

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 the Republic 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 the Republic 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 the Republic, 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 office 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 office 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 office 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 the Republic;
- 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 the Republic 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 the Republic 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 commodities are sold in Montenegro in the same state it was imported, the customs value of the commodities evaluated shall be established according to the unit price per which that commodity or identical or similar commodity is being sold in greatest total quantity in the same or approximately similar timeframe as the commodities evaluated, namely to the persons linked to the persons buying those commodities, 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 the Republic of imported goods of the same class or kind,
- 2) the usual charges for transport, insurance and other related costs incurred within the Republic,
- 3) customs duties, taxes and other charges payable in the Republic 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 the Republic 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 the Republic 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 the Republic 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 computed 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 the Republic;
- 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 the Republic shall be requested to enable inspection or allow access to any of his accounts or other records for the purpose of determining the computed 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 the Republic, 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 the Republic,
- 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 the Republic,
- 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 labor 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 the Republic,
 - the cost of insurance before the introduction of imported goods into the territory of the Republic;
- 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 the Republic 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 the Republic.

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 the Republic 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 fulfillment 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 office 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 commodities 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 commodities 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 organ establishes that:

- 1) the commodities 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 commodity sales signed before the commodity was marketed;
- 3) commodity deficiency was not considered when signing the commodity 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 twelve (12) months since the day of declaration acceptance for marketing the commodity.

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 office 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 office 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 commodities which were, after the second granted customs procedure or its use, marketed.

Article 44a

Information and data needed for determination and verification of customs value of the goods, confidential nature or which are provided on a confidential basis shall be considered as official secret and it shall not be disclosed by the customs authorities without the express consent of the person or authorities providing it, except in the case required by the court.

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 the Republic, the foreign currency shall be converted in accordance with the official exchange rate in effect on the day the customs debt is chargeable.