

CUSTOMS VALUATION OF GOODS

Chapter 1

Article 68

- (1) Value of goods for customs purposes (hereinafter: customs value) is the transaction value in accordance with Article 30 of the Customs Law. It is deemed to be, when the goods for export are sold to be imported in the customs territory, the agreed, actually paid, or payable price, which meets the conditions referred to in Article 30 para 1 of the Customs Law and which is to be determined in accordance with Article 38 of the Customs Law.
- (2) If it impossible to determine customs value in accordance with Article 30 of the Customs Law, customs value shall be determined in accordance with the steps provided in Article 31 to 37 of the Customs Law.
- (3) For the purposes of determining, in accordance with Article 30 of the Customs Law, the customs value of the goods whose price was agreed at the time that is the proper time for valuation and such price has not been paid, the price routinely taken into account shall be the price which should be paid in order to meet the obligation.

Article 69 (Definitions)

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

Article 70

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

- (1) When a part of a larger shipment is, within a sole transaction with the purchased goods, declared for placement into free circulation, it is, in accordance with Article 30 para 1 of the Customs Law, actually paid or payable price, such part of the total price which corresponds to the difference between the quantity of declared goods and total quantity of purchased goods.
- (2) Proportionate division of the actually paid or payable price should be made before placement into free circulation, when the goods, which is the subject of evaluation, is partially lost or damaged.

Article 71

(Taking into account duties payable in foreign countries)

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

Article 72

- (1) In application of Article 30 of the Customs Law it shall be deemed that the goods are sold for export to be imported in customs territory, if such goods are declared for placement into free circulation in Montenegro. In the event the goods have been repeatedly sold before determination of the customs value, only the last sale before entry of the goods to the customs territory may be taken into account, namely the last sale in the customs territory that was made before the goods that were subject to valuation have been placed into free circulation.
- (2) For the purposes of applying para 1 of this Article, Articles 64, 96 to 99 of this Decree shall be applied.
- (3) If, between the sale and placement into free circulation, the goods are used abroad, it shall not be required to use the transaction value as the customs value.
- (4) The buyer need not meet any conditions other than to be a party to the purchase/sale contract.

Article 73

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

Article 74

- (1) If, when determining customs value in accordance with Article 30 para 1 of the Customs Law, the customs authority finds that the sale/purchase deal or the price of imported goods is subject to the conditions or liabilities whose value is impossible to determine for the imported goods, such value shall be deemed to be indirect payment of the buyer to the seller and thus, a part of the actually paid or payable price.
- (2) Para 1 of this Article shall not apply if the conditions and liabilities are with regard to:
 - a. Business activities carried out by the buyer for his own account, including the business activities related to further sale of the imported goods, in accordance with Article 75 of this Decree, with the exception of those for which the adjustment is made in accordance with Article 38, or Article 21, of the Customs Law even though they incur gain for the seller or were subject to the agreement between the buyer and the seller. When determining the customs value, the costs of such business activities shall not be included in the actually paid or payable price.
 - b. Value of the services which in accordance with Article 38 of the Customs Law needs to be added to the actually paid or payable price.
- (3) The conditions whose value is impossible to determine and the liabilities arising from the sale/purchase deal shall be primarily deemed the event when:
 - a. The seller determines the price for the imported goods under the condition that the buyer buys certain quantity of other goods;
 - b. The price of the imported goods is subject to the price or prices at which the buyer sells other goods to the seller of the imported goods;
 - c. The price of the imported goods is determined based on a mode of payment unrelated to the imported goods.

Article 75

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

- (1) Business activities referred to in Article 74 para 2 item a) of this Decree are all business activities related to advertising and promotion of the sale of goods, and all business activities related to the security and guarantee for these goods.
- (2) Business activities referred to in para 1 of this Article which the buyer carries out on his own shall be deemed all business activities which were carried out for his account, even though they are the obligation of the buyer which was agreed with the seller of the imported goods.

Article 76

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

Article 77

(Interrelatedness between the buyer and the seller)

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

Article 78

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

- (1) For determination of customs value in accordance with Articles 32 and 33 of the Customs Law, the transaction value of the identical or similar goods from the sale/purchase contract shall be used, at the equal commercial level and for the quantity of goods which is approximately equivalent to the quantity of goods for which the customs value is being determined. In the absence of such sale/purchase deal, transaction value of the identical or similar goods that were sold at the other commercial level and/or in other quantity shall be taken into account, in following sequence:
 - a. Same commercial level but in different quantity;
 - b. Different commercial level but in approximately same quantity;
 - c. Different commercial level and different quantity.
- (2) The transaction value that is determined in accordance with para 1 of this Article should be adjusted for the difference arising from the commercial levels of sale/purchase and/or quantity, if it is possible to make accurate and precise corrections in the presented documents, regardless whether the value is increased or increased by such corrections.

Article 79

- (1) In application of Articles 32 and 33 of the Customs Law and Article 78 of this Decree, the transaction value of the goods that is prepared by a third party shall be taken into account only if the transaction values for the identical or similar goods that was prepared by the same person for the goods for which the customs value is being determined are not available to the customs authority.
- (2) Transaction value of the imported identical or similar goods shall be deemed to be the customs value which, in accordance with Article 30 of the Customs Law, was already accepted and which includes the corrections in accordance with Article 38 para 1 item 1 indents 4, 5, and 6 of the Customs Law, and para 2 Article 78 of this Decree.

Article 80

(Deductive method for customs valuation)

- (1) In application of Article 35 of the Customs Law, "price per unit, at which the imported goods are sold in the largest total quantity" shall be deemed to be such price at which the largest number of units of such goods is sold in the first sale after being imported in the customs territory, between the unrelated persons.
- (2) For determination of the price per unit in accordance with Article 35 of the Customs Law, the events of sale in Montenegro to persons who, directly or indirectly, for free or at reduced prices, supply the goods or provide the services referred to in Article 38 para 1 item 2 of the Customs Law relating to production or sale of the imported goods, may not be used.
- (3) The time of the first sale after importation is, in accordance with paragraph 2 of this Article, the day of carrying out the sale of imported goods or imported identical or similar goods in such quantity that it is possible to determine the price per unit.

Article 81
(Method of the calculated value)

- (1) Customs value shall, in accordance with Article 36 of the Customs Law (calculated value) routinely be determined only based on the data that are available to a person with domicile or permanent residence in Montenegro.
- (2) If, in addition to the data presented by the producer or the declarant in his name, other data is used for determination of customs value, the customs authority shall, taking into account Article 16 of the Customs Law, notify the declarant, at his request, about the data that was used and the source of data.
- (3) The value of the material and costs in accordance with Article 36 of the Customs shall also be deemed to be the costs referred to in Article 38 paragraph 1 item 1 of the Customs Law.
- (4) The value of costs and expenses referred to in Article 36 of the Customs Law shall also be deemed to be the costs and expenses for the goods and services referred to in Article 38 paragraph 1 item 2 of the Customs Law which the buyer supplied or provided directly or indirectly in connection with the production of the imported goods. The value of services referred to in Article 38 paragraph 1 item 2 indent 4 of the Customs Law that are provided in the customs territory shall be considered only if they are debited to the producer.
- (5) In accordance with Article 36 paragraph 1 item 2 of the Customs Law, the value of costs shall be deemed to be direct and indirect costs for production and sale of goods for export, other than taken into account as referred to in Article 36 paragraph 1 item 1 of the Customs Law.

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

- (1) The customs values that are determined in accordance with Article 37 of the Customs Law must rely, to the greatest extent possible, on previously determined customs values.
- (2) Evaluation methods that are applied in accordance with Article 37 of the Customs Law must correspond to the methods referred to in Articles 30, 31, 32, 33, 35, and 36 of the Customs Law. The mentioned methods may be applied in the events corresponding to the conditions referred to in Article 37 of the Customs Law.

Article 83
(Commissions)

- (1) In accordance with Article 38 paragraph 1 item 1 indent 1 of the Customs Law, the customs value shall include all payments made by the buyer to the intermediaries in connection with the sale/purchase of the goods, if such payments were not included in the paid or payable price.
- (2) Commissions for purchase which are paid by the buyer for the intermediation in purchase of the goods shall not be included in the customs value if they are presented separately. Commission for purchase shall constitute the payments by the buyer to his agent for agency services abroad in purchase of the goods whose value is being determined.

Article 84

(Packaging)

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

Article 85 (Place of entry to the customs territory)

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

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

Article 86 (Costs of Transport and Insurance)

- (1) If the agreed delivery is “fco destination in the customs territory” and if the amount of the transportation costs from the point of entry into the customs territory to the point of delivery cannot be learned from the contract and other documents submitted, the customs value shall include total transportation costs.
- (2) If the goods were purchased at a uniform price “fco destination in the customs territory”, which is adequate to the price at the point of entry, the costs related to the transportation within the customs territory shall not be subtracted from this price. The deduction shall be taken into account only in the case that it has been proved to the customs service authority that the price “fco point of entry in the customs territory” would be lower than the uniform price “fco destination in the customs territory”.
- (3) If the transportation is free of charge or performed by the buyer’s own vehicles, the customs value shall include all the costs from the point of entry into the customs territory, defined on the basis of usually applicable rate for equal manner of transportation. The declarant shall submit evidence of the costs thus calculated.
- (4) The customs value shall not include the insurance costs for the imported goods.
- (5) The customs value shall include full postal fees for the goods transported in postal traffic to the destination. The customs value shall not include possible additional postal fees, calculated in the customs territory.
- (6) The customs value of the goods whose import is not commercial shall not include the fees referred to in paragraph 5 of this Article.
- (7) Paragraphs 5 and 6 of this Article do not refer to the express postal services.

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

- (1) Pursuant to Article 38, paragraph 1, item 2, indents 1, 2, and 3 of the Customs Law, the buyer may provide the seller with the goods indirectly or directly. These goods, except for the goods

referred to in Article 38, paragraph 1, item 2, indent 3 of the Customs Law, must be used in the manufacturing of the imported goods and contained or used up in them.

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

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

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

Article 89
(Licensing Provisions)

- (1) The fees and costs referred to in Article 38, paragraph 1, item 3 of the Customs Law (hereinafter: licenses) shall be calculated prior to all payments for the right of use concerning the following:
 - a) the production of the goods imported (primarily patents, samples, models and technological know-how);
 - b) reselling the imported goods for exportation (primarily trademarks and service marks and protected models);
 - c) the use and selling of the imported goods (primarily copyright and technological procedures inherently included in the imported goods).
- (2) If the customs value of the imported goods is determined pursuant to Article 30 of the Customs Law, the licenses and actually paid prices or payable prices for the imported goods shall be included only if such payment:
 - a) refers to the goods whose value is being determined, and
 - b) represents the condition for selling the imported goods.
- (3) If the imported goods are only a part of, or accessories to, the goods produced in the customs territory, the license may be added to the actually paid price to be paid for the imported goods only if the license refers to the imported goods.
- (4) If the goods are imported in a disassembled state or if the goods undergo insignificant treatment prior to selling, e.g. disassembling and repackaging, that shall not exclude the fact that the license refers to the imported goods.
- (5) If the licenses partly refer to the imported goods, and partly to other parts and additional equipment to be added to the goods following importation, the licenses shall be allotted solely on the basis of objective facts and facts that can be determined.

- (6) The license for the right to use a trademark shall be added to the actually paid price or payable price for the imported goods only when:
 - a) the license refers to the goods resold after importation in an unchanged condition or only insignificantly treated or processed,
 - b) the goods are sold with the trademark, placed prior to the importation or following it, or the buyer has no possibility to purchase these goods from other suppliers, not related to the seller.
- (7) If the buyer makes payment for the license to a third party, the requirements referred to in paragraph 2 of this Article shall be deemed as met only if the seller or the person related to him requires from the buyer to make the payment to the third person.
- (8) If the method of calculating the license depends on the price of the imported goods, it shall be deemed, until proved otherwise, that the payment or the license refers to the goods whose value is being determined.
- (9) If the license amount is calculated regardless of the price of imported goods, the payment for the license may also refer to the goods whose value is being determined.
- (10) The country where the licensee has its principal place of business shall not be of importance in case of application of Article 38, paragraph 1, item 3 of the Customs Law.

Article 90
(Valuation of Services Provided Abroad)

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

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

- (1) When determining the customs value, no other items may be added to the actually paid price or payable price, except for the items referred to in Article 38, paragraph 1 of the Customs Law.
- (2) Each item added to the actually paid price or payable price pursuant to paragraph 1 of this Article must rely solely on the objective facts concerning the quantity verifiable.
- (3) As referred to in Article 39, paragraph 1, item 4 of the Customs Law, the multiplication (reproduction) shall be deemed primarily as graphic and three-dimensional multiplication, construction or performance of an architectural or other structure or instrument, taking photographs, sound and video recording and reproducing, as well as storing in electronic form.

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

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

were not shown separately (Article 81, paragraph 3 of this Decree), be determined in accordance with special criteria.

- (2) In cases referred to in paragraph 1 of this Article the declared customs value shall not be deemed to be temporary value pursuant to Article 134 of this Decree.
- (3) The approval referred to in paragraph 1 of this Article may be given:
 - a) if the application of the procedure pursuant to Article 134 of this Decree should entail disproportionately high costs in view of the circumstances;
 - b) if the method – replacement of use is valuation pursuant to Articles 32 through 37 of the Customs Law, in view of the circumstances, inappropriate;
 - c) in case there are sound reasons that the outstanding import duties in a certain period will not be lower due to the approval referred to in paragraph 1 of this Article than the duties, should the approval not be granted;
 - d) if the granting of the approval does not influence the competitiveness of business operators.

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

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

Article 94
(Acceptability of Transaction Value)

- (1) The customs service authority shall not accept the determination of the customs value on the basis of the transaction value, pursuant to paragraph 2 of this Article, in case there is doubt that the declared transaction value is adequate to the price paid or payable, referred to in Article 30 of the Customs Law.
- (2) Under conditions referred to in paragraph 1 of this Article, the customs service authority may, pursuant to Article 96, paragraph 3 of this Decree, request that the additional data be submitted. If the doubt is still present based on the data submitted at a later date, the customs service authority shall, prior to reaching the final decision, inform in writing the declarant at his request of the reasons for the doubt, and provide him with the adequate time period for the explanation. The customs service authority decides on the final decision.

Chapter 2
Specific Valuation Rules

Section 1
Programming Equipment

Article 95

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

the value of the data or programming instruction is shown separately from the value of the data carrier.

- (2) Under this Article the following shall not be included:
- b) “data carriers”: integrated circuits, semi-conductors and similar devices or goods containing such integrated circuits or devices;
 - c) “data and programming instructions”: sound, cinematographic or video recordings.

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

Article 96

- (1) If the customs value is determined pursuant to Article 33 through 44 of the Customs Law, the data concerning the customs value of the imported goods should be submitted correctly along with the customs declaration.
- (2) When applying paragraph 1 of this Article, regulations adopted based on Article 69, paragraph 2 of the Customs Law, shall be duly applied.
- (3) The declarant shall provide the following:
- b) the accuracy and completeness of the data stated in the customs value declaration
 - c) authenticity of the documents submitted as evidence for the data, and
 - d) all additional data and submission of all the documents necessary for determination of the customs value of the goods.

Article 97

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

Article 98

- (1) The declarant shall submit to the customs service authority two copies of the invoice for the goods imported, based on which the customs value has been declared.
- (2) One copy shall be retained by the customs service authority, and the other copy shall be certified by the customs mark and the number of the customs declaration shall be entered on it by the customs service authority, who will then submit it to the declarant.