

TITLE 6
CUSTOMS VALUE
Chapter I
General provisions

54.

54.1. In applying the provisions of Articles 27, 33 to 40 of the Code and those of this Title, customs authorities shall comply with the provisions set out in Annex 6. The provisions as set out in the first column of Annex 6 shall be applied in the light of the interpretative note appearing in the second column.

54.2. If it is necessary to make reference to generally accepted accounting principles in determining the customs value, the provisions of Annex 7 shall apply.

55.

55.1. For the purposes of Articles 34(1)(d) and 35(2)(c) of the Code, persons shall be deemed to be related only if:

- a) they are officers or directors of one another business;
- b) they are legally recognised partners in business;
- c) they are employer and employee;
- d) any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares or both of them;
- e) one of them directly or indirectly controls the other;
- f) both of them are directly or indirectly controlled by a third person;
- g) together they directly or indirectly control a third person; or
- h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another:
 - i) husband and wife;
 - ii) parent and child;
 - iii) brother and sister (whether by whole or half blood);
 - iv) grandparent and grandchild;
 - v) uncle or aunt and nephew or niece;
 - vi) parent in law and son in law or daughter in law;
 - vii) brother in law and sister in law.

55.2. For the purposes of this Title, persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria of point 55.1.

56. For the purposes of determining customs value under Article 34 of the Code of goods in regard to which the price has not actually been paid at the material time for valuation for customs purposes, the price payable for settlement at the said time shall as a general rule be taken as the basis for customs value.

57.

57.1. Where goods declared for free circulation are part of a larger quantity of the same goods purchased in one transaction, the price actually paid or payable for the purposes of Article 34(1) of the Code shall be that price represented by the proportion of the total price which the quantity so declared bears to the total quantity purchased.

57.2. Apportioning the price actually paid or payable shall also apply in the case of the loss of part of the consignment or when the goods being valued have been damaged before entry into free circulation.

58. Where the price actually paid or payable for the purposes of Article 34(1) of the Code includes an amount in respect of any internal tax applicable within the country of origin or export in respect of the goods in question, the said amount shall not be incorporated in the customs value provided that it can be demonstrated to the satisfaction of the customs authorities concerned that the goods in question have been or will be relieved therefrom for the benefit of the buyer.

59.

59.1. For the purposes of Article 34 of the Code, the fact that the goods which are the subject of a sale are declared for free circulation shall be regarded as adequate indication that they were sold for export to the customs territory of the Republic of Albania. This indication shall also apply in the case of successive sales before valuation; in such cases each price resulting from these sales may be taken as a basis for valuation.

59.2. However, where goods are used in a third country between the time of sale and the time of entry into free circulation the customs value need not be the transaction value.

59.3. The buyer need satisfy no condition other than that of being a party to the contract of sale.

60. Where, in applying Article 34(1)(b) of the Code, it is established that the sale or price of imported goods is subject to a condition or consideration the value of which can be determined with respect to the goods being valued, such value shall be regarded as an indirect payment by the buyer to the seller and part of the price actually paid or payable provided that the condition or consideration does not relate to either:

- a) an activity to which Article 34(3)(b) of the Code applies; or
- b) a factor in respect of which an addition is to be made to the price actually paid or payable under the provisions of Article 37 of the Code.

61.

61.1. For the purposes of Article 34(3)(b) of the Code, the term “*marketing activities*” means all activities relating to advertising and promoting the sale of the goods in question and all activities relating to warranties or guarantees in respect of them.

61.2. Such activities undertaken by the buyer shall be regarded as having been undertaken on his own account even if they are performed in pursuance of an obligation on the buyer following an agreement with the seller.

62.

62.1. In applying Article 35(2)(a) of the Code (the transaction value of identical goods), the customs value shall be determined by reference to the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and / or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

62.2. Where the costs and charges referred to in Article 37(1)(e) of the Code are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

62.3. If, in applying this Point, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

62.4. In applying this Point, a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under point 62.1 for identical goods produced by the same person as the goods being valued.

62.5. For the purposes of this Point, the transaction value of identical imported goods means a customs value previously determined under Article 34 of the Code, adjusted as provided for in paragraphs 1 (b) and 2 of this Article.

63.

63.1. In applying Article 35(2)(b) of the Code (the transaction value of similar goods), the customs value shall be determined by reference to the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

63.2. Where the costs and charges referred to in Article 37 (1) (e) of the Code are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

63.3. If, in applying this Point, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value for the imported goods.

63.4. In applying this Point, a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under point 63.1 for similar goods produced by the same person as the goods being valued.

63.5. For the purposes of this Point, the transaction value of similar imported goods means a customs value previously determined under Article 34 of the Code, adjusted as provided for in paragraphs 1 (b) and 2 of this Article.

64.

64.1. a) If the imported goods or identical or similar imported goods are sold in the Republic of Albania in the condition as imported, the customs value of imported goods, determined in accordance with Article 35(2)(c) of the Code, shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods in question) in connection with sales in the Republic of Albania of imported goods of the same class or kind;

ii) the usual costs of transport and insurance and associated costs incurred within the Republic of Albania;

iii) the import duties and other charges payable in Albania by reason of the importation or sale of the goods..* **(DCM no.516, Dt. 14.11.1999)**

iv) in compliance with Article 5.1 (a) (i) and Article 5.8 of the Explanatory Notes for the Customs Values of the WTO, of the agreement for the enforcement of Article 7 of the general agreement on tariffs and trade (GATT-1994), the local taxes payable in Albania by reason of the importation or sale of the goods according to point 64.1, letter a) i) (subtraction for commissions or reasons of profit or general expenses) are subtracted from the customs value stipulated on point 64.1 letter a) of these Implementing Provisions. * **(DCM no. 516, Dt. 14.11.1999)**

b) If neither the imported goods nor identical goods nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value of imported goods determined under this Point shall, subject otherwise to the provisions of point 64.1 (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

64.2. If neither the imported goods nor identical nor similar goods are sold in the country in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in point 64.1 (a).

64.3. For the purposes of this Point, the unit price at which imported goods are sold in the greatest aggregate quantity is the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

64.4. Any sale in the country 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 Article 37 (1) (b) of the Code should not be taken into account in establishing the unit price for the purposes of this Point.

64.5. For the purposes of point 64.1 (b), the “*earliest date*” shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

65.

65.1. In applying Article 35 (2) (d) of the Code (computed value), the customs authorities may not require or compel any person not resident in the Republic of Albania to produce for examination, or to allow access to, any account or other record for the purposes of determining this value. However, information supplied by the producer of the goods for the purposes of determining the customs value under this Point may be verified in a foreign country by the customs authorities with the agreement of the producer and provided that such authorities give sufficient advance notice to the authorities of the country in question and the latter do not object to the investigation.

65.2. The cost or value of materials and fabrication referred to in the first indent of Article 35 (2) (d) of the Code shall include the cost of elements specified in Article 37 (1) (a) (ii) and (iii) of the Code.

65.3. It shall also include the value, duly apportioned, of any product or service specified in Article 37 (1) (b) of the Code 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 Article 37 (1) (b) (iv) of the Code which are undertaken in the Republic of Albania shall be included only to the extent that such elements are charged to the producer.

65.4. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the customs authorities shall inform the declarant, if the latter so requests, of the source of such information, the data used and the calculations based on such data, subject to Article 25 of the Code.

65.5. The “*general expenses*” referred to in the second indent of Article 35 (2) (d) of the Code, cover the direct and indirect costs of producing and selling the goods for export which are not included under the first indent of Article 35 (2) (d) of the Code.

66. Where containers referred to in Article 37 (1) (a) (ii) of the Code are to be the subject of repeated importation, their cost shall, at the request of the declarant, be apportioned, as appropriate, in accordance with generally accepted accounting principles.

67. For the purposes of Article 37 (1) (b) (iv) of the Code, the cost of research and preliminary design sketches is not to be included in the customs value.

68. Article 38 (c) of the Code shall apply “*mutatis mutandis*” where the customs value is determined by applying a method other than the transaction value.

Chapter II

Provisions concerning royalties and license fees

69.

69.1. For the purposes of Article 37 (1) (c) of the Code, royalties and license fees shall be taken to mean in particular payment for the use of rights relating:

- a) to the manufacture of imported goods (in particular, patents, designs, models and manufacturing know-how), or
- b) to the sale for exportation of imported goods (in particular, trade marks, registered designs), or
- c) to the use or resale of imported goods (in particular, copyright, manufacturing processes inseparably embodied in the imported goods).

69.2. Without prejudice to Article 37 (5) of the Code, when the customs value of imported goods is determined under the provisions of Article 34 of the Code, a royalty or license fee shall be added to the price actually paid or payable only when this payment:

- a) is related to the goods being valued, and
- b) constitutes a condition of sale of those goods.

69. 3. The right of royalties and license fee shall not be added to the real paid or payable price for the cinematographic films imported in the Republic of Albania with the right of reproduction and redistribution.

*** (DCM no. 339, Dt. 23.06.2000, added point 3)**

70.

70.1. When the imported goods are only an ingredient or component of goods manufactured in the Republic of Albania, an adjustment to the price actually paid or payable for the imported goods shall only be made when the royalty or license fee relates to those goods.

70.2. Where goods are imported in an unassembled state or only have to undergo minor processing before resale, such as diluting or packing, this shall not prevent a royalty or license fee from being considered related to the imported goods.

70.3. If royalties or license fees relate partly to the imported goods and partly to other ingredients or component parts added to the goods after their importation, or to post-importation activities or services, an appropriate apportionment shall be made only on the basis of objective and quantifiable data, in accordance with the interpretative note to Article 37 (2) of the Code in Annex 6.

71. A royalty or license fee in respect of the right to use a trade mark is only to be added to the price actually paid or payable for the imported goods where:

- a) the royalty or license fee refers to goods which are resold in the same state or which are subject only to minor processing after importation,
- b) the goods are marketed under the trade mark, affixed before or after importation, for which the royalty or license fee is paid, and
- c) the buyer is not free to obtain such goods from other suppliers unrelated to the seller.

72. When the buyer pays royalties or license fees to a third party, the conditions provided for in Point 69.2 shall not be considered as met unless the seller or a person related to him requires the buyer to make that payment.

73. Where the method of calculation of the amount of a royalty or license fee derives from the price of the imported goods, it may be assumed in the absence of evidence to the contrary that the payment of that royalty or license fee is related to the goods to be valued. However, where the amount of a royalty or license fee is calculated regardless of the price of the imported goods, the payment of that royalty or license fee may nevertheless be related to the goods to be valued.

74. In applying Article 37 (1) (c) of the Code, the country of residence of the recipient of the payment of the royalty or license fee shall not be a material consideration.

Chapter III

Provisions concerning the place of introduction into the Republic of Albania

75.

75.1. For the purposes of Article 37 (1) (e) and Article 38 (a) of the Code, the place of introduction into the customs territory of the Republic of Albania shall be:

- a) for goods carried by sea, the port of unloading, or the port of transshipment, subject to transshipment being certified by the customs authorities of that port;
- b) for goods carried by sea and then, without transshipment, by inland waterway, the first port where unloading can take place either at the mouth of the river or canal or further inland, subject to proof being furnished to the customs office that the freight to the port of unloading is higher than that to the first port;
- c) for goods carried by rail, inland waterway, or road, the place where the first customs office is situated;
- d) for goods carried by other means, the place where the land frontier of the customs territory of the Republic of Albania is crossed.

75.2. The customs value of goods introduced into the customs territory of the Republic of Albania and then carried by sea to a destination in another part of that territory shall be determined by reference to the first place of introduction into the customs territory of the Republic of Albania, provided the goods are carried directly by a usual route to the place of destination.

Chapter IV

Provisions concerning transport costs

76. In applying Articles 37 (1) (e) and 38 (a) of the Code:

- a) where goods are carried by the same mode of transport to a point beyond the place of introduction into the customs territory of the Republic of Albania, transport costs shall be assessed in proportion to the distance covered outside and inside the customs territory of the Republic of Albania, unless evidence is produced to the customs authorities to show the costs that would have been incurred under a general compulsory schedule of freight rates for the carriage of the goods to the place of introduction into the customs territory of the Republic of Albania;

- b) where goods are invoiced at a uniform free domicile price which corresponds to the price at the place of introduction, transport costs within the Republic of Albania shall not be deducted from that price. However, such deduction shall be allowed if evidence is produced to the customs authorities that the free-frontier price would be lower than the uniform free domicile price;
- c) where transport is free or provided by the buyer, transport costs to the place of introduction, calculated in accordance with the schedule of freight rates normally applied for the same modes of transport, shall be included in the customs value.

77.

77.1. All postal charges levied up to the place of destination in respect of goods sent by post shall be included in the customs value of these goods, with the exception of any supplementary postal charge levied in the Republic of Albania.

77.2. No adjustment to the declared value shall, however, be made in respect of such charges in determining the value of consignments of a non-commercial nature.

77.3. Points 77.1 and 77.2 are not applicable to goods carried by the express postal services known.

78. The air transport costs to be included in the customs value of goods shall be determined by applying the rules and percentages shown in Annex 8.

Chapter V

Valuation of certain carrier media for use in ADP equipment

79. Notwithstanding Articles 34 to 38 of the Code, in determining the customs value of imported carrier media bearing data or instructions for use in data processing equipment, only the cost or value of the carrier medium itself shall be taken into account. The customs value of imported carrier media bearing data or instructions shall not, therefore, include the cost or value of the data or instructions, provided that such cost or value is distinguished from the cost or value of the carrier medium in question.

Chapter VI

Documents to be furnished

80. Where it is necessary to establish a customs value for the purposes of Articles 27 and 33 to 40 of the Code the declarant shall furnish the customs authorities with the invoice on the basis of which the value of the imported goods is declared. Where the customs value is declared in writing this invoice shall be retained by the customs authorities.

81.

81.1. The customs authorities need not determine the customs valuation of imported goods on the basis of the transaction value method if, in accordance with the procedure set out in point 81.2, they are not satisfied, on the basis of reasonable doubts, that the declared value represents the total amount paid or payable as referred to in Article 34 of the Code.

81.2. Where the customs authorities have the doubts described in point 81.1 they may ask for additional information in accordance with 81.3. If those doubts continue, the customs authorities must, before reaching a final decision, notify the person concerned, in writing if requested, of the grounds for those doubts and provide him with a reasonable opportunity to respond. A final decision and the grounds therefore shall be communicated in writing to the person concerned.

The interested party is entitled to appeal the decision to the General Directorate of Customs within 10 days from the date of announcement. The Director General must respond within 5 days. * **(this pointed was added by DCM no. 686, Dt. 02.11.2005.**

81.3. It should be the responsibility of the declarant to supply with the following additional information and documents concerning the establishment of the customs value if the custom authorities so require:

- a) the authenticity of the documents produced,
- b) the supply of any additional information or documents necessary to establish the customs value of goods.

81.4. In accordance with the Article 7.3 of the agreement for the enforcement of Article 7 of the general agreement on tariffs and trade (GATT-1994), responding to the request of the importer, the customs authorities of the Republic of Albania are bound to announce the customs value in writing as well as the methods used to estimate the customs value of the imported goods stipulated in Title II, Chapter 3 on "Value of goods for customs reasons" of the Customs Code.* (DCM no. 516, Dt. 14.11.1999)

81.4(5) In the enforcement of Article 36 of the Code, the preparation and update of the available data on the customs value whenever it has not been possible to determine in accordance with Articles 34 or 35, shall be rendered by the General Customs Directorate and approved by the *ad-hoc* commission of the available data in Albania, subordinate to the Minister of Finance.

The commission's duties and compositions shall be determined by order of the Minister of Finance.

The available data on the customs value shall be published in all visible places determined for this purpose as well as in all customs houses and the General Directorate. They shall also be published on the internet site of this directorate and a special bulletin. * (**this point was added by DCM no. 686, Dt. 02.11.2005. It seems that there is a problem in the numbering order. This point was to come after point 81.5, which is in force**)