

CHAPTER 3 VALUE OF GOODS FOR CUSTOMS PURPOSES

Article 32

The provisions of this Chapter shall determine the customs value for the purposes of applying the Customs Tariff of Kosovo and non-tariff measures laid down by Kosovo provisions governing specific fields relating to trade in goods.

Article 33

1. The customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to Kosovo, adjusted, where necessary, in accordance with Articles 36 and 37, provided:

- a) that there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which:
 - are imposed or required by a law or by the public authorities in Kosovo,
 - limit the geographical area in which the goods may be resold, or
 - do not substantially affect the value of the goods;
- b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 36; and

d) 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 under paragraph 2.

2. For the purposes of paragraph 1, the following shall apply:

a) In determining whether the transaction value is acceptable, the fact that the buyer and the seller are related shall not in itself be sufficient grounds for regarding the transaction value as unacceptable. Where necessary, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the declarant or otherwise, the Customs have grounds for considering that the relationship influenced the price, they shall communicate their grounds to the declarant and he shall be given a reasonable opportunity to respond. If the declarant so requests, the communication of the grounds shall be in writing.

b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with paragraph 1 wherever the declarant demonstrates that such value closely approximates to one of the following occurring at or about the same time:

(i) the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to Kosovo;

(ii) the customs value of identical or similar goods, as determined under Article 34 (2) (c);

(iii) the customs value of identical or similar goods, as determined under Article 34 (2) (d).

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 36 and costs incurred by the seller in sales in which he and the buyer are not related and where such costs are not incurred by the seller in sales in which he and the buyer are related.

c) The tests set forth in subparagraph (b) are to be used at the initiative of the declarant and only for comparison purposes. Substitute values may not be established under the said subparagraph.

3. 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 and includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller. 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 instrument and may be made directly or indirectly.

Activities, including marketing activities, undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 36 are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller, and their cost shall not be added to the price actually paid or payable in determining the customs value of imported goods.

Article 34

1. Where the customs value cannot be determined under Article 33, it is to be determined by proceeding sequentially through subparagraphs (a), (b), (c) and (d) of paragraph 2 to the first subparagraph under which it can be determined, subject to the proviso that the order of application of subparagraphs (c) and (d) shall be reversed if the declarant so requests; it is only when such value cannot be determined under a particular subparagraph that the provisions of the next subparagraph in a sequence established by virtue of this paragraph can be applied.
2. The customs value as determined under this Article shall be:
 - a) the transaction value of identical goods sold for export to Kosovo and exported at or about the same time as the goods being valued;
 - b) the transaction value of similar goods sold for export to Kosovo and exported at or about the same time as the goods being valued;
 - c) the value based on the unit price at which the imported goods for identical or similar imported goods are sold within Kosovo in the greatest aggregate quantity to persons not related to the sellers;
 - d) the computed value, consisting of the sum of:
 - the cost or value of materials and fabrication or other processing employed in producing the imported goods,
 - 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 Kosovo,
 - the cost or value of the items referred to in Article 36 (1) (e).
3. Any further conditions and rules for the application of paragraph 2 above shall be determined in the Administrative Instruction implementing this Code.

Article 35

1. Where the customs value of imported goods cannot be determined under Articles 33 or 34, it shall be determined, on the basis of data available in Kosovo, using reasonable means consistent with the principles and general provisions of:

-the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade of 1994;

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-the provisions of this chapter.

2. No customs value shall be determined under paragraph 1 on the basis of: a) the selling price in Kosovo of goods produced in Kosovo; b) a system which provides for the acceptance for customs purposes of the higher of two

alternative values; c) the price of goods on the domestic market of the country of exportation;

d) the cost of production, other than computed values which have been determined for

identical or similar goods in accordance with Article 33 (2) (d); e) prices for export to a

country other than Kosovo; f) minimum customs values; or g) arbitrary or fictitious values .

Article 36

1. In determining the customs value under Article 33, there shall be added to the price actually paid or payable for the imported goods:

a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(i) commissions and brokerage, except buying commissions,

(ii) the cost of containers which are treated as being one, for customs purposes, with the goods in question,

(iii) the cost of packing, whether for labor or materials;

b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

- (i) materials, components, parts and similar items incorporated in the imported goods,
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods,
 - (iii) materials consumed in the production of the imported goods,
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country and necessary for the production of the imported goods;
 - c) 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, to the extent that such royalties and fees are not included in the price actually paid or payable;
 - d) 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;
 - e) (i) the cost of transport and insurance of the imported goods, and
 - (ii) loading and handling charges associated with the transport of the imported goods to the place of introduction into Kosovo.
1. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.
 2. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.
 3. In this Chapter, the term 'buying commissions' means fees paid by an importer to his agent for the service of representing him in the purchase of the goods being valued.
 4. Notwithstanding paragraph 1 (c):
 - a) charges for the right to reproduce the imported goods in Kosovo shall not be added to the price actually paid or payable for the imported goods in determining the customs value; and
 - b) 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 Kosovo of the goods.

Article 37

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

- a) charges for the transport of goods after their arrival at the place of introduction into Kosovo;
- b) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation of imported goods such as industrial plant, machinery or equipment;
- c) charges for interest under a financing 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 financing arrangement has been made in writing and where required, the buyer can demonstrate that:
 - such goods are actually sold at the price declared as the price actually paid or payable, and
 - the claimed 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;
- d) charges for the right to reproduce imported goods in Kosovo;
- e) buying commissions;
- f) import duties or other charges payable in Kosovo by reason of the importation or sale of the goods.

Article 38

Specific rules may be laid down in the Administrative Instruction implementing this Code to determine the customs value of carrier media for use in data-processing equipment and bearing data or instructions.

Article 39

Where factors used to determine the customs value of goods are expressed in a currency other than euros, the rate of exchange to be used shall be that duly published by the authorities competent in the matter.