

# ORGANISATION MONDIALE DU COMMERCE

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Comité de l'évaluation en douane

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## NOTIFICATION AU TITRE DE L'ARTICLE 22 DE L'ACCORD SUR LA MISE EN ŒUVRE DE L'ARTICLE VII DE L'ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS ET LE COMMERCE DE 1994

TANZANIE

La communication ci-après, datée du 23 octobre 2006, est distribuée à la demande de la délégation de la Tanzanie.

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Comme tous les Membres de l'OMC sont tenus de le faire, nous notifions<sup>1</sup> la législation de notre pays concernant la mise en œuvre de l'article VII du GATT de 1994 et sa réponse à la Liste de questions de l'Organisation. Comme vous vous le rappellerez peut-être, notre Direction des douanes et de l'accise a commencé à appliquer l'Accord sur l'évaluation en douane le 1<sup>er</sup> janvier 2001. À cet égard, nous vous adressons donc ci-joint les textes correspondant aux quatre documents suivants:

- i) Notification au titre de l'article 22 de l'Accord sur la mise en œuvre de l'article VII du GATT.
  - ii) Renseignements concernant l'application et l'administration de l'Accord sur l'évaluation en douane.
  - iii) Notification au titre des Décisions A.3 et A.4 concernant l'interprétation de l'Accord sur la mise en œuvre de l'article VII du GATT de 1994.
  - iv) Notification au titre du paragraphe 2 de l'Annexe III de l'Accord sur la mise en œuvre de l'article VII du GATT de 1994.
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<sup>1</sup> En anglais seulement.

## PART IV

### THE AMENDMENT OF THE EAST AFRICAN CUSTOMS AND TRANSFER TAX MANAGEMENT ACT, E.A. CAP. 27

Construction and commencement E.A. Cap. 27	9. This Part shall be read as one with the East African Customs and Transfer Tax Management Act, and shall come into operation on the First day of January, 2001
Repeal and replacement of section 108 "Determination of value of goods liable to <i>ad valorem</i> import duty	<p>10. The principal Act is amended by repealing section 108 and replacing it with the following new section:</p> <p>"<b>122.</b>(1) Where imported goods are liable to import duty <i>ad valorem</i>, then the value of such goods shall be determined in accordance with the Fourth Schedule and import duty shall be paid on that value.</p> <p>(2) Upon written request, the importer shall be entitled to an explanation in writing from the proper officer as to how the customs value of the importer's goods was determined.</p> <p>(3) Where, in the course of determining the customs value of imported goods, it becomes necessary for the customs to delay the final determination of such customs value, the delivery of the goods shall, at the request of the importer, be made:</p> <p style="padding-left: 40px;">Provided that before granting such permission the proper officer may require the importer to provide sufficient guarantee in the form of a surety, a deposit or some other appropriate security as the proper officer may determine, to secure the ultimate payment of customs duties for which the goods may be liable.</p> <p>(4) Nothing in the Fourth Schedule shall be construed as restricting or calling into question the rights of the proper officer to satisfy himself or herself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes."</p> <p>(5) The Council shall publish in the Gazette judicial decisions and administrative rulings of general application giving effect to the Fourth Schedule.</p> <p>(6) In applying or interpreting this section and the provisions of the Fourth Schedule due regard shall be taken of the decisions, rulings, opinions, guidelines, and interpretations given by the Directorate, the World Trade Organization or the Customs Cooperation Council.</p> <p>(7) The rate of exchange to be used for determining the equivalent of a Partner State currency of any foreign currency shall be the selling rate last notified by the Central Bank of the respective Partner State when an entry is presented to and accepted by the proper officer.</p>

## "FOURTH SCHEDULE"

### PART I

#### Value of imported goods liable to *ad valorem* import duty

**1. (1) In this Schedule:**

"customs value of imported goods" means the value of goods for the purposes of levying *ad valorem* duties of customs on imported goods;

"identical goods" means goods which are 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;

"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.

"identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, art-work, design work, and plans and sketches for which no adjustment has been made under sub-paragraph (1)(b)(iv) or paragraph 9 because such elements were undertaken in the Partner States;

"produced" includes grown, manufactured and mined;

**(2) For the purposes of this Schedule:**

- (a) Goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued.
- (b) Goods produced by different persons 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) For the purposes of this Schedule, 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 have an employer and employee relationship;
  - (d) any person directly or indirectly owns, controls or holds five percent 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 control a third person; or
  - (h) they are members of the same family.
- (4) A person who associates with another person in business, such that one is the sole agent, distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Schedule if they fall within the criteria of sub-paragraph 3.

## TRANSACTION VALUE

2.(1) The customs value of imported goods shall be the transaction value, which is the price actually paid or payable for the goods when sold for export to the Partner State adjusted in accordance with the provisions of paragraph 9, but where:

- (a) 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 Partner State;
    - (ii) limit the geographical area in which the goods may be resold; or
    - (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 the provisions of paragraph 9; 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 the provisions of subparagraph (2).
- (2)(a) In determining whether the transaction value is acceptable for the purposes of subparagraph (1), the fact that the buyer and the seller are related within the meaning of paragraph (1) shall not in itself be a ground 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 proper officer has grounds for considering that the relationship influenced the price, he shall communicate his grounds to the importer and such importer shall be given a reasonable opportunity to respond and where the importer so requests, the communication of the grounds shall be in writing;
- (b) In the sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of subparagraph (1) whenever the importer demonstrates that such value closely approximates to one of the following accruing at or about the same time:
- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the Partner State;
  - (ii) the customs value of identical or similar goods as determined under the provisions of paragraph 6;
  - (iii) the customs value of identical or similar goods as determined under the provisions of paragraph 7.

Provided that, in applying the provisions under subparagraph (2)(a) and (b) of this paragraph, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in paragraph 9 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.

The tests set forth in subparagraph (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 subparagraph (2)(b).

#### TRANSACTION VALUE OF IDENTICAL GOODS

- 3.** (1)(a) Where the customs value of the imported goods cannot be determined under the provisions of paragraph 2, the customs value shall be the transaction value of identical goods sold for export to the Partner State and exported at or about the same time as the goods being valued;
- (b) In applying the provisions of this paragraph, 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 and where no such sale is found, the transaction value of identical goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level 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 decrease in the value;
- (2) Where the costs and charges referred to in paragraph 9(2) 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) Where in applying the provisions of this paragraph, 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.

#### TRANSACTION VALUE OF SIMILAR GOODS

- 4.**(1)(a) Where the customs value of the imported goods cannot be determined under the provisions of paragraphs 2 and 3, the customs value shall be the transaction value of similar goods sold for export to the Partner State and exported at or about the same time as the goods being valued;
- (b) In applying this paragraph, 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 subparagraph (2) of paragraph 9 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) Where, in applying the provisions this paragraph, 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.

## REVERSAL OF ORDER OF APPLICATION OF DEDUCTIVE VALUE AND COMPUTED VALUES

5. Where the customs value of the imported goods cannot be determined under the provisions of paragraphs 2, 3 and 4, the customs value shall be determined under the provisions of paragraph 6 or, when the customs value cannot be determined under that paragraph, under the provisions of paragraph 7 save that, at the request of the importer the order of application of paragraphs 6 and 7 shall be reversed.

### DEDUCTIVE VALUE

6.(1)(a) Where the imported goods or identical or similar imported goods are sold in the Partner State in the condition as imported, the customs value of the imported goods under the provisions of this paragraph 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 the 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 Partner State;
- (iii) where appropriate, the costs and charges referred to in paragraph 9(2) ; and
- (iv) the customs duties and other national taxes payable in the Partner State by reason of importation or sale of the goods;

(b) Where 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 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 the Partner State 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) Where neither the imported goods nor identical nor similar imported goods are sold in the Partner State 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 Partner State 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 subparagraph (1)(a).

### COMPUTED VALUE

7.(1) The customs value of imported goods under the provisions of 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 the Partner State;
- (c) the cost or value of all other expenses necessary to reflect the costs added under paragraph 9(2).

(2) A person who is not resident in the Partner State may be required to or compelled 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 paragraph may be verified in another country by a proper officer with the agreement of the producer and provided sufficient advance notice is given to the government of the country in question and the latter does not object to the investigation.

#### FALL BACK VALUE

**8.(1)** Where the customs value of the imported goods cannot be determined under the provisions of paragraphs 2, 3, 4, 5, 6, and 7, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in the Partner State.

(2) Customs value shall not be determined under the provisions of this paragraph on the basis of:

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

(3) Where the importer so requests, he or she shall be informed in writing of the customs value determined under the provisions of this paragraph and the method used to determine such value.

#### ADJUSTMENTS TO VALUE

**9.(1)** In determining the customs value under the provisions of paragraph 2, there shall be added to the price actually paid or payable for the imported goods as follows:

(a) 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) the 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 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 as follows:

- (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 Partner State 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 determining the value for duty purposes of any imported goods there shall be added to the price actually paid or payable for the goods:
- (a) the cost of transport of the imported goods to the port or place of importation into the Partner State; provided that in case of imports by air no freight costs shall be added to the price paid or payable;
  - (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation into the Partner State; and
  - (c) the cost of insurance.
- (3) Additions to the price actually paid or payable shall be made under this paragraph only on the basis of objective and quantifiable data.
- (4) Additions shall not be made to the price actually paid or payable in determining the customs value except as provided in this paragraph.

## **PART II**

### **INTERPRETATIVE NOTES**

#### ***General Notes***

#### **Sequential Application of Valuation Methods**

1. Paragraphs 2, 3, 4, 5, 6, 7 and 8 define how the customs value of imported goods is to be determined under the provisions of this Schedule. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in paragraph 2 and imported goods are to be valued in accordance with the provisions of this paragraph whenever the conditions prescribed therein are fulfilled.
2. Where the customs value cannot be determined under the provisions of paragraph 2, it is to be determined by proceeding sequentially through the succeeding paragraphs to the first such paragraph under which the customs value can be determined. Except as provided in paragraph 5, it is only when the customs value cannot be determined under the provisions of a particular paragraph that the provisions of the next paragraph in the sequence can be used.
3. Where the importer does not request that the order of paragraphs 6 and 7 be reversed, the normal order of the sequence is to be followed, and if the importer does so request but it then proves impossible to determine the customs value under the provisions of paragraph 7, the customs value shall be determined under the provisions of paragraph 6, if it can be so determined.
4. Where the customs value cannot be determined under the provisions of paragraphs 2, 3, 4, 5, 6 and 7 it is to be determined under the provisions of paragraph 8.

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

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within the Partner State 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 Schedule, the proper officer shall utilize information prepared in a manner consistent with generally accepted accounting principles in the Partner State which is appropriate for the paragraph in question. For example, the determination of usual profit and general expenses under the provisions of paragraph 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the Partner State. On the other hand, the determination of usual profit and general expenses under the provisions of paragraph 7 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 9(1)(b)(ii) undertaken in the Partner State would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of the Partner State.

***Note to Paragraph 1***

*Sub-paragraph 3(e)*

For the purposes of this Schedule, 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.

*Sub-paragraph 4*

For the purpose of paragraph 1, the term "person" includes a legal person, where appropriate.

***Note to Paragraph 2***

*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 paragraph 9, are not considered to be an indirect payment to the seller 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 Partner State;

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.

*Sub-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.

*Sub-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 Partner State shall not result in rejection of the transaction value for the purposes of paragraph 2.

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.

*Sub-paragraph (2)*

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

2. Sub-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 proper officer has no doubts about the acceptability of the price, it should be accepted without requesting further information from the owner. For example, the proper officer 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 proper officer is unable to accept the transaction value without further inquiry, it should give the owner 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 proper officer 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 paragraph 1, 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. Sub-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 proper officer and is therefore acceptable under the provisions of paragraph (2). Where a test under sub-paragraph (2)(b) is met, it is not necessary to examine the question of influence under paragraph (2)(a). If the proper officer has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in sub-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 sub-paragraph (2)(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

*Sub-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 sub-paragraph (2)(b) of paragraph 2.

***Note to Paragraph 3***

1. In applying paragraph 3, the proper officer 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 paragraph 3, the transaction value of identical imported goods means a customs value, adjusted as provided for in sub-paragraphs (1)(b) and (2), which has already been accepted under paragraph 2.

5. A condition for adjustment because of different commercial level 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 paragraph 3 is not appropriate.

***Note to Paragraph 4***

1. In applying paragraph 4, the proper officer 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 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 paragraph 4, the transaction value of similar imported goods means a customs value, adjusted as provided for in sub-paragraphs (1)(b) and (2), which has already been accepted under paragraph 2.

5. A condition for adjustment because of 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 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 paragraph 4 is not appropriate.

***Note to Paragraph 6***

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.

Sale Quantity	Unit Price	Number of Sales	Total Quantity Sold at each Price
1-10 units	100	10 sales of 5 units 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 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

Sale Quantity	Unit Price
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

Total Quantity Sold	Unit Price
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 partner state, as described in sub-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 sub-paragraph 1(b) of paragraph 9, should not be taken into account in establishing the unit price for the purposes of paragraph 6.

6. It should be noted that "profit and general expenses" referred to in sub-paragraph (1) of paragraph 6 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 Partner State 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 owner.

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 6(1)(a)(iv) shall be deducted under the provisions of paragraph 6(1)(a)(i).

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 6(1) 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 Partner State 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 paragraph 6, "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 6(1)(b), 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 6(2) 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 practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in paragraph 6(2) 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 Partner State 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.

***Note to paragraph 7***

1. As a general rule, customs value is determined under this schedule on the basis of information readily available in the Partner State. 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 Partner State. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the Partner State. 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 Partner State the necessary costing and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in paragraph 7(1)(a) is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf 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 of value" shall include the cost of elements specified in subparagraphs 9(1)(a)(ii) and (iii). It shall also include the value, apportioned as appropriate under the provisions of the relevant note to paragraph 9, of any element specified in paragraph 9 (1)(b) 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 9(1)(b)(iv) which are undertaken in the Partner State 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 7(1)(b) 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 exportations for export to the Partner State.

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 Partner State 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 Partner State 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 a Partner State, 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 proper officer 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.

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

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 paragraph 7, sales for export to the Partner State 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 paragraph 7, "goods of the same class or kind" must be from the same country as the goods being valued.

#### ***Note to Paragraph 8***

1. Customs values determined under the provisions of paragraph 8 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under paragraph 8 should be those laid down in paragraphs 2, 3, 4, 5, 6 and 7 but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of paragraph 8.

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 paragraphs 6 and 7 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 paragraphs 6 and 7 could be used.
  - (c) Deductive methods – the requirement that the goods shall have been sold in the "condition as imported" in paragraph 6(1)(a) could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

### ***Note to Paragraph 9***

#### *Sub-paragraph (1)(a)(i)*

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

#### *Sub-paragraph (1)(b)(ii)*

1. There are two factors involved in the apportionment of the elements specified in paragraph 9(1)(b)(ii) 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 proper officer to apportion the value of the mould, over 1,000 units, 4,000 units or 10,000 units.

#### *Sub-paragraph (1)(b)(iv)*

1. Additions for the elements specified in paragraph 9(1)(b)(iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and proper officer 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. It is possible for example, that a firm which imports a variety of products from several countries maintains the records of its design centre outside the Partner State 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 paragraph 9.

5. In another case, a firm may carry the cost of the design centre outside the Partner State as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of paragraph 9 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 Partner State.

#### *Sub-paragraph (1)(c)*

1. The royalties and licence fees referred to in paragraph 9(1)(c) may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the Partner State 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 Partner State of the imported goods.

#### *Sub-paragraph 3*

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of paragraph 9, the transaction value cannot be determined under the provisions of paragraph 2. 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.

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