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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

ARMÉNIE

La Mission permanente de l'Arménie a fait parvenir au Secrétariat la communication ci-après, datée du 15 juillet 2003.

Se référant à l'article 22 de l'Accord sur la mise en œuvre de l'article VII (valeur en douane) du GATT de 1994, le Centre de notification de la République d'Arménie auprès de l'OMC a l'honneur de communiquer au Comité de l'évaluation en douane les textes ci-après en rapport avec les dispositions de l'Accord.

On trouvera ci-joint le Décret concernant l'approbation des notes interprétatives relatives à l'évaluation en douane et la section pertinente (Section 4) du Code douanier.¹

¹ En anglais seulement.

THE GOVERNMENT OF THE REPUBLIC OF ARMENIA

DECREE

No 2170-N of the December 5, 2002

**ON THE APPROVAL OF INTERPRETATIVE NOTES
TO CUSTOMS VALUATION**

adopted by the President of
the Republic of Armenia
R. Kocharyan
on January 28, 2003

According to the Article 82 of the Customs Code of the Republic of Armenia the Government of the Republic of Armenia makes the decision:

1. To approve interpretative notes to the customs valuation according to the Annex.
2. The present Decree shall enter into force after the day of official publication.

Prime Minister of the
Republic of Armenia

A. Margaryan

Annex
Of the Decree No2170-N
of the Government of the Republic
of Armenia of December 5, 2002

INTERPRETATIVE NOTES TO THE CUSTOMS VALUATION

General Note

1. Sequential Application of Valuation Methods

1.1. Articles 87 through 93 of the Customs Code of the Republic of Armenia (hereinafter the Code) define how the customs value of imported goods is to be determined under the provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (hereinafter Agreement). The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 87 of the Code and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

1.2. Where the customs value cannot be determined under the provisions of Article 87 of the Code, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 94 of the Code, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

1.3. If the importer does not request that the order of Articles 91 and 92 of the Code be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 92 of the Code, the customs value is to be determined under the provisions of Article 91 of the Code, if it can be so determined.

1.4. Where the customs value cannot be determined under the provisions of Articles 87 through 92 of the Code it is to be determined under the provisions of Article 93 (reserve method).

2. Use of Generally Accepted Accounting Principles

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

2.2. For the purposes of this Agreement, the customs administration of each Member shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 90 of the Code would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 92 of the Code 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 sub point "d" of Article 83 of the Code

undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 87 of the Code

3. Price Actually Paid or Payable

3.1. 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.

3.2. Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in Article 83 of the Code, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

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

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

3.4. 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 point “a” of the point 2 of Article 87 of the Code

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

Sub point “b” of the point 2 of Article 87 of the Code

3.6. 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.

3.7. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 87 of the Code. 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 point "e" of the point 2 of Article 87 of the Code

3.8. Sub point "e" of the point 2 of Article 87 of the Code provides different means of establishing the acceptability of a transaction value.

3.9. Sub point "e" of the point 2 of Article 87 of the Code provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3.10. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 78 of the Code, 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.

3.11. Sub point "e" of the point 2 of Article 87 of the Code provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 87 of the Code. Where a test under sub point "e" of the point 2 of Article 87 of the Code is met, it is not necessary to examine the question of influence under sub point "e" of the point 2 of Article 87 of the Code. If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in sub point "e" of the point 2 of Article 87 of the Code has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In sub point "e" of the point 2 of Article 87 of the Code the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

3.12. 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 point "e" of the point 2 of Article 87 of the Code.

4. Note to Article 89 of the Code

4.1. In applying Article 89 of the Code, the customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

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

4.2. 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.

4.3. 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.

4.4. For the purposes of Article 89, the transaction value of identical imported goods means a customs value, adjusted as provided for in points 1 and 2, which has already been accepted under Article 87.

4.5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 89 is not appropriate.

5. Note to Article 90 of the Code

5.1. In applying Article 90, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

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

5.2. 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.

5.3. 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.

5.4. For the purpose of Article 90, the transaction value of similar imported goods means a customs value, adjusted as provided for in Article 89 points 1 and 2, which has already been accepted under Article 87 of the Code.

5.5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 90 is not appropriate.

6. Note to Article 91 of the Code

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.

6.2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

| <i>Sale quantity</i> | <i>Unit price</i> | <i>Number of sales</i> | <i>Total quantity sold at each price</i> |
|----------------------|-------------------|---|--|
| 1-10 units | 100 | 10 sales of 5 units 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.

6.3. 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.

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

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

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

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

6.5. Any sale in the importing country, as described in paragraph 6.1 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 point "d" of Article 83 of the Code, should not be taken into account in establishing the unit price for the purposes of Article 91 of the Code.

6.6. It should be noted that "profit and general expenses" referred to in sub point "a" of the point 2 of Article 91 of the Code should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless the importer's figures are inconsistent with those obtained in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

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

6.8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of sub point "d" of the point 2 of Article 91 of the Code shall be deducted under the provisions of sub point "a" of the point 2 of Article 91 of the Code.

6.9. In determining either the commissions or the usual profits and general expenses under the provisions of point 2 of Article 91 of the Code, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of

imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 91 of the Code, "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.

6.10. For the purposes of point 3.1 of Article 91 of the Code, 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.

6.11. Where the method in point 4 of Article 91 of the Code is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

6.12. It is recognized that the method of valuation provided for in point 4 of Article 91 of the Code would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

7. Note to Article 92 of the Code

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

7.2. The "cost or value" referred to in sub point "a" of the point 1 of Article 92 of the Code is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

7.3. The "cost or value" shall include the cost of elements specified in sub point "f" of Article 83 of the Code. It shall also include the value, apportioned as appropriate under the provisions of sub point "d" of Article 83 of the Code of any element specified 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 4 of sub point "d" of Article 83 of the Code which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

7.4. The "amount for profit and general expenses" referred to in sub point "b" of the point 1 of Article 92 of the Code is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of

the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

7.5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and the producer's general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

7.6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 95 of the Code.

7.7. The "general expenses" referred to in sub point "b" of the point 1 of Article 92 of the Code covers the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1 of sub point "d" of Article 83 of the Code.

7.8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 92 of the Code, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 82 of the Code, "goods of the same class or kind" must be from the same country as the goods being valued.

8. Note to Article 93 of the Code

8.1. Customs values determined under the provisions of Article 93 of the Code should, to the greatest extent possible, be based on previously determined customs values.

8.2. The methods of valuation to be employed under Article 93 of the Code should be those laid down in Articles 87 through 92 of the Code but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 93 of the Code.

8.3. Some examples of reasonable flexibility are as follows:

- (a) *Identical goods* - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the

goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 91 and 92 of the Code could be used.

- (b) *Similar goods* - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 91 and 92 of the Code could be used.
- (c) *Deductive method* - the requirement that the goods shall have been sold in the "condition as imported" in point 1 of Article 91 of the Code could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

9. Note to Article 83 of the Code

Sub point "c" of Article 83 of the Code

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

Paragraph 2 of sub point "d" of Article 83 of the Code

9.2. There are two factors involved in the apportionment of the elements specified in Paragraph 2 of sub point "d" of Article 83 of the Code 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.

9.3. 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.

9.4. 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.

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

Paragraph 4 of sub point “d” of Article 83 of the Code

9.6. Additions for the elements specified in paragraph 4 of sub point “d” of Article 83 of the Code should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

9.7. 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.

9.8. 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.

9.9. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 83.

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

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

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

Sub point “e” of Article 83 of the Code

9.13. The royalties and licence fees referred to in sub point “e” of Article 83 of the Code may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

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

9.15. Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 83 of the Code, the transaction value cannot be determined under the provisions of Article 87 of the Code. 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.

10. Point 5 of Article 95 of the Code

10.1. For the purposes of point 5 of Article 95 of the Code, "time of importation" may include the time of entry for customs purposes.

11. Note to Article 96 of the Code

11.1. Article 96 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

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

11.3. However, nothing in Article 96 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal.

SECTION 4.
DETERMINATION OF CUSTOMS VALUE OF THE GOODS
TRANSPORTED THROUGH THE CUSTOMS BORDER OF
THE REPUBLIC OF ARMENIA

CHAPTER 12.
GENERAL PROVISIONS ON CUSTOMS VALUE

Article 74. The Aims of Determining the Customs Value

Customs value of the transported goods through the Customs border of the Republic of Armenia is determined with the aim of calculation of the *ad valorem* customs payments, implementation of non-tariff regulatory measures determined in an *ad valorem* way and conducting the customs statistics.

Article 75. Identical Goods

The goods shall be considered identical if they are the same in all respects, including physical characteristics, quality, reputation (trademark), and the country of origin. Minor differences in appearance of the goods, which shall not give the consumer serious grounds for giving preference to this or that product of two comparable products, shall not constitute sufficient grounds for not considering the goods as identical.

Article 76. Similar Goods

The goods shall be considered similar if they have the same country of origin, which, though not identical, have like characteristics and component materials, which enable them to perform the same functions and be interchangeable. The quality, reputation (trademark) are among the factors to be considered in determining whether goods are similar.

Article 77. Additional Provisions to the Concepts of Identical and Similar

1. In relation to the declared goods, identical or similar shall be considered the goods of other producers only when there are no identical or similar goods produced by a particular industry or industry sector for comparison.
2. *Goods containing or expressing work of an architectural, design, art or drafting nature, as well as layouts and sketches, for which no clarification is made in subparagraph (d)(iv) of Art. 83 because of the fact that this work was done in the importing country, shall not be considered as "Identical Goods" and "Similar Goods". [September 2002]*

Article 78. Related Persons

Persons are related to each other, if:

- (a) one is a director or officer in the other's company;
- (b) one is the employer or employee of the other;
- (c) any other person who at the same time owns, holds or controls five per cent or more of the outstanding voting stock or shares of each such person;
- (d) one in some way controls or limits the actions of the other;
- (e) any other person in some way controls or limits their actions;
- (f) they together in some way control or limit the actions of any other person;
- (g) they are *legally recognized as persons who have interest in the same business*;

(h) they are members of the same family. [September 2002]

Article 79. The Same or Nearly the Same Period of Time

The same or nearly the same period of time shall be considered the ninety-day period preceding the time observed.

Article 80. Goods of the Same Kind

Goods of the same kind shall be considered those goods that fall within a group of goods produced by a particular industry sector *or sub-sector and include identical or similar goods.*

[September 2002]

CHAPTER 13. CUSTOMS VALUE OF GOODS TRANSPORTED THROUGH THE CUSTOMS BORDER AND ITS CONSTITUENTS

Article 81. Customs Value

Customs value of goods transported through the Customs border is *the transaction price, which is the amount actually paid and subject to payment or that should be paid for the purchase of the goods to export to the country of importation and their transportation to the Customs border of the Republic of Armenia.* [September 2002]

Article 82. Determination of Customs Value

1. Customs value of goods transported across the RA Customs border is determined by the declarant except for cases specified by this Code, when Customs value is determined by Customs Authorities.
2. *Customs Valuation shall be made in accordance with the Interpretative Notes of Chapter 7 (Valuation Agreement) of the "General Agreement on Tariffs and Trade", in compliance with procedures specified by the RA Government.* [September 2002]

Article 83. Constituents of Customs Value

Customs value shall include:

- a. the purchasing price of goods in the exporting country;
 - b. transportation, loading, unloading, transshipment, insurance and other similar costs made before reaching the Customs border of the Republic of Armenia;
 - c. the commission and mediation /broker/ expenditures made for the transportation of goods to the Customs border of the Republic of Armenia, except for commission and mediation /broker/ expenditures made for the purchase of goods;
 - d. the value, *apportioned to the goods as appropriate*, [November 2002] of the following items directly or indirectly provided by the purchaser to the supplier, without compensation or with partial compensation to the latter for the production and supply of goods transported through the Customs border:
 - i) the value of materials, components and other similar items included in the goods;
 - ii) the value of tools and other similar items used in the production of the goods;
 - iii) materials consumed in the production of the goods;
 - iv) value of engineering, design, planning and other similar services required for the production of the goods *carried out in a country other than the importing country.*
- [September 2002]

- e. the payments made or subject to direct or indirect payment to the supplier by the purchaser against royalties and license fees that are required *conditions* for the sale of imported goods; [September 2002]
- f. the cost of containers, packages and packaging;
- g. the proceeds of any subsequent resale, use or disposal of the goods transported across the RA Customs border that accrue to the supplier.

Article 84. Customs Value With Inclusion of Its Constituents

- 1. The costs referred to in subparagraphs (b) to (g) of Article 83 of this Code shall be included into the Customs Value only to the extent that they have not been included in the transaction price of the goods.
- 2. *The costs referred to in subparagraphs (c) and (f) of Article 83 of this Code shall be included in the customs value only to the extent that they have not been included in the transaction price of the goods and they are incurred by the buyer.* [November 2002]

Article 85. Costs Not Included in the Customs Value

The Customs Value shall not include:

- a. indirect taxes paid, subject to payment in the exporting country or separately recorded in payment documents;
- b. transportation, loading, unloading, transshipment, insurance, commission and mediation /broker/ costs made in the importing country;
- c. the per cents, resulted from the financial obligations of the purchaser to the supplier, with exception of the costs mentioned in subparagraph 7 of Article 86 of the present Code, and if the given interest rate does not exceed the average interest rate used in similar transactions in the exporting country at the same or nearly the same period of time.
- d. The cost of information in disks /programme files.
- e. *Payments made against construction, assembly, maintenance or technical support activities carried out after transportation through RA Customs Border and related to plants, machine-building tools or equipment and other goods transported through RA Customs Border, if these payments are not included in the amount actually paid or subject to payment for the above-mentioned goods;*
- f. *Duties, taxes and other mandatory payments collected or subject to collection for the importation of goods in the importing country, if they are not included are not included in the amount actually paid or subject to payment for the goods transported through RA Customs Border.* [September 2002]

Article 86. Declaration of Customs Value

- 1. Customs Value of goods transported through the Customs border shall be declared, together with other information subject to declaration, by the person transporting goods or the person authorised by the latter.

CHAPTER 14. RULES FOR DETERMINING CUSTOMS VALUE

Article 87. Transaction Price Method For Determining Customs Value

- a) *1. For the purpose of calculating Customs value of goods transported across the Customs border by transaction price method the declarant must submit with the Customs Declaration a payment document for the purchase of goods in the country of*

export (invoice or any substituting document), which should contain information about the date of issuing of the document, serial number, detailed description of seller (shipper), purchaser (consignee) and goods (description of commodity, trademark or commercial name if there is one), number of boxes/packages, unit of measure, unit price, weight and total value, also in case consignment is specified for shipment conditions, there should be a separate line mentioning about transportation, loading, unloading, transshipment, insurance and other similar costs made before reaching the RA Customs border, as well as commission and mediation / broker expenditures (except commission and mediation / broker expenditures made for the purchase of goods), about the proceeds of any subsequent resale, use or disposal of goods that the purchaser should pay to the supplier, directly or indirectly provided by the purchaser to the supplier without compensation or partial compensation to the latter for the production and supply of goods.

2. Customs value of goods transported through the Customs border shall be determined according to the transaction price method, if:

- (a) there is no reasonable basis for the Customs Authorities to conclude that the document presented pursuant to part 1 of this article is false;*
- (b) there are no restrictions in respect of disposition or use of the goods by the purchaser other than restrictions imposed by laws of the Republic of Armenia or decisions of the Government, or those limiting the geographical area in which the goods may be resold, or which do not affect essentially the price of commodity;*
- (c) the sale or the sale (purchasing) price of the goods are not subject to some condition or consideration, for which customs value cannot be determined based on the cost of the goods;*
- (d) any part of the proceeds of any subsequent use, resale or disposal of the goods by the purchaser does not accrue, directly or indirectly, to the vendor, except for the possibility to make additions pursuant to subparagraph g, Article 83 of the present Code;*
- (e) the purchaser and the vendor are not related, and if they are, the circumstances of the sale indicate that the relationship did not influence the price. If there is an indication that the relationship between the buyer and the seller may have influenced the price, [November 2002] the Declarant shall substantiate that the Customs Value calculated by transaction method is close to one of the following values:*

- *The transaction value of identical or similar goods sold within the same or approximately the same time period to the purchasers not related to the seller for exporting to RA,*
- *Customs Value determined for identical or similar goods within the same or approximately the same time period in accordance with Article 91,*
- *Customs Value determined for identical or similar goods within the same or approximately the same time period in accordance with Article 92.*

The above-mentioned justification shall be made on the declarant's own initiative only for the purpose of substantiating the declared Customs Value by method of comparison. When substantiation is made, attention shall be paid to the differences between commercial and quantitative levels, to the elements listed in Art. 83 of this Code, as well as to the expenditures made by the seller or purchaser in case of absence of relation between the seller and purchaser, which are absent in case when the seller and purchaser are related persons.

- (f) the declared Customs value is not significantly lower or higher than, accordingly, the lowest and the highest Customs value, determined through transaction price method, of similar or identical goods accepted by RA Customs Authorities within the same or nearly the same period of time.*

3. *After declaration has been submitted to Customs Authorities, the latter, if it does not accept the Customs value determined through transaction price method, must give the person transporting the goods an opportunity to produce such detailed information, that may be required to corroborate purchase (transaction) related information. For this purpose, the declarant may submit to Customs Authorities the Customs Value Details Declaration completed in accordance with the procedure specified by the Supreme Customs Authority. Information declared therein must be, upon Customs Authorities' request, corroborated with appropriate documents.*

[September 2002]

Article 88. Cases of Determining Customs Value by Customs Authorities

1. *Customs value determined by the declarant shall not constitute grounds in the following cases:*
- (a) if the declarant does not submit documents substantiating transportation, loading, unloading, transshipment, insurance costs made for goods before they reach the Customs border of the Republic of Armenia;*
 - (b) if the declarant does not submit to the Customs Authorities the invoice or other document defined by point 1 of Article 87 of this Code;*
 - (c) if, where the Customs Authorities have reasonable grounds to suspect that the invoice presented by the declarant may be false and request further information, the declarant does not submit such of the following documents as are requested by the Customs Authorities to corroborate the invoice:*
 - A copy of the purchase contract for the goods*
 - Banking records of the transfer of funds for the purchase to the vendor*
 - Customs Value Details Declaration completed in accordance with the procedure specified by the Supreme Customs Authority.*
 - (d) if for the person transporting the goods there are restrictions in respect of disposition or use of the goods, except for those restrictions defined by laws or other legal acts, or those limiting the geographical area in which the goods may be resold, or which do not affect essentially the price of commodity;*
 - (e) if the purchase price is conditioned by a circumstance because of which Customs value is not possible to determine on the basis of value of the goods;*
 - (g) if any part of the proceeds of any subsequent use, resale or disposal of the goods by the person transporting the goods does not accrue, directly or indirectly, to the vendor, except for the possibility to make additions to subparagraph g, Article 83 of the present Code;*
 - (h) if Customs value calculated on the basis of transaction price is unacceptable under the provisions of Article 87(2)(e) of this Code [November 2002].*
2. *Customs value of goods, stipulated in subparagraph 1(a) of the present Article, which are transported through Customs border, is determined by the Customs Authorities, by making additions pursuant to Article 83 of the present Code.*
3. *Customs value of goods, stipulated in subparagraphs 1(b) to 1(g) of the present Article, which are transported through Customs border, is determined by the Customs Authorities in accordance with Articles 89-94 of this Code.*
4. *In consideration of the present paragraph, the Customs Authorities use the information at their disposal, as well as the information submitted by the declarant, and the one acquired from the foreign State Bodies and the State Bodies of the Republic of Armenia. The procedure of submitting information to the Customs Authorities by the State Bodies of the Republic of Armenia concerning the present subparagraph shall be determined by the Government of the Republic of Armenia.*

[September 2002]

Article 89. Determination of Customs Value According to the Transaction Price of Identical Goods

1. *Customs value of goods transported through the Customs border of the Republic of Armenia shall be determined on the basis of transaction price of identical goods sold in the same or nearly the same quantity at the same or nearly the same period of time for export to the importing country, making specifications conditioned by differences in commercial levels and/or quantities of goods. This specification shall be based on facts, irrespective of the circumstances that transaction price increased or decreased after the specification.*
2. *While making the specifications, the differences between expenditures and payments for transportation of goods imported from different distances and by different means of transportation shall be taken into consideration.*
3. *If, when applying this Article, it appears that there are more than one transaction prices for the same goods, Customs value of the imported goods shall be determined according to the lowest such value.*
[September 2002]

Article 90. Determination of Customs Value According to the Transaction Price of Similar Goods

1. *Customs value of goods transported through the Customs border of the Republic of Armenia shall be determined on the basis of transaction price of similar goods sold in the same or nearly the same quantity at the same or nearly the same period of time for export to the importing country, making specifications conditioned by differences in commercial levels and/or quantities of goods. This specification shall be based on facts, irrespective of the circumstances that transaction price increased or decreased after the specification.*
2. *While making the specifications, the differences between expenditures and payments for transportation of goods imported from different distances and by different means of transportation shall be taken into consideration.*
3. *If, when applying this Article, it appears that there are more than one transaction prices for the same goods, Customs value of the imported goods shall be determined according to the lowest such value.*
[September 2002]

Article 91. Determination of Customs Value for Goods Transported across the RA Customs border on the Basis of Sale Price of the Unit of Commodity in the RA Domestic Market

1. If the goods transported across the RA Customs border or in accordance with Articles 75 and 76 of this Code their similar or identical goods are sold in the RA domestic market in the same appearance then their Customs value is determined by their largest gross quantity on the basis of sale price for unit of those goods or their similar or identical goods in the same or nearly the same time period taking into account taking into account the reductions and additions mentioned in point 2 and 3 of this Article according to the cases of import and export.
2. The reductions mentioned in point one of this Article are:
 - a) Commissions and commercial overheads (including the profits gained in the result of selling those goods in the RA domestic market) usually applied in the RA at sale of goods of the same kind when determining Customs value for imported goods;

- b) Transportation, warehousing, insurance and other similar expenditures made within the territory of the RA when determining Customs value for imported goods;
 - c) Taxes and other obligatory payments payable for selling those goods within the territory of the RA when determining Customs value for imported and exported goods;
 - d) Customs payments payable for importing those goods when determining Customs value for imported goods.
3. The additions mentioned in point 1 of this Article are the expenditures made for warehousing, transporting, insuring (and other similar expenditures) those goods within the RA territory.
4. *If goods imported within the same or approximately the same period of importation of goods being assessed or imported similar or identical goods are not sold, then Customs Value, for which in other cases provisions of Par. 1 of this Article are applied, shall be determined on the basis of sale unit price in case of selling in the unchanged appearance in the largest gross quantity after the importation of goods or similar or identical goods into RA, provided that those goods had been sold immediately after the importation of goods being assessed, but no later than within 90 days. Furthermore, Customs Payments shall be made in accordance with Par. 1, Art. 96 of this Code, and final recalculation shall be made within the following 60 days.* [September 2002]
5. If the goods imported in the same or nearly the same time period or their similar or identical goods are not sold in the RA domestic market in the same appearance then Customs value for imported goods may be determined on the basis of the price by which after further processing imported goods are sold in the RA in their largest aggregate quantity taking into account added value in the result of such processing and the reductions specified by this Article.
6. Procedures for defining the largest aggregate quantity are determined by the RA Government.

Article 92. Determination of Customs Value on the Basis of Computed Value

1. Customs value of goods transported through the Customs border shall be determined on the basis of computed value, which includes:
- (a) the value of processing and materials used in production of goods transported through the Customs border;
 - (b) total expenditures made and profits usually gained in the result of selling goods of the same kind which is mentioned by the producers in the country of export for import into the Republic of Armenia or in the Republic of Armenia for export to the country of import.
 - (c) Transportation, loading, unloading, transshipment, insurance and other similar expenditures usually made for transporting goods of the same kind in accordance with Article 80 of this Code to the RA Customs border in the same or nearly the same time period with the same or nearly the same quantity.
 - (d) Commissions and mediation / broker expenditures (except for commissions and mediation / broker expenditures made for the purchase of goods) usually made for transporting goods of the same kind in accordance with Article 80 of this Code to the RA Customs border in the same or nearly the same time period with the same or nearly the same quantity.
2. *According to this article, for the purposes of determination of Customs value, RA Customs Authorities may, at the producer's consent, verify the information provided by the producer for determination of Customs value in some other country, after notifying in a due order the government of that country of their intention to conduct a verification, if the government of that country does not object the conduct of such a verification.* [September 2002]

Article 93. Residual Method for Determining Customs Value

If the customs value of goods transported through the Customs border cannot be determined under the preceding provisions on Customs value determination stipulated in the present section, it shall be determined by means appropriate for principles and general provisions of “General Agreement on Tariff and Trade” on the basis of data available in the Republic of Armenia. It shall not comprise:

- (a) the selling price in the Republic of Armenia of merchandise produced in the Republic of Armenia for determining customs value of imported goods;
- (b) any option of taking as basis the highest value of two alternative values;
- (c) the price of merchandise in the domestic market of the country of export for calculation of Customs value for the goods being imported;
- (d) the cost of production, except for the computed value, stipulated in Article 92 of the present Code, determined for identical or similar goods;
- (e) the price of merchandise for export to a country other than the Republic of Armenia;
- (f) minimum Customs values;
- (g) arbitrary values.

Article 94. Succession of Implementation of Rules for Determining Customs Value

- 1. Rules, mentioned in Articles 87-93, for determining Customs value shall be applied in succession, except for the cases stipulated in subparagraph 2 of the present Article.
- 2. Based on demand of the declarant, the succession of implementation of rules, stipulated in Articles 91 and 92 of the present Code, shall be changed. If there isn't such demand the determined succession shall be implemented. If upon such demand it is impossible to determine Customs value by implementing the rules of Article 92 of the present Code, it shall be determined according to the procedures stipulated in Article 91 of the present Code. [September 2002]

CHAPTER 15. INFORMATION USED FOR DETERMINING CUSTOMS VALUE AND APPEAL AGAINST ACTIONS AND DECISIONS OF CUSTOMS OFFICIALS

Article 95. Information Used For Determining Customs Value

- 1. Upon written request of the person transporting goods, the Customs Authorities shall within five days period inform the latter about the amount of Customs value and the methods of its determination.
- 2. The information provided by the declarant to the Customs Authorities for determining Customs value of goods shall be used by the latter exceptionally for the aims stipulated in Article 73 of the present Code. The information shall not be submitted to any other person without the assent of the declarant, except for the cases stipulated by law.
- 3. The information used for determining customs value, as well as its sources shall be open and shall be subject to publication by the superior Customs Authorities within at least ten days before their application.
- 4. The requirement determined by point 3 of this Article does not apply to the information and its sources mentioned in point 4 of Article 88 of this Code. The information and its sources mentioned in this point for determining Customs value are open except for confidential information maintained by law and can be publicized on the initiative of superior Customs Authority.

5. Exchange of foreign currency for determining Customs Value of goods shall be carried out only by the Central Bank of the Republic of Armenia, according to the exchange rate of the day the goods have been declared.

Article 96. Disagreement with the Decisions Made by the Customs Authorities or Customs Officials Concerning Determination of Customs Value

1. If the Customs Authorities find it necessary to determine or verify the Customs value of the goods declared by the declarant, then Customs formalities shall be carried out according to the Customs value (transaction price) declared by the declarant, provided 30 days Bank Guarantee is available for the disputed amount on condition of further final settlement in compliance with the final decision made.
 2. In case Customs Authorities disagree with Customs value declared by the declarant or his method of Customs value determination they shall, on the day of declaration submission, draw up and provide the declarant with a notice of rejection according to the procedure established superior Customs Authority, substantiating the reason for rejection of the size of Customs value declared by the declarant or method of determination of Customs value and the address of the superior Customs Authority or official to whom the declarant can lodge the appeal.
 3. In the event of disagreement of Customs Authorities with the Customs value declared by the declarant or methods of Customs value determination, the declarant, after receiving rejection notice, may within ten working days period appeal to the superior Customs Authority or to the court. The superior Customs Authority shall be obliged to make a relevant decision within 30 days period and inform the declarant about it. The appeal shall not exempt the declarant from fulfilling his liabilities connected with the subject of appeal within specified timeframes. *Apart from this, the fact of appeal provided for in this paragraph shall not serve as a base for imposition of penalties other than those specified in RA Legislation for delays in making Customs payments.*
- [September 2002]
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