the goods being valued, except for minor differences in appearance that do not affect the value of the goods; and
- (b) Were produced in the country in which the goods being valued were produced; and
- (c) Were produced by or on behalf of the person who produced the goods being valued, but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in Cambodia were supplied, directly, or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods.

**Price actually paid or payable** in relation to any goods means the sum of all amounts actually paid or payable by the buyer to or for the benefit of the seller in respect of the goods.

**To produce** includes to grow, to manufacture, and to mine.

**Selling commission** means a fee paid or payable by the seller to the seller's agent for the service of representing the seller overseas in respect of the sale of the goods.

**Similar goods** means imported goods that:

- (a) Closely resemble the goods being valued in respect of component materials and parts and characteristics and are functionally and commercially interchangeable with the goods being valued having regard to the quality and reputation of the goods and the goods being valued and
- (b) Were produced in the country in which the goods being valued were produced; and
- (c) Were produced by or on behalf of the person who produced the goods being valued : but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in Cambodia were supplied, directly or indirectly by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods.

**Sufficient information** in respect of the determination of any amount, difference, or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference, or adjustment.

**Transaction value** means the value determined in accordance with Chapters II and Chapters III of this Prakas.

## **Praka 2**

For the purposes of this Prakas, persons shall be deemed to be related only if:

- (a) They are officers or directors of one another's business; or
- (b) They are legally recognized partners in business; or
- (c) They are employer and employee; or
- (d) Any person directly or indirectly owns, controls, or holds 5 percent or more of the outstanding voting stock or shares of both of them; or
- (e) One of them directly or indirectly controls the other; or
- (f) Both of them are directly or indirectly controlled by a third person; or
- (g) Together they directly or indirectly control a third person; or
- (h) They are members of the same family.

## **Praka 3**

For the purposes of this Prakas, charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the Customs value where:

- (a) The charges are distinguished from the price actually paid or payable for the goods; and
- (b) Such goods are actually sold at the price declared as the price actually paid or payable; and
- (c) The buyer, if required, can demonstrate that:
  - i) The financing arrangement was made in writing;
  - ii) The claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

## **Chapter II**

### **Transaction value as primary basis of valuation**

## **Praka 4**

The Customs value of imported goods shall be their transaction value, that is, the price actually paid or payable for the goods when sold for export to Cambodia, adjusted in accordance with Chapter III of this Prakas, if:

- (a) There are no restrictions respecting the disposition or use of the goods by the buyer, other than restrictions that:



- i) Are imposed by law or the competent Authority of Cambodia; or
  - ii) Limit the geographical area in which the goods may be resold; or
  - iii) Do not substantially affect the value of the goods; or
- (b) The sale of the goods or the price actually paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be determined; or
- (c) The buyer and seller of the goods are not related at the time the goods are sold for export or, where the buyer and seller are related at that time,
  - i) Their relationship did not influence the price actually paid or payable for the goods; or
  - ii) The importer demonstrates that the transaction value of the goods meets the requirements set out in Article 5 of this Chapter.

#### **Praka 5**

In a sale between related persons, for the purpose of showing that the relationship did not influence the transaction value, the importer shall produce evidence that the transaction value of the goods being valued, closely approximates the Customs value of other goods exported at the time or substantially at the same time as the goods being valued, being

- (a) The transaction value of identical goods or similar goods in respect of a sale of those goods for export to Cambodia between a seller and buyer who are not related at the time of the sale; or
- (b) The deductive value of identical or similar goods determined in accordance with Chapter VI of this Prakas; or
- (c) The computed value of identical or similar goods determined in accordance with Chapter VII of this Prakas.

#### **Praka 6**

Where the relationship between the buyer and seller of the goods is considered to have influenced the price actually paid or payable, the Customs shall inform the importer of the reasons, in writing, if so requested and shall provide the importer the opportunity to satisfy the Customs that the relationship did not influence the price.

#### **Praka 7**

Where Article 5 of this Chapter applies, the importer shall provide the following information:

- (a) The nature of the goods being valued;
- (b) The nature of the industry that produces the goods being valued;
- (c) The season in which the goods being valued are imported;
- (d) Whether a difference in values is commercially significant;
- (e) The trade levels at which the sales take place;

- (f) The quantity levels of the sales;
- (g) Any of the amounts referred to in Chapter III of this Prakas;
- (h) The costs, charges, or expenses incurred by a seller when the seller sells to a buyer to whom the seller is not related that are not incurred when the seller sells to a buyer to whom the seller is related.

#### **Praka 8**

If the Customs value cannot be determined under this Chapter, or if Customs has reason to doubt the truth or accuracy of the declared Customs value and, after having sought further explanation or other evidence the Customs is still not satisfied that the Customs value can be determined under this Chapter. The Customs, in accordance with the Article 21 of the Law on Customs, may determine the Customs value of the goods by proceeding sequentially through Chapters IV to Chapters VIII of this Prakas to the first such Chapter of this Prakas under which the Customs value can be determined.

#### **Praka 9**

On the written request of the importer, the order of consideration of the valuation basis provided for in Chapters VI and Chapters VII of this Prakas shall be reversed in accordance with paragraph (f) Article 21 of the Law on Customs.

### **Chapter III**

#### **Adjustment of price actually paid or payable**

#### **Praka 10**

In determining the transaction value of goods under Chapter II of this Prakas, the price actually paid or payable for the goods shall be adjusted:

- (a) By adding amounts, to the extent that each such amount is not otherwise included in the price actually paid or payable for the goods and is determined on the basis of sufficient information, equal to:
  - i) Commissions and brokerage, except buying commissions in respect of the goods incurred by the buyer, other than fees paid or payable by the buyer to the buyer's agent for the service of representing the buyer overseas in respect of the purchase of the goods; and
  - ii) The packing costs and charges incurred by the buyer in respect of the goods, including the cost of cartons, cases, and other containers and coverings that are treated for customs purposes as being part of the imported goods and all expenses of packing incidental to placing the goods in the condition in which they are shipped to Cambodia; and
  - iii) The value of any of the following goods and services:
    - a. Materials, component parts, and other goods incorporated in the imported goods;
    - b. Tools, dies, moulds, and other goods utilized in the production of the imported goods;

- c. Materials consumed in the production of the imported goods;
  - d. Engineering, development work, artwork, design work, plans, and sketches undertaken elsewhere than in Cambodia and necessary for the production of the imported goods, determined in accordance with Article 11 of this Prakas, that are supplied, directly or indirectly, by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, apportioned to the imported goods in a reasonable manner and in accordance with generally accepted accounting principles;
  - iv) Royalties and licence fees, including payments for patents, trademarks, and copyrights in respect of the imported goods that the buyer must pay, directly or indirectly, as a condition of the sale of the goods for export to Cambodia, exclusive of charges for the right to reproduce the imported goods in Cambodia;
  - v) The value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue, directly or indirectly, to the seller; and
  - vi) The costs of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods until the goods have arrived in Cambodia:
- (b) By deducting amounts, equal to any of the following costs, charges, or expenses, provided that they are distinguished from the price actually paid or payable:
- i) Any reasonable cost, charge, or expense that is incurred for the construction, erection, assembly, or maintenance of, or technical assistance provided in respect of, the goods after the goods are imported;
  - ii) Any reasonable cost, charge, or expense that is incurred in respect of the transportation or insurance of the goods within Cambodia and any reasonable cost charge, or expense associated therewith;
  - iii) Any Customs duties or other taxes payable in Cambodia.

#### **Praka 11**

The value of the goods and services described in sub-paragraph (iii) paragraph (a) Article 10 of this Prakas shall be determined:

- (a) In the case of materials, components, parts and other goods incorporated in the goods being valued or any materials consumed in the production of the goods being valued:
  - i) By ascertaining :
    - a. Their cost of acquisition where they were acquired by the buyer from a person who was not related to the buyer at the time of their acquisition; or
    - b. Their cost of acquisition incurred by the person related to the buyer, where the goods were acquired by the buyer from a person who was related to the buyer at the time of their acquisition but who did not produce them; or

- c. Their cost of production where they were produced by the buyer or a person related to the buyer at the time of their production; and
  - ii) By adding:
    - a. The cost of their transportation to the place of production of the goods being valued, and
    - b. The value added to them by any repairs or modifications made to them after they were so acquired or produced;
- (b) In the case of tools, dies, moulds, and other goods, utilised in the production of the goods being valued:
  - i) By ascertaining:
    - a. Their cost of acquisition where they were acquired by the buyer from a person who was not related to the buyer at the time they were so acquired; or
    - b. Their cost of acquisition incurred by the person related to the buyer, where they were acquired by the buyer from a person related to the buyer at the time they were so acquired but who did not produce them; or
    - c. Their cost of production where they were produced by the buyer or a person related to the buyer at the time of their production; and
  - ii) By adding:
    - a. The cost of their transportation to the place of production of the goods being valued; and
    - b. The value added to them by any repairs or modifications made to them after they were so acquired or produced; and
  - iii) By deducting an amount to account for any previous use of the goods made after the goods were so acquired or produced;
- (c) In the case of engineering, development work, art work, design work, plans and sketches, undertaken elsewhere than in Cambodia and necessary for the production of the goods being valued by ascertaining:
  - i) Their cost of acquisition or lease, where they were acquired or leased by the buyer from a person who was not related to the buyer and are not generally available to the public; or
  - ii) Their cost of acquisition or lease incurred by the person related to the buyer, where they were acquired or leased by the buyer from a person related to the buyer, but who did not produce them and are not generally available to the public; or
  - iii) The cost to the public of obtaining them where they are available generally to the public; or

- iv) The cost of production where they were produced by the buyer or a person related to the buyer at the time of their production.

#### **Praka 12**

Where any adjustment in terms of this Chapter cannot be made because of the lack of sufficient information, the transaction value of the goods being valued cannot be determined under Chapter II of this Prakas.

### **Chapter IV**

#### **Transaction value of identical goods as Customs value**

#### **Praka 13**

Where the Customs value of imported goods cannot be determined under Chapter II of this Prakas, the Customs value of the goods shall be the transaction value of identical goods in respect of a sale of those goods for export to Cambodia if that transaction value is the Customs value of the identical goods and the identical goods were exported at the same or substantially the same time as the goods being valued and were sold under the following conditions:

- (a) To a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
- (b) In the same or substantially the same quantities as the goods being valued.

#### **Praka 14**

Where the Customs value of imported goods cannot be determined under Article 13 of this Prakas because identical goods were not sold under the conditions described in paragraph (a) and paragraph (b) Article 13 of this Prakas, there shall be substituted the value of identical goods sold under any of the following conditions:

- (a) To a buyer at the same or substantially the same trade level as the buyer of the goods being valued but in quantities different from the quantities in which those goods were sold; or
- (b) To a buyer at a trade level different from that of the buyer of the goods being valued but in the same or substantially the same quantities as the quantities in which those goods were sold; or
- (c) To a buyer at a trade level different from that of the buyer of the goods being valued and in quantities different from the quantities in which those goods were sold.

#### **Praka 15**

For the purposes of determining the Customs value of imported goods under Article 13, the transaction value of identical goods shall be adjusted by adding or deducting amounts to account for:

- (a) Commercially significant differences between the costs, charges, and expenses referred to in sub-paragraph (vi) paragraph (a) Article 10 of this Prakas in respect of the identical goods and those costs, charges, and expenses in respect of the goods being valued due to differences in distances and types of transport;

- (b) Where the transaction value is in respect of identical goods sold under the conditions described in any of paragraphs (a) to paragraphs (c) Article 14 of this Prakas, differences in the trade levels of the buyers of the identical goods and the goods being valued or the quantities in which the identical goods and the goods being valued were sold or both, as the case may be, if each amount can be determined on the basis of sufficient information. Where any such amount cannot be so determined, the Customs value of the goods being valued shall not be determined on the basis of the transaction value of those identical goods under this Chapter.

#### **Praka 16**

Where, in relation to imported goods being valued, there are two or more transaction values of identical goods that meet all the requirements set out in Articles 13 and Article 15 of this Prakas or where there is no such transaction value but there are two or more transaction values of identical goods sold under the conditions described in any of paragraphs (a) to paragraphs (c) Article 14 of this Prakas that meet all the requirements set out in this Chapter that are applicable by virtue of Article 14 of this Prakas, the Customs value of the goods being valued shall be determined on the basis of the lowest such transaction value.

### **Chapter V**

#### **Transaction value of similar goods as Customs value**

#### **Praka 17**

Subject to Articles 14 to Articles 16 and Article 18 of this Prakas, where the Customs value of imported goods cannot be determined under Chapter IV of this Prakas, the Customs value of the goods shall be the transaction value of similar goods in respect of a sale of those goods for export to Cambodia if that transaction value is the Customs value of the similar goods and the similar goods were exported at the same or substantially the same time as the goods being valued and were sold under the following conditions:

- (a) To a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
- (b) In the same or substantially the same quantities as the goods being valued.

#### **Praka 18**

The Provisions of Articles 12, Articles 13 and Articles 14 of Chapter IV of this Prakas shall apply to this Chapter in respect of similar goods as if every reference in those Articles to "identical goods" were a reference to "similar goods".

### **Chapter VI**

#### **Deductive value as Customs value**

#### **Praka 19**

Subject to Article 8 and Articles 9 of this Prakas, where the Customs value cannot be determined under Chapter V of this Prakas, the Customs value of the goods shall be the deductive value in respect of the goods.

**Praka 20**

Where the goods being valued or identical goods or similar goods are sold in Cambodia in the condition in which they were imported at or about the same time as the time of importation of the goods being valued, the deductive value of the goods being valued shall be the price per unit in respect of sales described in Article 23 of this Prakas determined in accordance with that Article and adjusted in accordance with Article 24 of this Prakas, at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold.

**Praka 21**

Where the goods being valued or identical goods or similar goods are sold in Cambodia in the condition in which they were imported before the expiration of 90 days after the importation of the goods being valued but are not so sold at or about the same time as the time of that importation, the deductive value of the goods being valued shall be the price per unit in respect of sales described in Article 23, determined in accordance with that Article and adjusted in accordance with Article 24, at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold at the earliest date after the importation of the goods being valued.

**Praka 22**

Where the goods being valued or identical goods or similar goods are not sold in Cambodia in the circumstances described in Article 20 or Article 21, but the goods being valued, after being assembled, packaged, or further processed in Cambodia, are sold in Cambodia before the expiration of 90 days after importation and the importer of the goods being valued requests that this Article be applied in the determination of the Customs value of those goods, the deductive value of the goods being valued shall be the price per unit, in respect of sales described in Article 23, determined in accordance with that Article and adjusted in accordance with Article 24, at which the greatest number of units of the goods being valued are so sold.

**Praka 23**

For the purposes of Articles 20, Articles 21 and Articles 22, the price per unit in respect of any goods being valued or identical goods or similar goods, shall be determined by ascertaining the unit price in respect of sales of the goods at the first trade level after their importation to persons who:

- (a) Are not related to the persons from whom they buy the goods at the time the goods are sold to them; and
- (b) Have not supplied, directly or indirectly, free of charge or at a reduced cost for use in connection with the production and sale for export of the goods, any of the goods or services referred to in Chapter 3 Article 10 paragraph (a) sub-paragraph (iii) of this Prakas, at which the greatest number of units of the goods is sold where, a sufficient number of such sales have been made to permit a determination of the price per unit of the goods.

**Praka 24**

For the purposes of Articles 20 to 22, the price per unit in respect of any goods being valued or identical goods or similar goods, shall be adjusted by deducting an amount equal to the sum of:

- (a) An amount, determined in accordance with Article 25, equal to:
  - i) The amount of commission generally earned on a unit basis; or

- ii) The amount for profit and general expenses, including all costs of marketing the goods, considered together as a whole, that is generally reflected on a unit basis. In connection with sales in Cambodia of goods of the same class or kind as those goods;
- (b) Reasonable costs charges and expenses that are incurred in respect of the transportation and insurance of the goods within Cambodia and reasonable costs, charges, and expenses associated therewith to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a) of this Article;
- (c) Any Customs duties or other taxes payable in Cambodia, to the extent that an amount for such duties and taxes is not deducted in respect of general expenses under paragraph (a) of this Article;
- (d) Where Article 22 applies, the amount of the value added to the goods that is attributable to the assembly, packaging, or further processing in Cambodia of the goods, if that amount is determined on the basis of sufficient information.

#### **Praka 25**

The amount considered to be equal to the amount of commission or the amount for profit and general expenses referred to in Article 24 paragraph (a) shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles that is supplied by or on behalf of the importer of the goods being valued; or where the information supplied is not sufficient, there can be an examination of sales in Cambodia of the narrowest group or range of goods of the same class or kind as the goods being valued from which sufficient information can be obtained in respect of the amount of commission or the amount for profit and general expenses referred to in Article 24 paragraph (a).

#### **Praka 26**

Where an amount referred to in Article 24 paragraph (d) in respect of any goods being valued cannot be determined on the basis of sufficient information, the Customs value of the goods cannot be determined on the basis of the deductive value under Article 22.

### **Chapter VII**

#### **Computed value as Customs value**

#### **Praka 27**

Where the Customs value of imported goods cannot be determined under Chapter VI of this Prakas, the Customs value of the goods shall be the computed value in respect of those goods.

#### **Praka 28**

The computed value of the goods being valued is the sum of amounts equal to:

- (a) The costs, charges, and expenses incurred in respect of, or the value of:
  - i) Materials employed in producing the goods being valued;



- ii) The production or other processing of the goods being valued, determined on the basis of :
  - a. The commercial accounts of the producer of the goods being valued; or
  - b. Any other sufficient information relating to the production of the goods being valued that are supplied by or on behalf of the producer of the goods and prepared in a manner consistent with the generally accepted accounting principles of the country of production of the goods being valued, including, without limiting the generality of the foregoing,
- iii) The costs, charges, and expenses referred to in sub-paragraph (ii) paragraph (a) Article 10 of this Prakas:
- iv) The value of any of the goods and services referred to in subparagraph (iii) paragraph (a) Article 10 of this Prakas, determined and apportioned to the goods being valued as referred to in that Chapter, whether or not such goods and services have been supplied free of charge or at a reduced cost:
- v) (v) The costs, charges, and expenses incurred by the producer in respect of engineering, development work, artwork, design work. plans, or sketches undertaken in Cambodia that were supplied, directly or indirectly, by the buyer of the goods being valued for use in the production and sale for export of those goods to the extent that such elements are charged to the producer of the goods, apportioned to the goods being valued as referred to in Chapter III Article 10 paragraph (a) sub-paragraph (iii) of this Prakas:
- vi) The amount, determined in accordance with Article 29 of this Prakas, for profit and general expenses, generally reflected in sales for export to Cambodia of goods of the same class or kind as the goods being valued, made by the producers of the goods to buyers in Cambodia who are not related to the producers from whom they buy the goods at the time the goods are sold to them.

## **Praka 29**

The amount of profit and general expenses referred to in paragraph (b) Article 28 of this Prakas shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally acceptable accounting principles of the country of production of the goods being valued and that is supplied :

- (a) By or on behalf of the producer of the goods being valued; or
- (b) Where the information supplied by or on behalf of the producer of the goods being valued is not sufficient information, by an examination of sales for export to Cambodia of the narrowest group or range of goods of the same class or kind from which sufficient information can be obtained.

## **Chapter VIII**

### **Residual basis of valuation**

#### **Praka 30**

Where the Customs value of imported goods cannot be determined under Chapter VII of this Prakas, it shall be determined on information available in Cambodia on the basis of a value derived from the methods of valuation set out in Chapters II to VII of this Prakas interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at a Customs value of the goods.

#### **Praka 31**

A Customs value shall not be determined on the basis of:

- (a) The selling price in Cambodia of goods produced in Cambodia; or
- (b) A basis which provides for the acceptance of the higher of 2 alternative values; or
- (c) The price of goods on the domestic market of the country of exportation; or
- (d) The cost of production, other than computed values that have been determined for identical or similar goods in accordance with Chapter VII of this Prakas; or
- (e) The price of goods for export to a country other than Cambodia, unless the goods were imported into Cambodia; or
- (f) Minimum customs values; or
- (g) Arbitrary or fictitious values.

## **Chapter IX**

### **Transitional Provisions**

#### **Praka 32**

In accordance with the provision of Article 78 of the Law on Customs, Agreement on implementation of Article 7 of the General Agreement on Tariffs and Trade 1994 and the interpretative notes of the agreement which is the Annex of this Prakas, the Customs and Excise Department may request for approval from the Ministry of Economy and Finance in order to temporally delay the implementation of fully or partially the provision of this Prakas on some imported goods which the Customs and Excise Department consider as the sensitive goods or high risk goods.

## **Chapter X**

### **Final Provisions**

#### **Praka 33**

Delegate of the Royal Government in charge of Customs and Excise Department, Secretary General, Director of Cabinet, Director of the Department and involved units within the Ministry of Economy

and Finance; including personnel and institutions concerned shall carry out the provisions of the s effectively from the signatory date.

**Senior Minister,**

**Minister of Economy and Finance**

Signature

**C.C : Keat Chhon**

- Ministry of the Royal palace
- Secretariat General of the Senate
- Secretariat General of the National Assembly
- Cabinet of Samdech Akka Moha Sena Padei Techo Hun Sen Prime Minister of the Kingdom of Cambodia
- Council of Ministers "To be informed"
- Customs and Excise Department
- As Praka 33
- Cambodia Chamber of Commerce "For publicized cooperation and implementation"
- Official Journal
- Document - Archive

**ANNEX**  
Of Prakas No 387 MEF.BK Dated: 22 May 2008  
On the Customs Valuation of Imported Goods  
**AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL  
AGREEMENT ON TARIFFS AND TRADE 1994 AND  
THE INTERPRETATIVE NOTES**

**AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL  
AGREEMENT ON TARIFFS AND TRADE 1994**

*General Introductory Commentary*

1. The primary basis for customs value under this Agreement is "transaction value" as defined in Article 1. Article 1 is to be read together with Article 8 which provides, *inter alia*, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Articles 2 through 7 provide methods of determining the customs value whenever it cannot be determined under the provisions of Article 1.

2. Where the customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the customs administration and importer with a view to arriving at a basis of value under the provisions of Article 2 or 3. It may occur, for example, that the importer has information about the customs value of identical or similar imported goods which is not immediately available to the customs administration in the port of importation. On the other hand, the customs administration may have information about the customs value of identical or similar imported goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes.

3. Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under paragraph 1 of Article 5 the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if the importer so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.

4. Article 7 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Articles.

*General Introductory Commentary (contd.) Members, Having regard to the Multilateral Trade Negotiations;*

*Desiring to further the objectives of GATT 1994 and to secure additional benefits for the international trade of developing countries;*

*Recognizing the importance of the provisions of Article VII of GATT 1994 and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;*

*Recognizing* the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;

*Recognizing* that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

*Recognizing* that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

*Recognizing* that valuation procedures should not be used to combat dumping;

Hereby *agree* as follows:

#### *General Note*

#### *Sequential Application of Valuation Methods*

1. Articles 1 through 7 define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Article 1, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 4, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Articles 1 through 6 it is to be determined under the provisions of Article 7.

#### *Use of Generally Accepted Accounting Principles*

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Agreement, the customs administration of each Member shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the

provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in paragraph 1 (b) (ii) of Article 8 undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

## *RULES ON CUSTOMS VALUATION*

### *Article 1*

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 the country of importation adjusted in accordance with the provisions of Article 8, provided:

- (a) 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 law or by the public authorities in the country of importation;
    - ii) limit the geographical area in which the goods may be resold; or
    - iii) do not substantially affect the value of the goods;
  - (b) 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;
  - (c) 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 8; and
  - (d) 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.
2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 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.
- (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 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 same country of importation;
  - ii) the customs value of identical or similar goods as determined under the provisions of Article 5;

- iii) the customs value of identical or similar goods as determined under the provisions of Article 6;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and 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.

- iv) The tests set forth in paragraph 2 (b) 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 (b).

*Note to Article 1*

*Price Actually Paid or Payable*

1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

2. Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

3. The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) the cost of transport after importation;
- (c) duties and taxes of the country of importation.

4. The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

*Paragraph 1 (a) (iii)*

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

*Paragraph 1 (b)*

1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

- (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that the seller will receive a specified quantity of the finished goods.

2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on the buyer's own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

*Paragraph 2*

1. Paragraphs 2 (a) and 2 (b) provide different means of establishing the acceptability of a transaction value.

2. Paragraph 2 (a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit



realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2 (b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 1. Where a test under paragraph 2 (b) is met, it is not necessary to examine the question of influence under paragraph 2 (a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2 (b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2 (b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

#### *Paragraph 2 (b)*

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in paragraph 2 (b) of Article 1.

#### *Article 2*

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.
  - (b) 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 paragraph 2 of Article 8 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.

#### *Note to Article 2*

1. In applying Article 2, the customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 2, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1 (b) and 2, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

### ***Article 3***

1.

- (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.
- (b) 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 paragraph 2 of Article 8 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.

*Note to Article 3*

1. In applying Article 3, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Article 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1 (b) and 2, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 3 is not appropriate.

***Article 4***

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3, the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

**Article 5**

1. (a) If the imported goods or identical or similar imported goods are sold in the country of importation 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:
  - i) 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 such country of imported goods of the same class or kind;
  - ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;
  - iii) where appropriate, the costs and charges referred to in paragraph 2 of Article 8; and
  - iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.
- (b) 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, subject otherwise to the provisions of paragraph 1 (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation 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 the country of importation 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 the country of importation who 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 (a).

*Note to Article 5*

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.
2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

| <i>Sale quantity</i> | <i>Unit price</i> | <i>Number of sales</i>                    | <i>Total quantity sold at each price</i> |
|----------------------|-------------------|---|--|
| 1-10 units           | 100               | 10 sales of 5 units<br>5 sales of 3 units | 65                                       |
| 11-25 units          | 95                | 5 sales of 11 units                       | 55                                       |
| over 25 units        | 90                | 1 sale of 30 units<br>1 sale of 50 units  | 80                                       |

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

| <i>Sale quantity</i> | <i>Unit price</i> |
|----------------------|-------------------|
| 40 units             | 100               |
| 30 units             | 90                |
| 15 units             | 100               |
| 50 units             | 95                |
| 25 units             | 105               |
| 35 units             | 90                |
| 5 units              | 100               |

(b) Totals

| <i>Total quantity sold</i> | <i>Unit price</i> |
|----------------------------|-------------------|
| 65                         | 90                |
| 50                         | 95                |
| 60                         | 100               |
| 25                         | 105               |

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in paragraph 1 (b) of Article 8, should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that "profit and general expenses" referred to in paragraph 1 of Article 5 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis

of information supplied by or on behalf of the importer unless the importer's figures are inconsistent with those obtained in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of paragraph 1 (a) (iv) of Article 5 shall be deducted under the provisions of paragraph 1 (a) (i) of Article 5.

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 1 of Article 5, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 5, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of paragraph 1 (b) of Article 5, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in paragraph 2 of Article 5 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in paragraph 2 of Article 5 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.\$

## ***Article 6***

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:

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) 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 the country of importation;
- (c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Member under paragraph 2 of Article 8.

2. No Member may require or compel any person not resident in its own territory 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 authorities of the country of importation 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.

*Note to Article 6*

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in paragraph 1 (a) of Article 6 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in paragraphs 1 (a) (ii) and (iii) of Article 8. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in paragraph 1 (b) of Article 8 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in paragraph 1 (b) (iv) of Article 8 which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in paragraph 1 (b) of Article 6 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those 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 the country of importation.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and the producer's general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an

unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those 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 the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

7. The "general expenses" referred to in paragraph 1 (b) of Article 6 covers the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1 (a) of Article 6.

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 6, "goods of the same class or kind" must be from the same country as the goods being valued.

#### ***Article 7***

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 through 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of GATT 1994 and on the basis of data available in the country of importation.

2. No customs value shall be determined under the provisions of this Article on the basis of:

- (a) the selling price in the country of importation of goods produced in such country;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) 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;
- (e) the price of the goods for export to a country other than the country of importation;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

3. If the importer so requests, 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.



*Note to Article 7*

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values.
2. The methods of valuation to be employed under Article 7 should be those laid down in Articles 1 through 6 but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7.
3. Some examples of reasonable flexibility are as follows:
  - (a) *Identical goods* - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.
  - (b) *Similar goods* - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.
  - (c) *Deductive method* - the requirement that the goods shall have been sold in the "condition as imported" in paragraph 1 (a) of Article 5 could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

**Article 8**

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:
  - (a) 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;
  - (b) 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, 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 the country of importation and necessary for the production of the imported goods;
- (c) royalties and licence 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;
- (d) 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.

2. In framing its legislation, each Member shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

- (a) the cost of transport of the imported goods to the port or place of importation;
- (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (c) the cost of insurance.

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

*Note to Article 8*

*Paragraph 1 (a) (i)*

The term "buying commissions" means fees paid by an importer to the importer's agent for the service of representing the importer abroad in the purchase of the goods being valued.

*Paragraph 1 (b) (ii)*

1. There are two factors involved in the apportionment of the elements specified in paragraph 1 (b) (ii) of Article 8 to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to the importer at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to the importer, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time

of the first shipment. As a further example, the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with the producer to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

*Paragraph 1 (b) (iv)*

1. Additions for the elements specified in paragraph 1 (b) (iv) of Article 8 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

*Paragraph 1 (c)*

1. The royalties and licence fees referred to in paragraph 1 (c) of Article 8 may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

*Paragraph 3*

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

***Article 9***

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.
2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Member.

*Note to Article 9*

For the purposes of Article 9, "time of importation" may include the time of entry for customs purposes.

***Article 10***

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 authorities concerned 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 11***

1. The legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.
2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority.
3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.

*Note to Article 11*

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because the importer chose to exercise the right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

3. However, nothing in Article 11 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal.

***Article 12***

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of GATT 1994 by the country of importation concerned.

***Article 13***

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 the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.

***Article 14***

The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes.

Annexes II and III also form an integral part of this Agreement.

***Article 15***

1. In this Agreement:

- (a) "customs value of imported goods" means the value of goods for the purposes of levying *ad valorem* duties of customs on imported goods;
- (b) "country of importation" means country or customs territory of importation; and
- (c) "produced" includes grown, manufactured and mined.

2. In this Agreement:

- (a) "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;

- (b) "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;
- (c) the terms "identical goods" and "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 paragraph 1 (b) (iv) of Article 8 because such elements were undertaken in the country of importation;
- (d) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;
- (e) goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

3. In this Agreement "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.

4. For the purposes of this Agreement, persons shall be deemed to be related only if:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) 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;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.

5. 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 or the purposes of this Agreement if they fall within the criteria of paragraph 4.

*Note to Article 15*

*Paragraph 4*

For the purposes of Article 15, the term "persons" includes a legal person, where appropriate.

*Paragraph 4 (e)*

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

***Article 16***

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of the importer's goods was determined.

***Article 17***

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART II

*ADMINISTRATION, CONSULTATIONS AND DISPUTE SETTLEMENT*

***Article 18***

*Institutions*

1. There is hereby established a Committee on Customs Valuation (referred to in this Agreement as "the Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Members the opportunity to consult on matters relating to the administration of the customs valuation system by any Member as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Members. The WTO Secretariat shall act as the secretariat to the Committee.

2. There shall be established a Technical Committee on Customs Valuation (referred to in this Agreement as "the Technical Committee") under the auspices of the Customs Co-operation Council (referred to in this Agreement as "the CCC"), which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

***Article 19***

*Consultations and Dispute Settlement*

1. Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.

2. If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Member or of other Members, it may, with a view to reaching a mutually satisfactory solution of this matter, request consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultations.

3. The Technical Committee shall provide, upon request, advice and assistance to Members engaged in consultations.

4. At the request of a party to the dispute, or on its own initiative, a panel established to examine a dispute relating to the provisions of this Agreement may request the Technical Committee to carry out an examination of any questions requiring technical consideration. The panel shall determine the terms of reference of the Technical Committee for the particular dispute and set a time period for receipt of the report of the Technical Committee. The panel shall take into consideration the report of the Technical Committee. In the event that the Technical Committee is unable to reach consensus on a matter referred to it pursuant to this paragraph, the panel should afford the parties to the dispute an opportunity to present their views on the matter to the panel.

5. Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of this information, authorized by the person, body or authority providing the information, shall be provided.

### PART III

#### *SPECIAL AND DIFFERENTIAL TREATMENT*

##### *Article 20*

1. Developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement for such Members. Developing country Members who choose to delay application of this Agreement shall notify the Director-General of the WTO accordingly.

2. In addition to paragraph 1, developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of paragraph 2 (b) (iii) of Article 1 and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country Members that choose to delay application of the provisions specified in this paragraph shall notify the Director-General of the WTO accordingly.

3. Developed country Members shall furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis developed country Members shall draw up programmes of technical assistance which may include, *inter alia*, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.



## PART IV

### *FINAL PROVISIONS*

#### ***Article 21***

##### *Reservations*

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

#### ***Article 22***

##### *National Legislation*

1. Each Member shall ensure, not later than the date of application of the provisions of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

2. Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

#### ***Article 23***

##### *Review*

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews.

#### ***Article 24***

##### *Secretariat*

This Agreement shall be serviced by the WTO Secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the CCC Secretariat.

## **ANNEX I**

### *INTERPRETATIVE NOTE*

Interpretative Note are allocated after each relevant article.

## **ANNEX II**

### *TECHNICAL COMMITTEE ON CUSTOMS VALUATION*

1. In accordance with Article 18 of this Agreement, the Technical Committee shall be established under the auspices of the CCC with a view to ensuring, at the technical level, uniformity in interpretation and application of this Agreement.

2. The responsibilities of the Technical Committee shall include the following:

- (a) to examine specific technical problems arising in the day-to-day administration of the customs valuation system of Members and to give advisory opinions on appropriate solutions based upon the facts presented;
- (b) to study, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;
- (c) to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;
- (d) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Member or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;
- (e) to facilitate, as requested, technical assistance to Members with a view to furthering the international acceptance of this Agreement;
- (f) to carry out an examination of a matter referred to it by a panel under Article 19 of this Agreement; and
- (g) to exercise such other responsibilities as the Committee may assign to it.

#### *General*

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Members, the Committee or a panel, in a reasonably short period of time. As provided in paragraph 4 of Article 19, a panel shall set a specific time period for receipt of a report of the Technical Committee and the Technical Committee shall provide its report within that period.

4. The Technical Committee shall be assisted as appropriate in its activities by the CCC Secretariat.

#### *Representation*

5. Each Member shall have the right to be represented on the Technical Committee. Each Member may nominate one delegate and one or more alternates to be its representatives on the Technical

Committee. Such a Member so represented on the Technical Committee is referred to in this Annex as a "member of the Technical Committee". Representatives of members of the Technical Committee may be assisted by advisers. The WTO Secretariat may also attend such meetings with observer status.

6. Members of the CCC which are not Members of the WTO may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

7. Subject to the approval of the Chairman of the Technical Committee, the Secretary General of the CCC (referred to in this Annex as "the Secretary General") may invite representatives of governments which are neither Members of the WTO nor members of the CCC and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

8. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary General.

#### *Technical Committee Meetings*

9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the meeting may be varied either at the request of any member of the Technical Committee concurred in by a simple majority of the members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman. Notwithstanding the provisions in sentence 1 of this paragraph, the Technical Committee shall meet as necessary to consider matters referred to it by a panel under the provisions of Article 19 of this Agreement.

10. The meetings of the Technical Committee shall be held at the headquarters of the CCC unless otherwise decided.

11. The Secretary General shall inform all members of the Technical Committee and those included under paragraphs 6 and 7 at least 30 days in advance, except in urgent cases, of the opening date of each session of the Technical Committee.

#### *Agenda*

12. A provisional agenda for each session shall be drawn up by the Secretary General and circulated to the members of the Technical Committee and to those included under paragraphs 6 and 7 at least 30 days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Technical Committee during its preceding session, all items included by the Chairman on the Chairman's own initiative, and all items whose inclusion has been requested by the Secretary General, by the Committee or by any member of the Technical Committee.

13. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Technical Committee.

#### *Officers and Conduct of Business*

14. The Technical Committee shall elect from among the delegates of its members a Chairman and one or more Vice-Chairmen. The Chairman and Vice-Chairmen shall each hold office for a period of one year. The retiring Chairman and Vice-Chairmen are eligible for re-election. The mandate of a Chairman or Vice-Chairman who no longer represents a member of the Technical Committee shall terminate automatically.

15. If the Chairman is absent from any meeting or part thereof, a Vice-Chairman shall preside. In that event, the latter shall have the same powers and duties as the Chairman.

16. The Chairman of the meeting shall participate in the proceedings of the Technical Committee as such and not as the representative of a member of the Technical Committee.

17. In addition to exercising the other powers conferred upon the Chairman by these rules, the Chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The Chairman may also call a speaker to order if the speaker's remarks are not relevant.

18. During discussion of any matter a delegation may raise a point of order. In this event, the Chairman shall immediately state a ruling. If this ruling is challenged, the Chairman shall submit it to the meeting for decision and it shall stand unless overruled.

19. The Secretary General, or officers of the CCC Secretariat designated by the Secretary General, shall perform the secretarial work of meetings of the Technical Committee.

#### *Quorum and Voting*

20. Representatives of a simple majority of the members of the Technical Committee shall constitute a quorum.

21. Each member of the Technical Committee shall have one vote. A decision of the Technical Committee shall be taken by a majority comprising at least two thirds of the members present. Regardless of the outcome of the vote on a particular matter, the Technical Committee shall be free to make a full report to the Committee and to the CCC on that matter indicating the different views expressed in the relevant discussions. Notwithstanding the above provisions of this paragraph, on matters referred to it by a panel, the Technical Committee shall take decisions by consensus. Where no agreement is reached in the Technical Committee on the question referred to it by a panel, the Technical Committee shall provide a report detailing the facts of the matter and indicating the views of the members.

#### *Languages and Records*

22. The official languages of the Technical Committee shall be English, French and Spanish. Speeches or statements made in any of these three languages shall be immediately translated into the other official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in that event the delegation concerned shall provide the translation into English, French or Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.

23. The Technical Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or a designee of the Chairman shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the CCC.

### ANNEX III

1. The five-year delay in the application of the provisions of the Agreement by developing country Members provided for in paragraph 1 of Article 20 may, in practice, be insufficient for certain developing country Members. In such cases a developing country Member may request before the end of the period referred to in paragraph 1 of Article 20 an extension of such period, it being understood that the Members will give sympathetic consideration to such a request in cases where the developing country Member in question can show good cause.

2. Developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Members.

3. Developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make a reservation to Article 4 in the following terms: "The Government of ... reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6." If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

4. Developing countries may wish to make a reservation with respect to paragraph 2 of Article 5 of the Agreement in the following terms :

"The Government of ... reserves the right to provide that paragraph 2 of Article 5 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests. "If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

5. Certain developing countries may have problems in the implementation of Article 1 of the Agreement insofar as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. If such problems arise in practice in developing country Members applying the Agreement, a study of this question shall be made, at the request of such Members, with a view to finding appropriate solutions.

6. Article 17 recognizes that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. The Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. Members, subject to their national laws and procedures, have the right to expect the full co-operation of importers in these enquiries.

7. The price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

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