

**WORLD TRADE
ORGANIZATION**

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Committee on Customs Valuation

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**NOTIFICATIONS UNDER ARTICLE 22.2 OF THE AGREEMENT ON
IMPLEMENTATION OF ARTICLE VII OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE 1994**

TRINIDAD AND TOBAGO

The following communication, dated 28 October 1998, has been received from the Permanent Mission of Trinidad and Tobago.

In accordance with Article 22.2 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, I have the honour to notify the Committee on Customs Valuation of the legislation of the Republic of Trinidad and Tobago relevant to customs valuation.

The legislation dealing with customs valuation, referred to as the Sixth Schedule, is legislated under paragraph 23 of the Customs Act, Chapter 78:01 of the Republic of Trinidad and Tobago.

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be retained and applied to the use of the State in the same manner as if it had been originally paid and received as the duty due on the goods; and in case of proceedings, if it is determined that the duty deposited is not the proper duty, but that a less duty is payable, the difference between the deposit and the duty found to be due, or the whole deposit, as the case may require, shall be returned to such importer or exporter.

(3) Proceedings referred to in this section shall be commenced before the Appeal Board.

(4) Notwithstanding any provision in the Tax Appeal Board Act, no appeal may be instituted before the Tax Appeal Board in respect of a dispute referred to in subsection (1) after-

Act 34 of 1996.

(a) the expiry of six months from the date of the deposit made under this section; or

(b) the expiry of six months from the date of the final assessment under section 87A(5).

23. (1) Where goods are imported and, under any written law, they are required to be entered for the purposes of this Act, the value of the goods shall be determined in accordance with the Sixth Schedule.

Value.
[44 of 1951
25 of 1952
23 of 1973].
Act 6 of 1991

(2) Nothing in the Sixth Schedule shall be construed as restricting or calling into question the rights of the Comptroller to satisfy himself as to the truth or accuracy of any statement or document presented for customs valuation purposes.

Act 34 of 1996.

(2A) The Comptroller may, within one year from the date of entry of imported goods, adjust the value accepted by an Officer at the date of entry of such goods, where he discovers that the value accepted by the Officer was incorrect-

(a) based on new information concerning the goods; or

(b) for any other reason.

(3) In determining the value of goods as referred to in subsection (1), where it is necessary to determine an equivalent in Trinidad and Tobago currency, the rate of exchange to be used in any period shall be that notified to the Comptroller by the

Sixth Schedule.
Act 6 of 1991
Act 9 of 1993

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Central Bank, as being in effect on the date on which the first-

- (i) Customs Declaration (Import/Export);
- (ii) Deposit Entry;
- (iii) Bill of Sight covered by bond; or
- (iv) entry in any other form prescribed by the Comptroller under section 264,

following importation of goods to which such Customs Declaration (Import/Export), Deposit Entry, Bill of Sight or entry in any other form refers, is submitted to the Comptroller for his approval;

(4) The date of submission referred to in subsection (3) shall not be earlier than the date on which the goods were imported into Trinidad and Tobago.

24. Where any article can reasonably be classified under two or more names, headings or descriptions in the Tariff, the classification shall be determined in accordance with the Rules for the Interpretation of the Tariff set out in the First Schedule.

Duty payable on classification.
Act 9 of 1993

25. Goods containing any article liable to duty as a part or ingredient thereof shall be liable to duty at the rate payable on such part or ingredient, and any goods composed of more than one article liable to duty shall be liable to duty at the rate payable on the article charged with the highest rate of duty; but the highest rate shall not be exacted in cases where the Comptroller in his discretion decides that the goods contain only a negligible proportion of the article liable to the highest rate; however, in no case shall any less duty be charged on any such goods than the duty due thereon when considered as a whole without regard to their contents.

Duty on composite goods.

26. If any article subject to the payment of specific duty is imported in any package & intended for sale, or of a kind usually sold with the goods when the same are sold retail, and marked or labelled, or commonly sold, as containing, or commonly to contain, a specific quantity of such article, then such package shall be deemed to contain not less than such specific quantity.

Duty chargeable on reputed quantity.

27. If any article subject to the payment of duty according to the weight thereof is imported in any package intended for sale, or of a kind usually sold with the article when it is sold retail, and such package is not marked or labelled, or is not in the opinion of the Comptroller commonly sold as containing, or commonly reputed to contain, a specific quantity of such article, and the importer is not able to satisfy the Comptroller as to the correct net weight, the duty thereon shall be calculated

On gross weight in certain cases.

SIXTH SCHEDULE

VALUE OF IMPORTED GOODS

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Interpretation 1. (1) In this Schedule :

(ACT 34/1996)

- (a) "buying agent" means a person who acts for the account of a buyer of goods, rendering services in connection with finding supplies, informing the seller of the wishes of the importer, collecting samples, inspecting goods and in some cases, arranging the insurance, transport, storage and delivery of the goods for a buying commission;
- (b) "customs value of imported goods" for the purposes of levying *ad-valorem* duties of customs on imported goods;
- (c) "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;
- (d) "identical goods" means goods produced in the same country which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical;
- (e) "identical goods" and "similar goods", as the case may be, do not include goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 8(1)(d)(iv) because such elements were undertaken in Trinidad and Tobago;

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(ACT 34/1996)

- (f) "produced" includes grown, manufactured and mined;
- (g) "seller" means a person who has the legal or beneficial interest in the goods at the time that the contract of sale is concluded and to whom the proceeds of sale will ultimately be paid, exclusive of any commission;"
- (h) "similar goods" means goods produced in the same country 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 goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;

(2) For the purpose of this Schedule:

- (a) A buyer and seller of goods shall be deemed to be related only where -
 - (i) One of them is an officer or director in a business owned or controlled, by the other;
 - (ii) they are legally recognized partners in business;
 - (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds 5% or more of the outstanding stock or shares of the business of both the buyer and seller;

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h *Schedule*

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(a) *continued*

(v) one of them directly or indirectly
controls a business owned by the
other;

(vi) the business of the buyer and seller
are directly or indirectly controlled
by a third person;

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- (vii) together they directly or indirectly control a business owned by a third person; or
- (viii) they are members of the same family;
- (b) one person shall be deemed to control the business of another when the ~~former~~ is legally or operationally in a position to exercise restraint or direction over the business of other person;
- (c) persons who are associated in business with each other in that one is the sole agent, sole distributor or sole concessionaire, however described, in a business owned by the other, the other shall be deemed to be related only where they fall within the criteria of subparagraph (a) above;
- (d) the term "person" means a natural or legal person;
- (e) an event shall be deemed to occur about the same time as another event if the first event, occurs on the same day as the other event or within 45 days immediately before, or the 45 days immediately after the day on which the other event occurs.

Customs Value

2. (1) The customs value of imported goods shall be determined under paragraph 3 whenever the conditions prescribed therein are fulfilled.

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(2) Where such value cannot be determined under paragraph 3, it shall be determined by proceeding sequentially through paragraphs 4 to 7, inclusive to the first such paragraph under which it can be determined, subject to the proviso that, where the importer requests it and the Comptroller agrees, the order of application of paragraphs 6 and 7 shall be reversed.

(3) Except as provided for in subparagraph (2), it is only when the customs value of imported goods cannot be determined under a particular paragraph that the provisions of the next paragraph in the sequence established by subparagraph (2) can be applied.

(4) Where the customs value of imported goods cannot be determined under paragraphs 3 to 7, inclusive the value shall -

- (a) be determined using reasonable means consistent with the principles and general provisions of this Schedule;
- (b) to the greatest extent possible, be based on previously determined customs values; and
- (c) make use of the methods of valuation laid down in paragraphs 3 to 7, inclusive, using, where necessary, reasonable flexibility in their application.

(5) No customs value shall be determined under subparagraph (4) on the basis of-

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- (a) the selling price in Trinidad and Tobago of goods produced in Trinidad and Tobago;
- (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 paragraph 7;
- (e) the price of goods for export to a country other than Trinidad and Tobago;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

Conditions for
customs value

3. (1) The customs value of imported goods determined under this paragraph shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to Trinidad and Tobago, adjusted in accordance with paragraph 8, and in appropriate cases paragraph 9, except that -
- (a) there are no restrictions as to the disposition or use of goods by the buyer or other restrictions which -
 - (i) are imposed or required by law or by the public authorities in Trinidad and Tobago;
 - (ii) limit the geographical area in which the goods may be resold; or

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(iii) do not substantially affect the value of the goods;

(b) 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) 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 paragraph 8; and

(d) 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 subparagraph (2).

(2) (a) For the purposes of subparagraph (1), in determining whether the transaction value is acceptable, the fact that the buyer and the seller are related within the meaning of paragraph 1 (2) shall not in itself be grounds for regarding the transaction value as unacceptable, but where necessary, 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 Comptroller has grounds for considering that the relationship influenced the price, he shall communicate the grounds to the importer who shall be given a reasonable opportunity to respond.

ACT 34/1996) "But where the value of identical or similar goods, which was utilized in determining the value in paragraph 3(2)(b) was subsequently adjusted, based upon discovery under section 23(2A), the value of the goods imported in a sale between related persons may also be adjusted in accordance with the adjusted value of the identical or similar goods";

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with subparagraph 1 whenever the importer

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demonstrates that such value closely approximates to one of the following, occurring at or about the same time -

- (i) the transaction value in sales, between buyers and sellers who are not related in any particular case of identical or similar goods for export to Trinidad and Tobago;
- (ii) the customs value of identical or similar goods, as determined under paragraph 6;
- (iii) the customs value of identical or similar goods, as determined under paragraph 7;

(3) In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in paragraph 8 and costs incurred by the seller in sales in which he and the buyer are related.

(4) The tests set forth in subparagraph 2(b) shall be used at the initiative of the importer and only for comparison purposes and substitute values may not be established under that subparagraph.

(5) 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. Payments may be made directly or indirectly, need not necessarily take the form of a transfer of money, and shall include -

- (i) all payments 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; and
- (ii) any settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

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(6) Activities, including marketing activities, undertaken by the buyer on his own account, other than those for which an adjustment is provided in paragraph 8, are not considered to be indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller, and their cost shall not be added to the price actually paid or payable in determining the customs value of imported goods.

(7) The customs value of imported goods 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) customs duties and other taxes payable in Trinidad and Tobago by reason of the importation or sale of the goods;
- (c) the cost of transport after importation.

DELETED BY
ACT 34/1996

(8) The fact that goods which are the subject of a sale are entered for home use within Trinidad and Tobago shall be regarded as adequate indication that they were sold for export to Trinidad and Tobago, and this indication shall also apply where successive sales of the goods have taken place before valuation. Where such successive sales have taken place each price resulting from them may be used as a basis for valuation.

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- Transaction value identical goods
4. (1) The customs value of imported goods determined under this paragraph shall be the transaction value of identical goods sold for export to Trinidad and Tobago and exported at or about the same time as the goods being valued but -
- (a) in applying this subparagraph, the transaction value of identical goods in a sale at the same ~~same~~ commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value;
- (b) where no such sale is found, the transaction value of identical goods sold at a different commercial level and in different quantities, adjusted to take account of differences attributable to commercial level and 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 value.
- (2) Where the costs and charges referred to in paragraph 8(1)(g) are included in the transaction value, and 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) In applying this paragraph -
- (a) if more than one transaction value of identical goods is found, the lower or lowest such value shall be used to determine the customs value of the imported goods;

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- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found for identical goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that such adjustment ~~shall~~ be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment.

(4) For the purposes of this paragraph the transaction value of identical imported goods means a customs value previously determined under paragraph 3, adjusted as provided for, in subparagraphs (1) (b) and (2) of this paragraph.

transaction value of similar goods

5. (1) The customs value of imported goods determined under this paragraph shall be the transaction value of similar goods sold for export to Trinidad and Tobago and exported at or about the same time as the goods being valued but

- (a) in applying this subparagraph, 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;
- (b) Where no such sale is found, the transaction value of similar goods sold at a different commercial level and in different quantities, adjusted to take account of differences attributable to commercial level and to quantity, shall be used, provided that such adjustments can be made on

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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 value.

(2) Where the costs and charges referred to in paragraph 8 (1) (g) 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) In applying this paragraph -

- (a) if 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;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under subparagraph 1 for similar goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that such adjustment shall be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment.

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(4) For the purposes of this paragraph, the transaction value of similar imported goods means a customs value previously determined under paragraph 3, adjusted as provided for in subparagraphs 1(b) and 2 of this paragraph.

Value based
on unit
price of
greatest
aggregate

6. (1) Where the imported goods or identical or similar imported goods are sold in Trinidad and Tobago in the condition as imported, the customs value of imported goods, determined under this paragraph, shall be based on the unit quantity price at which the imported goods or identical or similar imported goods are 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:
- (a) either the commissions usually paid or agreed to be paid or the additions usually made for profit, and general expenses including the direct and indirect costs of marketing the goods in question in connection with sales in Trinidad and Tobago of imported goods of the same class or kind;
 - (b) the usual costs of transport and insurance and associated costs incurred within Trinidad and Tobago; and
 - (c) the customs duties and other taxes payable in Trinidad and Tobago by reason of the importation or sale of the goods.

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(2) When 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 of imported goods determined under this paragraph shall, subject otherwise to the provisions of subparagraph 1(a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Trinidad and Tobago in the condition as imported, at the earliest date after the importation of goods being valued but before the expiration of ninety days after such importation.

(3) If neither the imported goods nor identical nor similar imported goods are sold in Trinidad and Tobago in the condition as imported, then where the Comptroller so decides, 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 Trinidad and Tobago 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. Where this method of valuation 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 and accepted industry formulas, recipes; methods of construction and other industry practices shall form the basis of the calculations.

(4) In this paragraph, the unit price at which imported goods or identical or similar imported goods are sold in the

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greatest aggregate quantity is 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.

(5) Any sale in Trinidad and Tobago 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 8(1)(b), shall not be taken into account in establishing the unit price for the purposes of this paragraph.

(6) For the purposes of subparagraph 1(a) -

(a) 'profit and general expenses' shall be taken as a whole, the figure for the purposes of this deduction being determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales 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; and

(b) in determining either the commissions or the additions usually made for profit and general expenses, the question whether certain goods are of the same class or kind as other goods shall be determined on a case-by-case basis by reference to the circumstances involved and in doing this, sales for which the necessary

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information can be provided of the narrowest group or range of imported goods of the same class or kind as the goods being valued should be examined;

(c) '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.

(7) For the purposes of paragraph (2), 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.

Computed
value.

7. (1) The customs value of imported goods determined under this paragraph shall be based on a computed value which 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 Trinidad and Tobago;

(c) the cost or value of the items referred to in paragraph 8(1)(g).

(2) The cost or value of materials and fabrication referred to in subparagraph 1(a) above shall include the cost of elements specified in paragraph 8(1) and the value duly apportioned, of any element specified in paragraph 8(1)(d) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods but the value of the elements specified

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in paragraph 8(1)(d)(iv) which are undertaken in Trinidad and Tobago shall be included only to the extent that such elements are charged to the producer, no cost or value of an element referred to in this subparagraph shall be counted more than once in determining the computed value.

(3) The 'cost or value' referred to in subparagraph 1(a) shall 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 shall be based upon the commercial accounts of the producer, provided that these accounts are consistent with the generally accepted accounting principle applied in the country where the goods are produced.

(4) For the purposes of subparagraph 1(b) -

(a) the 'amount for profit and general expenses' shall be taken as a whole and shall be determined on the basis of information supplied by or on behalf of the producer unless his 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 Trinidad and Tobago;

(b) if the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of the goods of the same class or kind referred to in subparagraph (a) 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;

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- (c) 'goods of the same class or kind' means goods imported from the same country as the goods being valued;
- (d) whether goods are 'of the same class or kind' as other goods shall be determined on a case-by-case basis with reference to the circumstances involved. In doing this, sales for export to Trinidad and Tobago of the narrowest group or range of goods of the same class or kind as the goods being valued for which the necessary information can be provided should be examined;
- (e) the 'general expenses' referred to cover the direct and indirect costs of producing and selling the goods for export which are not included under subparagraph 1(a).

Customs value includes certain charges

8. (1) In determining the customs value under paragraph 3, there shall be added to the price actually paid or payable for the imported goods 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 -

- (a) commission and brokerage, except buying commission;
- (b) the cost of containers which are treated as being one for customs purposes with the goods in question;
- (c) the cost of packing, whether for labour or materials;
- (d) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of

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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 Trinidad and Tobago and necessary for the production of the imported goods;
- (e) royalties and licence fees, which among other things, may include payments in respect of patents, trademarks and copyrights, 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;
- (f) 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;

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(g) the cost of transport of the imported goods to the port or place of importation, the loading and handling charges associated with the transport of the imported goods to the port or place of importation, and the cost of insurance.

(2) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this paragraph.

(3) Additions to the price actually paid or payable shall be made under this paragraph only on the basis of objective and quantifiable data and if such do not exist a transaction value shall not be determined under the provisions of paragraph 3.

(4) In this paragraph, the term 'buying commissions' means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

(5) Notwithstanding subparagraph 1(c) -

(a) charges for the right to reproduce the imported goods in Trinidad and Tobago shall not be added to the price actually paid or payable for the imported goods in determining the customs value; and

(b) 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 Trinidad and Tobago of the goods.

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Charges for
interest
not included

9. (1) Charges for interest under a financing arrangement entered into by the buyer and related to the purchase of imported goods shall not be included in the customs value determined under paragraph 3 except that:

(a) the charges are distinguished from the price actually paid or payable for the goods;

(b) the financing arrangement has been made in writing;

(c) where required by the Comptroller, the buyer can demonstrate that -

(i) such goods are actually sold at the price declared as the price actually paid or payable; and

(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.

(2) The provisions of subparagraph (1) shall apply whether or not the finance is provided by the seller, a bank or another person; and it shall also apply, mutatis mutandis, where customs value is determined under a method other than the transaction value.