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Committee on Customs Valuation

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**NOTIFICATION UNDER ARTICLE 22 OF THE AGREEMENT ON
IMPLEMENTATION OF ARTICLE VII OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE 1994**

MONTENEGRO

The following submission, dated 17 November 2014, is being circulated at the request of the delegation of Montenegro.

In accordance with the Decision of the Committee on Customs Valuation of 12 May 1995, Montenegro hereby notifies the Committee on Customs Valuation of the legislation relevant to customs valuation.

Please find attached the following:

1. Customs Law - Title II - Chapter 3: Value of the Goods for the Customs purposes; and
 2. Decree on Implementation of the Customs Law- Part 4: Customs Valuation of Goods.
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CUSTOMS LAW - excerpt

Official Gazette Nos. 7/02, 38/02, 72/02, 21/03, 31/03, 29/05, 66/06, 21/08 and 62/13

**TITLE II
CHAPTER 3
VALUE OF GOODS FOR CUSTOMS PURPOSES**

Article 29

The provisions of this Chapter shall establish the customs value of the goods for the purposes of application of the customs tariff as well as non-tariff measures laid down by the rules of Montenegro governing certain fields related to trade in goods.

Article 30

The customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods sold for export to Montenegro and increased as set forth in the Article 38 of this Law, provided:

- 1) That there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which:
 - Are defined by regulations in force in Montenegro, or based on by-laws adopted on the basis of those regulations;
 - Limit the geographical area in which the goods may be resold; or
 - Do not substantially affect the value of the goods.
- 2) That the sale or price are not subject to conditions or restrictions for which a value cannot be determined with respect to the goods being valued;
- 3) That no part of the proceeds of any subsequent resale, disposal or use of the goods will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 37 of this Law;
- 4) That the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes.

Two persons shall be considered related in the cases where:

- 1) One person is a manager or director of a company owned by the other person and vice versa;
- 2) They are legally recognized as business partners;
- 3) They are in an employer-employee relationship;
- 4) One of them is a direct or indirect owner, or controls or owns 5% or more of voting shares in both companies;
- 5) One person, in direct or indirect manner, controls another, i.e. when one of these persons is legally or actually in position to force limitations or to manage other person;
- 6) They are under direct or indirect supervision of a third party;
- 7) They jointly supervise a third party directly or indirectly; or
- 8) They are members of the same family.

Where one person is the other person's exclusive representative, exclusive dealer or exclusive concessionaire, irrespective of the description of their relationship, those persons shall be considered related.

In determining whether the transaction value is acceptable as set forth in paragraph 1 of this Article, the circumstance that the buyer and seller are related persons referred to in paragraph 2 of this Article shall not represent sole grounds for not accepting the pertinent transaction value.

In the case referred to in paragraph 4 of this Article the customs house shall determine the sale circumstances and accept the transaction value, provided that the existing related status did not influence the price.

If, in the light of the information provided by the importer or otherwise, the customs house has grounds for considering that the existing related status influenced the price, they shall communicate their grounds to the importer and he shall be given opportunity to respond as to the nature of his business relationship. At the request of the importer, the customs house shall in writing communicate to him the grounds due to which the transaction value was not accepted.

In case of sale between related persons, the transaction value shall be considered acceptable and the goods valued, as referred to in paragraph 1 of this Article, wherever the importer can prove that such value closely approximates to one of the following, occurring at or about the same time:

- 1) The transaction value in sales, between buyers and sellers who are not related, of identical or similar goods intended for export to Montenegro;
- 2) The customs value of identical or similar goods as determined under Article 35 of this Law;
- 3) The customs value of identical or similar goods as determined under Article 36 of this Law.

In conducting the comparison, due account shall be taken of demonstrated differences in commercial levels, of quantity levels, the appropriate amounts determined in Article 38 of this Law, and costs incurred by the seller in sales where the seller and the buyer are not related, and which are not present in sales where the seller and the buyer are related.

The comparison is to be carried out at the request of the importer and only for comparison purposes in determining the transaction value, and such value cannot represent the transaction value.

Article 31

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

The payment may be made by cash money, letters of credit or other negotiable instrument of payment.

The payment may be made directly or indirectly.

Activities undertaken by the buyer on his own account, including also marketing activities not referred to in Article 38 of this Law, for which an adjustment of value is to be made, shall not be considered as an indirect payment to the seller, even when they may be regarded as undertaken for the benefit of the seller or by agreement with the seller, and their cost shall not be added to the price actually paid or payable in determining the customs value.

Article 32

Where the customs value of imported goods cannot be determined on the basis of Article 30 of this Law, it is to be determined as the transaction value of identical goods sold for export to Montenegro and exported at or about the same time and sold on the same commercial grounds and in approximately the same quantity as the goods being valued.

Where it is impossible to find an adequate example of sales as referred to in paragraph 1 of this Article, the transaction value of identical goods sold on different commercial grounds or in different quantities shall apply, after the necessary adjustments of the differences arising from commercial grounds or quantities, provided that such adjustments can be made on the basis of the evidence produced which clearly demonstrates the adequacy and accurateness of the adjustment, irrespective of whether the adjustment increases or reduces the value.

Where the transaction value includes costs and charges referred to in the Article 38 paragraph 1 item 1), indents 4, 5, and 6 of this Law, the adjustment shall take into account the difference in such costs and prices between the imported goods and identical goods which may derive from differences in distances and means of transport.

Where, in application of this Article, it is established that there is more than one transaction value for the identical goods, the lowest of the existing values shall be applied in determining the customs value.

Article 33

Where the customs value of imported goods cannot be determined as set forth in Articles 30 and 32 of this Law, the transaction value of similar goods sold for export to Montenegro shall be considered as the customs value if the goods are exported at or about the same time as the goods being valued.

In the implementation of this Article, the transaction value of similar goods sold on the same commercial grounds and in approximately the same quantity as the goods being valued shall be used in determining the customs value.

Where it is impossible to find an adequate example of sales referred to in paragraph 2 of this Article, the transaction value of similar goods sold on different commercial grounds or in different quantities shall apply, after the necessary adjustments of the differences arising from commercial grounds or quantities, provided that such adjustments can be made on the basis of the evidence produced which clearly demonstrates the adequacy and accurateness of the adjustment, irrespective of whether the adjustment increases or reduces the value.

Where the transaction value includes costs and charges referred to in the Article 38, paragraph 1 item 1), indents 4, 5, and 6 of this Law, the adjustment shall take into account the difference in such costs and prices between the imported goods and similar goods which may derive from differences in distances and means of transport.

Where, in the application of this Article, it is established that there is more than one transaction value of the similar goods, the lowest of the existing values shall be applied in determining the customs value.

Article 34

Where the customs value of imported goods cannot be determined as set forth in Articles 30, 32 and 33 of this Law, it is to be determined as laid down in Article 35 of this Law.

Where the customs value cannot be determined under Article 35 of this Law either, the provisions of Article 36 of this Law shall apply, and at the request of the importer, the order of application of Articles 35 and 36 of this Law may be reversed.

Article 35

If the same or identical or similar goods are sold in Montenegro in the same state it was imported, the customs value of the goods evaluated shall be established according to the unit price per which that goods or identical or similar goods is being sold in greatest total quantity in the same or approximately similar timeframe as the goods evaluated, namely to the persons linked to the persons buying those goods, providing that the price is decreased for the amount of:

- 1) An amount of commission usually paid or payable, or an amount usually added for profit and general expenses equal to that usually present in sales within Montenegro of imported goods of the same class or kind,
- 2) The usual charges for transport, insurance and other related costs incurred within Montenegro,
- 3) Customs duties, taxes and other charges payable in Montenegro at importation or sale of the goods.

In case that imported or identical or similar goods are not sold at or about the same time as the time of import of goods being valued, the customs value shall be based on unit price at which imported or identical or similar goods are sold within Montenegro in the same state as that in which they were imported and within the shortest possible period after the importation of the goods being valued, but not later than 90 days from the import date.

In case that imported goods, identical or similar goods are not sold within Montenegro in the same state as that in which they were imported, then, at the importer's request, the customs value of the goods shall be based on unit price at which the imported goods, upon subsequent processing are sold in the greatest aggregate quantity to persons in Montenegro who are not related to the sellers of such goods, provided that the valuation takes into account the processing value added to the goods, and the reductions laid down in paragraph 1 of this Article.

Article 36

Pursuant to the provisions of this Article, the customs value of imported goods shall be based on the calculated value, consisting of the sum of:

- a) The value of materials and cost of production or other treatments 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 Montenegro;
- c) All costs and charges set forth in Article 38, paragraph 1, item 1), indents 4, 5 and 6 of this Law.

No person permanently established or residing in the territory of Montenegro shall be requested to enable inspection or allow access to any of his accounts or other records for the purpose of determining the calculated value.

For the purposes of determining the customs value in another country, the customs service authority may, with the permission of the manufacturer of goods, verify the information received from him, provided that the government of the country concerned is timely notified and does not object the verification.

Article 37

The customs value of imported goods that cannot be determined under the provisions of Articles 30 to 36 of this Law shall be determined on the basis of data available in Montenegro, applying appropriate methods in accordance with the principles and main provisions of:

- Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade of 1994;
- Article VII of the General Agreement on Tariffs and Trade;
- This Chapter of the Law.

Pursuant to this Article, no customs value shall be determined on the basis of:

- 1) The selling price for goods produced in Montenegro;
- 2) A system which provides for the acceptance for customs purposes of the higher of two possible values;
- 3) The price of goods on the domestic market of the exporting country;
- 4) The production costs, except for calculated value determined for identical or similar goods in accordance with the provisions of Article 36 of this Law;
- 5) The price of goods intended for export to another country, and not for the market of Montenegro;
- 6) Officially determined minimum customs value; and
- 7) Arbitrary or fictitious values.

At the importer's request, the customs authority shall notify him of the customs value determined pursuant to the provisions of this Article and of the method used to determine the value.

The information on customs value and method used for its establishing mentioned in Paragraph 3 herein shall be issued in the form of resolution, against which a complaint may be filed according to the Article 8 herein.

Article 38

In determining the customs value, in accordance with Article 30 of this Law, to the price actually paid or payable (transaction value) for the imported goods the following shall be added:

- 1) The costs, to the amount borne by the buyer, not included in the price actually paid or payable for the goods, of the following:
 - Commissions and brokerage, except buying commission;
 - Packaging treated as being integral part of the goods in question for customs purposes;
 - Packing, whether for labour or materials;
 - Transport of imported goods to the port or the place of introduction into the customs area of Montenegro;
 - Loading, unloading and handling pertaining to the transport of the imported goods to the port or the place of introduction into the territory of Montenegro;
 - The cost of insurance before the introduction of imported goods into the territory of Montenegro;
- 2) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at a reduced price, for use in production and sale of imported goods for export, to the extent that such value has not been included in the price actually paid or payable:
 - Materials, components and similar items incorporated into imported goods;
 - Tools, dies, moulds, casts and similar items used in the production of the imported goods;
 - Other materials consumed in the production of imported goods;
 - Engineering, development, artwork services, design work, and plans and sketches undertaken elsewhere than in Montenegro and necessary for the production of imported goods,
- 3) Royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, provided that such royalties and license fees are not included in the price actually paid or payable;
- 4) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

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

No other additions shall be made to the price actually paid or payable in determining the customs value, save those set forth in this Article.

In determining the customs value, the following shall not be added to the price actually paid or payable:

- 1) Charges for the right to reproduce the imported goods;
- 2) Payments made by the buyer for the right to distribute or resell the imported goods, if such payments are not a condition for the sale for export to Montenegro.

Article 39

Provided that they are shown separately from the price actually paid or payable, the following costs shall not be included in the customs value:

- 1) The transport of goods after their introduction into the customs territory;
- 2) Construction, mounting, assembling, maintenance or technical assistance, to be undertaken after the importation, e.g. of industrial plants, machinery or equipment;

- 3) Interests under a financial arrangement entered into by the buyer and relating to the purchase of imported goods, irrespective of whether the finance is provided by the seller or another person, provided that the financial arrangement has been made in writing and, where required, the buyer can demonstrate that:
- Such goods have been sold at the price actually paid or payable;
 - The 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,
- 4) The right to reproduce imported goods;
- 5) Buying commissions;
- 6) Import duties or other charges payable in Montenegro by reason of the importation or sale of the goods.

Article 40

The customs value of goods, for which the contracted price has not yet been paid at the time of determination of the customs value, shall be determined on the basis of a price payable towards the fulfilment of the obligation.

All usual price reductions and cash discounts shall not be included in the customs value if they were contracted before the importation and effected within the period laid down.

Article 41

The customs value of the goods not sold for export to Montenegro and the customs value of temporarily imported goods shall be determined under Articles 32 through 37 of this Law.

The customs value of the goods damaged before being released to the declarant shall be determined by reducing the relevant contracted price by a percentage in which it was damaged.

The customs house shall estimate the percentage of the damage.

Where a new price, corresponding to the conditions provided in Article 30 of this Law, was contracted during the customs procedure, that price shall represent the new customs value.

If the goods imported according to the lease or leasing arrangement the customs value cannot be established according to the provisions of Paragraph 1 herein and for which no purchase option is defined within the contract, the customs value shall be the amount of lease fee to be paid for the duration of lease period or leasing, increased, if necessary, according to the Article 38 herein.

If, after marketing the goods the marketer had decreased real paid price or price to be paid, such decreased price shall be taken into account when determining the customs value, according to the Article 30 herein, providing that the customs authority establishes that:

- 1) The goods had deficiencies in the time of declaration accepting for marketing;
- 2) The marketer had decreased the price regarding execution of warranty obligation prescribed by the contract on goods sales signed before the goods was marketed;
- 3) Goods deficiency was not considered when signing the goods sales contract.

Price paid or to be paid is, according to the Paragraph 6 herein decreased, and it may be considered when establishing the customs value if the change had occurred no later than 12 months since the day of declaration acceptance for marketing the goods.

Article 42

Where in determining the customs value of imported goods it is necessary to postpone the final determination of the customs value, the goods may be released to the declarant provided that the payment of customs duties is secured in the form of a deposit in the amount of a probable customs debt.

Article 43

In determining the customs value of data carrier bearing data or program instructions for use of data processing equipment (hereinafter referred to as: program support), the price or value of the program support shall not be included in the customs value provided that the price or value is shown separately from the value of the carrier media for use in data processing.

The expression "data carrier" referred to in paragraph 1 of this Article shall not mean included systems, semiconductors and similar devices or products incorporating such systems or devices.

The expression "data and program instructions" referred to in paragraph 1 of this Article, shall not mean audio, cinematographic or video recordings.

Article 44

In the customs procedure, the customs house may request the declarant to produce all the requisite documents and information necessary for determining the customs value as provided for in Articles 30 to 37 of this Law.

No provision of this chapter shall restrict the right of the customs house to establish whether any statement, document or declaration submitted for the determination of the customs value is accurate and correct.

The provisions of this chapter shall be without prejudice to the specific provisions of this Law regarding the determination of the customs value for goods released for free circulation after being assigned a different customs-approved treatment or use.

The Director General of the Customs Administration may lay down a simplified procedure for determining the customs value of perishable goods.

Provisions of this Chapter shall not exclude applications of provisions of this Law for establishing the customs value for the goods which were, after the second granted customs procedure or its use, marketed.

Article 44a

Information and data necessary for validation and checking of customs value of goods, having a classified nature or obtained on a classified basis, shall be considered to be an official secret and the customs authority must not further communicate it, without prior consent of a person or authorized bodies who revealed it, except in cases where a Court requires it to be revealed.

Article 45

Where the procedure of determining the customs value calls for conversion of foreign currency into the currency used as means of payment in Montenegro, the foreign currency shall be converted in accordance with the official exchange rate in effect on the day the customs debt is chargeable.

DECREE ON IMPLEMENTATION OF CUSTOMS LAW - excerpt

Official Gazette Nos. 15/03, 81/06 and 38/08

**PART 4
CUSTOMS VALUATION OF GOODS
Chapter 1****Article 68**

(1) Value of goods for customs purposes (hereinafter: customs value) is the transaction value in accordance with Article 30 of the Customs Law. It is deemed to be, when the goods for export are sold to be imported in the customs territory, the agreed, actually paid, or payable price, which meets the conditions referred to in Article 30 para 1 of the Customs Law and which is to be determined in accordance with Article 38 of the Customs Law.

(2) If it impossible to determine customs value in accordance with Article 30 of the Customs Law, customs value shall be determined in accordance with the steps provided in Article 31 to 37 of the Customs Law.

(3) For the purposes of determining, in accordance with Article 30 of the Customs Law, the customs value of the goods whose price was agreed at the time that is the proper time for valuation and such price has not been paid, the price routinely taken into account shall be the price which should be paid in order to meet the obligation.

**Article 69
(Definitions)**

(1) For the purpose of this chapter, the terms shall mean as follows:

1. "Derived goods" – the goods that are produced in agriculture, the goods that are produced or derived through excavation;
2. "Identical goods" – the goods which have been derived in the same country and which are in all aspects identical, including physical properties, quality and product reputation. Any minor discrepancies in appearance of the goods shall have no impact on deeming the goods identical, if the goods are so deemed in accordance with this definition of the identical goods;
3. "Similar goods" – the goods derived in the same country and having, although they are not identical in all aspects, equal properties and equal material composition, which provide for serving the same function and serving as a substitute for the requirements of trade. When determining whether some goods are identical or not, the quality and reputation of the goods, as well as the existence of the trademark should be, *inter alia*, taken into account;
4. "Goods of a kind or group of products" – the goods belonging to the same group or cluster of goods, produced by an industry or an industrial sector, including the identical or similar goods;
5. "Identical good" or "Similar goods" – not including the goods containing the technologies, development services, plans, drawings and sketches, for which the adjustment in accordance with Article 38 para 1 item 2 of the Custom Law has not been made because the services have been provided in Montenegro.

**Article 70
(Division of value in the event of partial shipments or in partial loss or damage of a shipment)**

(1) When a part of a larger shipment is, within a sole transaction with the purchased goods, declared for placement into free circulation, it is, in accordance with Article 30 para 1 of the Customs Law, actually paid or payable price, such part of the total price which corresponds to the difference between the quantity of declared goods and total quantity of purchased goods.

(2) Proportionate division of the actually paid or payable price should be made before placement into free circulation, when the goods, which is the subject of evaluation, is partially lost or damaged.

Article 71
(Taking into account duties payable in foreign countries)

When actually paid or payable price for the goods whose value is being determined includes the amount of national duties of the country of origin or country of export, such amount shall not be included in the customs value of the goods, if the customs authority is supplied evidence that the goods were or shall be exempted from such duties in favour of the buyer.

Article 72

(1) In application of Article 30 of the Customs Law it shall be deemed that the goods are sold for export to be imported in customs territory, if such goods are declared for placement into free circulation in Montenegro. In the event the goods have been repeatedly sold before determination of the customs value, only the last sale before entry of the goods to the customs territory may be taken into account, namely the last sale in the customs territory that was made before the goods that were subject to valuation have been placed into free circulation.

(2) For the purposes of applying para 1 of this Article, Articles 64, 96 to 99 of this Decree shall be applied.

(3) If, between the sale and placement into free circulation, the goods are used abroad, it shall not be required to use the transaction value as the customs value.

(4) The buyer need not meet any conditions other than to be a party to the purchase/sale contract.

Article 73

When checking whether there are any restrictions as referred to in Article 30 para 1 item 1 of the Customs Law, the sale/purchase deal in question should be considered.

Article 74

(1) If, when determining customs value in accordance with Article 30 para 1 of the Customs Law, the customs authority finds that the sale/purchase deal or the price of imported goods is subject to the conditions or liabilities whose value is impossible to determine for the imported goods, such value shall be deemed to be indirect payment of the buyer to the seller and thus, a part of the actually paid or payable price.

(2) Para 1 of this Article shall not apply if the conditions and liabilities are with regard to:

- a. Business activities carried out by the buyer for his own account, including the business activities related to further sale of the imported goods, in accordance with Article 75 of this Decree, with the exception of those for which the adjustment is made in accordance with Article 38, or Article 21, of the Customs Law even though they incur gain for the seller or were subject to the agreement between the buyer and the seller. When determining the customs value, the costs of such business activities shall not be included in the actually paid or payable price.
- b. Value of the services which in accordance with Article 38 of the Customs Law needs to be added to the actually paid or payable price.

(3) The conditions whose value is impossible to determine and the liabilities arising from the sale/purchase deal shall be primarily deemed the event when:

- a. The seller determines the price for the imported goods under the condition that the buyer buys certain quantity of other goods;

- b. The price of the imported goods is subject to the price or prices at which the buyer sells other goods to the seller of the imported goods;
- c. The price of the imported goods is determined based on a mode of payment unrelated to the imported goods.

Article 75

(Business activities carried out by the buyer for his account)

(1) Business activities referred to in Article 74 para 2 item a) of this Decree are all business activities related to advertising and promotion of the sale of goods, and all business activities related to the security and guarantee for these goods.

(2) Business activities referred to in para 1 of this Article which the buyer carries out on his own shall be deemed all business activities which were carried out for his account, even though they are the obligation of the buyer which was agreed with the seller of the imported goods.

Article 76

The agreed, actually paid, or payable price may be also taken into account when determining the customs value in the events referred to in Article 30 para 1 item 3 of the Customs Law, if it is possible to adjust the price in accordance with Article 38 para 1 item 4 of the Customs Law.

Article 77

(Interrelatedness between the buyer and the seller)

(1) For the purposes of Article 30 para 2 item 5 of the Customs Law, supervision of other person shall be deemed such relationship between the person in which one person has such control over the business of other person that the latter may not freely determine prices or make calculations.

(2) License sale agreements per se shall not constitute the mutual interrelatedness.

Article 78

(Use of the transaction value of the identical or similar goods)

(1) For determination of customs value in accordance with Articles 32 and 33 of the Customs Law, the transaction value of the identical or similar goods from the sale/purchase contract shall be used, at the equal commercial level and for the quantity of goods which is approximately equivalent to the quantity of goods for which the customs value is being determined. In the absence of such sale/purchase deal, transaction value of the identical or similar goods that were sold at the other commercial level and/or in other quantity shall be taken into account, in following sequence:

- a. Same commercial level but in different quantity;
- b. Different commercial level but in approximately same quantity;
- c. Different commercial level and different quantity.

(2) The transaction value that is determined in accordance with para 1 of this Article should be adjusted for the difference arising from the commercial levels of sale/purchase and/or quantity, if it is possible to make accurate and precise corrections in the presented documents, regardless whether the value is increased or increased by such corrections.

Article 79

(1) In application of Articles 32 and 33 of the Customs Law and Article 78 of this Decree, the transaction value of the goods that is prepared by a third party shall be taken into account only if the transaction values for the identical or similar goods that was prepared by the same person for the goods for which the customs value is being determined are not available to the customs authority.

(2) Transaction value of the imported identical or similar goods shall be deemed to be the customs value which, in accordance with Article 30 of the Customs Law, was already accepted and

which includes the corrections in accordance with Article 38 para 1 item 1 indents 4, 5, and 6 of the Customs Law, and para 2 Article 78 of this Decree.

Article 80
(Deductive method for customs valuation)

(1) In application of Article 35 of the Customs Law, "price per unit, at which the imported goods are sold in the largest total quantity" shall be deemed to be such price at which the largest number of units of such goods is sold in the first sale after being imported in the customs territory, between the unrelated persons.

(2) For determination of the price per unit in accordance with Article 35 of the Customs Law, the events of sale in Montenegro to persons who, directly or indirectly, for free or at reduced prices, supply the goods or provide the services referred to in Article 38 para 1 item 2 of the Customs Law relating to production or sale of the imported goods, may not be used.

(3) The time of the first sale after importation is, in accordance with paragraph 2 of this Article, the day of carrying out the sale of imported goods or imported identical or similar goods in such quantity that it is possible to determine the price per unit.

Article 81
(Method of the calculated value)

(1) Customs value shall, in accordance with Article 36 of the Customs Law (calculated value) routinely be determined only based on the data that are available to a person with domicile or permanent residence in Montenegro.

(2) If, in addition to the data presented by the producer or the declarant in his name, other data is used for determination of customs value, the customs authority shall, taking into account Article 16 of the Customs Law, notify the declarant, at his request, about the data that was used and the source of data.

(3) The value of the material and costs in accordance with Article 36 of the Customs shall also be deemed to the costs referred to in Article 38 paragraph 1 item 1 of the Customs Law.

(4) The value of costs and expenses referred to in Article 36 of the Customs Law shall also be deemed to be the costs and expenses for the goods and services referred to in Article 38 paragraph 1 item 2 of the Customs Law which the buyer supplied or provided directly or indirectly in connection with the production of the imported goods. The value of services referred to in Article 38 paragraph 1 item 2 indent 4 of the Customs Law that are provided in the customs territory shall be considered only if they are debited to the producer.

(5) In accordance with Article 36 paragraph 1 item 2 of the Customs Law, the value of costs shall be deemed to be direct and indirect costs for production and sale of goods for export, other than taken into account as referred to in Article 36 paragraph 1 item 1 of the Customs Law.

Article 82
(Customs valuation in accordance with Article 37 of the Customs Law)

(1) The customs values that are determined in accordance with Article 37 of the Customs Law must rely, to the greatest extent possible, on previously determined customs values.

(2) Evaluation methods that are applied in accordance with Article 37 of the Customs Law must correspond to the methods referred to in Articles 30, 31, 32, 33, 35, and 36 of the Customs Law. The mentioned methods may be applied in the events corresponding to the conditions referred to in Article 37 of the Customs Law.

**Article 83
(Commissions)**

(1) In accordance with Article 38 paragraph 1 item 1 indent 1 of the Customs Law, the customs value shall include all payments made by the buyer to the intermediaries in connection with the sale/purchase of the goods, if such payments were not included in the paid or payable price.

(2) Commissions for purchase which are paid by the buyer for the intermediation in purchase of the goods shall not be included in the customs value if they are presented separately. Commission for purchase shall constitute the payments by the buyer to his agent for agency services abroad in purchase of the goods whose value is being determined.

**Article 84
(Packaging)**

If the packaging is intended to be used in ensuing events of importation as well, the proportionately allocated costs shall be included in the customs value in proportion to the at the request of the declarant.

**Article 85
(Place of entry to the customs territory)**

The place of entry in the customs territory shall be deemed:

- a) Customs border crossing – in road and railroad transportation;
- b) Port of unloading – in marine transportation;
- c) First destination airport – in transportation of the goods by air;
- d) Place at which the goods cross the land border of the customs territory – for the goods which is being transported in other manner.

**Article 86
(Costs of Transport and Insurance)**

(1) If the agreed delivery is "fco destination in the customs territory" and if the amount of the transportation costs from the point of entry into the customs territory to the point of delivery cannot be learned from the contract and other documents submitted, the customs value shall include total transportation costs.

(2) If the goods were purchased at a uniform price "fco destination in the customs territory", which is adequate to the price at the point of entry, the costs related to the transportation within the customs territory shall not be subtracted from this price. The deduction shall be taken into account only in the case that it has been proved to the customs service authority that the price "fco point of entry in the customs territory" would be lower than the uniform price "fco destination in the customs territory".

(3) If the transportation is free of charge or performed by the buyer's own vehicles, the customs value shall include all the costs from the point of entry into the customs territory, defined on the basis of usually applicable rate for equal manner of transportation. The declarant shall submit evidence of the costs thus calculated.

(4) The customs value shall not include the insurance costs for the imported goods.

(5) The customs value shall include full postal fees for the goods transported in postal traffic to the destination. The customs value shall not include possible additional postal fees, calculated in the customs territory.

(6) The customs value of the goods whose import is not commercial shall not include the fees referred to in paragraph 5 of this Article.

(7) Paragraphs 5 and 6 of this Article do not refer to the express postal services.

Article 87
(Goods Provided by the Buyer to the Seller)

(1) Pursuant to Article 38, paragraph 1, item 2, indents 1, 2, and 3 of the Customs Law, the buyer may provide the seller with the goods indirectly or directly. These goods, except for the goods referred to in Article 38, paragraph 1, item 2, indent 3 of the Customs Law, must be used in the manufacturing of the imported goods and contained or used up in them.

(2) The goods referred to in Article 38, paragraph 1, item 2, indent 1 of the Customs Law, provided by the buyer, may be purchased in any foreign country, including the country of the seller.

(3) The goods referred to in Article 38, paragraph 1, item 2, indent 1 of the Customs Law shall be deemed to be the goods under Article 38, paragraph 1, item 2, indent 3 of the Customs Law, provided that such goods have not been bought abroad; this applies to disposable material as well.

Article 88
(Costs for Tools, Molds, Matrices, etc.)

The proportionate part of the value of tools, molds, matrices and similar products, used in the production of the goods imported, which constitutes part of the customs value pursuant to Article 38, paragraph 1, item 2, indent 3 of the Customs Law, shall be the amount of the depreciated value of such products used in the production of the imported goods.

Article 89
(Licensing Provisions)

(1) The fees and costs referred to in Article 38, paragraph 1, item 3 of the Customs Law (hereinafter: licenses) shall be calculated prior to all payments for the right of use concerning the following:

- a) The production of the goods imported (primarily patents, samples, models and technological know-how);
- b) Reselling the imported goods for exportation (primarily trademarks and service marks and protected models);
- c) The use and selling of the imported goods (primarily copyright and technological procedures inherently included in the imported goods).

(2) If the customs value of the imported goods is determined pursuant to Article 30 of the Customs Law, the licenses and actually paid prices or payable prices for the imported goods shall be included only if such payment:

- a) refers to the goods whose value is being determined; and
- b) represents the condition for selling the imported goods.

(3) If the imported goods are only a part of, or accessories to, the goods produced in the customs territory, the license may be added to the actually paid price to be paid for the imported goods only if the license refers to the imported goods.

(4) If the goods are imported in a disassembled state or if the goods undergo insignificant treatment prior to selling, e.g. disassembling and repackaging, that shall not exclude the fact that the license refers to the imported goods.

(5) If the licenses partly refer to the imported goods, and partly to other parts and additional equipment to be added to the goods following importation, the licenses shall be allotted solely on the basis of objective facts and facts that can be determined.

(6) The license for the right to use a trademark shall be added to the actually paid price or payable price for the imported goods only when:

- a) The license refers to the goods resold after importation in an unchanged condition or only insignificantly treated or processed;
- b) The goods are sold with the trademark, placed prior to the importation or following it, or the buyer has no possibility to purchase these goods from other suppliers, not related to the seller.

(7) If the buyer makes payment for the license to a third party, the requirements referred to in paragraph 2 of this Article shall be deemed as met only if the seller or the person related to him requires from the buyer to make the payment to the third person.

(8) If the method of calculating the license depends on the price of the imported goods, it shall be deemed, until proved otherwise, that the payment or the license refers to the goods whose value is being determined.

(9) If the license amount is calculated regardless of the price of imported goods, the payment for the license may also refer to the goods whose value is being determined.

(10) The country where the licensee has its principal place of business shall not be of importance in case of application of Article 38, paragraph 1, item 3 of the Customs Law.

Article 90 (Valuation of Services Provided Abroad)

Separately paid services referred to in Article 38, paragraph 1, item 2, indent 4 of the Customs Law shall include services that the buyer received free of charge or at a reduced price.

Article 91 (Taking into Account Added and Deductible Items in Valuation)

(1) When determining the customs value, no other items may be added to the actually paid price or payable price, except for the items referred to in Article 38, paragraph 1 of the Customs Law.

(2) Each item added to the actually paid price or payable price pursuant to paragraph 1 of this Article must rely solely on the objective facts concerning the quantity verifiable.

(3) As referred to in Article 39, paragraph 1, item 4 of the Customs Law, the multiplication (reproduction) shall be deemed primarily as graphic and three-dimensional multiplication, construction or performance of an architectural or other structure or instrument, taking photographs, sound and video recording and reproducing, as well as storing in electronic form.

Article 92 (Particulars Concerning Taking into Account Added and Deductible Items in Valuation)

(1) Without prejudice to Article 81, paragraphs 2 and 3 of this Decree, the customs service authority may, at the request of the participant(s), approve that the amounts of specific items to be added to the actually paid price or payable price, even if they were not quantifiable at the time the debt was incurred (Article 81, paragraph 2 of this Decree), or the amounts of specific items not included in the customs value, in cases when at the time the customs debt was incurred they were not shown separately (Article 81, paragraph 3 of this Decree), be determined in accordance with special criteria.

(2) In cases referred to in paragraph 1 of this Article the declared customs value shall not be deemed to be temporary value pursuant to Article 134 of this Decree.

(3) The approval referred to in paragraph 1 of this Article may be given:

- a) If the application of the procedure pursuant to Article 134 of this Decree should entail disproportionately high costs in view of the circumstances;
- b) If the method – replacement of use is valuation pursuant to Articles 32 through 37 of the Customs Law, in view of the circumstances, inappropriate;

- c) In case there are sound reasons that the outstanding import duties in a certain period will not be lower due to the approval referred to in paragraph 1 of this Article than the duties, should the approval not be granted;
- d) If the granting of the approval does not influence the competitiveness of business operators.

Article 93
(Taking into Account Financial Costs in Alternative Valuation Methods)

Financial costs shall be considered, pursuant to Article 39, paragraph 1, item 3 of the Customs Law, when applying alternative valuation methods referred to in Articles 32, 33, 35, 36, 37 of the Customs Law.

Article 94
(Acceptability of Transaction Value)

(1) The customs service authority shall not accept the determination of the customs value on the basis of the transaction value, pursuant to paragraph 2 of this Article, in case there is doubt that the declared transaction value is adequate to the price paid or payable, referred to in Article 30 of the Customs Law.

(2) Under conditions referred to in paragraph 1 of this Article, the customs service authority may, pursuant to Article 96, paragraph 3 of this Decree, request that the additional data be submitted. If the doubt is still present based on the data submitted at a later date, the customs service authority shall, prior to reaching the final decision, inform in writing the declarant at his request of the reasons for the doubt, and provide him with the adequate time period for the explanation. The customs service authority decides on the final decision.

Chapter 2
Specific Valuation Rules
Section 1
Programming Equipment

Article 95

(1) Notwithstanding the provisions of Articles 30-43 of the Customs Law, when determining the customs value at import of data carriers containing data or programming instruction intended for use in automatic data processors, only the value of the data carrier shall be taken into account, if the value of the data or programming instruction is shown separately from the value of the data carrier.

(2) Under this Article the following shall not be included:

- b) "data carriers": integrated circuits, semi-conductors and similar devices or goods containing such integrated circuits or devices;
- c) "data and programming instructions": sound, cinematographic or video recordings.

Chapter 3
Declaring Data on Customs Valuation and Documents to Be Presented

Article 96

(1) If the customs value is determined pursuant to Article 33 through 44 of the Customs Law, the data concerning the customs value of the imported goods should be submitted correctly along with the customs declaration.

(2) When applying paragraph 1 of this Article, regulations adopted based on Article 69, paragraph 2 of the Customs Law, shall be duly applied.

(3) The declarant shall provide the following:

- b) The accuracy and completeness of the data stated in the customs value declaration;

- c) Authenticity of the documents submitted as evidence for the data; and
- d) All additional data and submission of all the documents necessary for determination of the customs value of the goods.

Article 97

In case the automatic data processing system is used, or if simplification concerning customs declarations has been approved for certain goods, the Customs Administration may approve deviations from the form of the presentation of the data necessary for determining the customs value.

Article 98

(1) The declarant shall submit to the customs service authority two copies of the invoice for the goods imported, based on which the customs value has been declared.

(2) One copy shall be retained by the customs service authority, and the other copy shall be certified by the customs mark and the number of the customs declaration shall be entered on it by the customs service authority, who will then submit it to the declarant.
