

EAST AFRICAN COMMUNITY

EAC CUSTOMS VALUATION MANUAL

**A Guide to the Customs Valuation of Imported
Goods in the East African Community**

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PREFACE

This Customs valuation manual is an EAC publication which sets out guidelines on operationalisation of the EAC Customs valuation provisions as set out in the EAC Customs Management Act, 2004 in order to determine the Customs values for ad valorem duty purposes of goods imported into the Community. The manual spells out in detail the application of the six methods of determining the customs value, procedures of administering the methods, procedure for treatment of adjustments and institutional framework for implementation of the Customs valuation.

This manual has been developed to enable uniform interpretation and application of Customs valuation provisions in the Community. It is designed to assist Customs officers and other officers involved in Customs valuation of imported goods.

The manual can be used both as an operational instrument and in training of Customs officers and other stakeholders. Periodical review will be done on the manual to ensure that it is consistent with any new changes in trade both at regional and international level for which the Community circumscribe to.

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CHAPTER 1

1.0 INTRODUCTION

1.1 Background of the Manual

The East African Community (EAC) is a Regional organization mandated by the Governments of Kenya, Tanzania, Uganda, Rwanda and Burundi to spearhead the East African economic, social and political integration agenda. The Treaty for the establishment of the EAC was signed in November 1999 and entered into force in July 2000. The Treaty sets out a bold vision for the eventual unification of the EAC Partner States. Article 75 sets a Customs Union (CU) as the first step of integration.

A Protocol establishing the EAC CU was signed in December 2004 and the implementation of the CU commenced on 1st January 2005. The transitional period consisted of five years which was followed by the fully fledged CU in January 2010.

The EAC Customs Management Act, 2004, Section 122 and the Fourth Schedule to the Act lay down the procedure of determination of the Customs value of imported goods liable to ad valorem import duty. This is derived from the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade variously referred to as the Agreement Customs Valuation (ACV), or the GATT Valuation Agreement (GVA), or the WTO Valuation Agreement. This is one of the multilateral Agreements resulting from the Tokyo Round of multilateral trade negotiations within GATT.

The WTO/GATT Valuation System necessitates the active involvement of both importers and Customs in the valuation process. It presupposes that a process of consultation may take place between Customs and importers to ensure that the value determined is accurate. Importers and/or their Agents at the time of importation must be fully conversant with the valuation laws applicable, and present to Customs a complete and accurate declaration. Customs, on its part, must ensure that importers have full information on the Customs laws and regulations, to enable them to fulfill their obligations. After presentation of the declaration, it is the responsibility of the Customs to verify the information/data presented by the importer to ensure its truth and accuracy. To be effective in this respect, Customs officials must have full knowledge of the legal provisions, and be able to examine the relevant facts of the case under consideration.

In all cases, the importer is required to be fully aware of the circumstances of a transaction and, particularly, of how the declared value was determined. Evidence to support the declaration of value should be maintained on file for presentation to Customs should it be requested for purposes of verification.

1.2 Importance of Customs Valuation

Customs valuation is a major feature, and concern, of modern Customs tariff systems. It is important not only for the assessment of Customs duties, whether for purposes of generating revenue or as a means of encouraging and protecting domestic industry but is also a significant element in a variety of other aspects of international trade such as trade facilitation, statistics, taxes and other charges levied at importation as well as in the application of preference systems.

The determination of a Common Customs Valuation methodology becomes even more critical as EAC consolidates its Customs Union and subsequently implement the common market as this will provide a uniform and harmonized basis for Customs valuation throughout the EAC Territory. This manual should in this regard, assist the EAC Customs Administrations to reach convergence in their operations with respect to Customs valuation and in the process, contribute to evolving a more transparent and improved quality and level of service.

1.3 Evolution of Customs Valuation

In the 1950s, the method of Customs valuation for assessment of import duties for most countries was Brussels Definition of Value (BDV). Under this method, a normal market price, defined as ‘the price that a good would fetch in an open market between a buyer and seller independent of each other, was determined for each product. Factual deviations from this price were fully taken into account where the declared value was higher than the listed value. This method caused widespread dissatisfaction among traders, as price changes and competitive advantages of firms were not reflected until the notional price was adjusted by the customs office after certain periods of time. New and rare products were often not captured in the lists, which made determination of the ‘normal price’ difficult. These were the major disadvantages of the BDV in determining the Customs value of imported goods. By applying this system of valuation which has scarcely any relation to the price actually paid, it was not fair to the traders. It was clear that a more flexible and uniform valuation method was needed which would harmonize the systems of all countries.

Between 1973 and 1979, a new phase in the history of valuation was in the making. During that period, the GATT multilateral trade negotiations known as the “Tokyo Round” took place in Geneva, representing one of the most significant trade policy events. One of the results of these negotiations was the adoption of the Agreement on the Implementation of Article VII of the GATT, establishing a positive system of Customs valuation based on the price actually paid or payable for the imported goods. It is intended to provide a fair, uniform, and neutral system of valuation of goods for Customs purposes, conforming to commercial realities and outlawing the use of arbitrary or fictitious Customs values. The Agreement recognizes that Customs valuation should as far as possible, be based on the **actual price** of the goods to be valued, which is generally shown on the invoice. This price, subject to certain adjustments, is known as the Transaction Value.

A protocol to the 1979 Agreement, deemed to form an integral part thereof, contained provisions concerning special problems and trading needs of developing countries, permitting them to flexibly apply the Agreement. This has become Annex III of the GATT 1994 Valuation Agreement. The Agreement entered into force in 1981.

The Uruguay Round of GATT Negotiations was finalized in December 1994. It did make several changes to the existing GATT and the Agreement on the implementation of Article VII, one of which was the creation of World Trade organization (WTO) which came into force on 1st January, 1995.

The WTO/GATT Valuation Agreement has been domesticated and enacted in the EAC Customs Management Act, 2004.

1.4 Scope of the Manual

This Customs Valuation manual covers the provisions governing determination of value of imported goods liable to ad valorem duties into the Community and the administration procedure of the Customs valuation. It is intended to be a multipurpose in that it provides reference material for policies makers, trainers and other stakeholders. It is also designed to assist the Customs officials of the Community in handling the Customs valuation of imported goods. It may be used as a practical guide for Customs officials when valuing goods. In addition, the manual is a useful tool for training purposes.

The verification of Customs value covers the whole enquiry to be made by Customs in checking the truth or accuracy of any statement, document or declaration presented for Customs valuation purposes. This is as per Provisions of Section 122(4) of EAC CM Act, 2004.

This manual is a supplement to and not a substitute for the EAC Customs Management Act, 2004; Section 122 and the Fourth Schedule to the Act which lay down the procedures for determination of the Customs value of imported goods liable to ad valorem import duty.

1.5 Objectives of the Manual

The objective of this manual is to:

- (i) Enable Customs officers and other stakeholders in interpretation of Section 122 and the Fourth Schedule to the EAC Customs Management Act, 2004, while determining the Customs value of imported goods liable to Ad Valorem import duty;
- (ii) Provide the framework on which to base Customs valuation policy and control;
- (iii) Assist the EAC Partner States to enhance their procedural efficiency in the determination of Customs values of the imported goods;
- (iv) Ensure that EAC Partner States harmoniously comply with provisions of Section 122 and the Fourth Schedule to the EAC Customs Management Act, 2004;
- (v) Explain the basic Customs valuation methods;
- (vi) Explain the dispute settlement procedures under the Customs valuation of imported goods;
- (vii) Assist in training of Customs officers and stakeholders.

1.6 Legal and Institutional Framework on Customs Valuation under EAC

In determining the Customs value of imported goods liable to ad valorem duty, Section 122 and the Fourth Schedule to the EAC CMA, 2004 apply. Customs valuation offences shall be handled under the provision of Part XVII to the EAC CMA, 2004. The importer directly affected by the decision or omission of the commissioner or any other officer on the matter relating to Customs valuation, shall within thirty days of the date of decision or omission lodge an application for review of that decision or omission to the commissioner; as provided for under Section 229 of EAC CMA, 2004. The importer who is dissatisfied with the decision of the commissioner under Section 229 may appeal to the Tax Tribunal.

1.7 Customs Valuation Control

Subject to the provisions of EAC CMA, 2004, valuation control can be exercised either at the time of or after clearance of imported goods. Control up to the time of clearance is usually carried out by the local office and post-clearance verification by a Central office.

1.7.1 Division of Customs Valuation Control

Customs valuation control is divided between:

- (a) The control of the declaration of value; and
- (b) A more thorough subsequent verification of the Customs value.

The control of the declaration of value means, a cursory screening and checking of a declaration of value and/or the value details in a Customs clearance entry, usually carried out at the local level.

The purpose of this initial control is to confirm whether:

- (i) The declaration of value has been completed fully and correctly;
- (ii) The required supporting documents are appended thereto;
- (iii) The details of the declaration of facts about the value correspond to the supporting documents;

- (iv) The entry is subject to any Customs rulings;
- (v) The declared value is realistic in the light of the commercial practices of the industry and identical or similar goods.

1.7.2 Purpose of Customs Control in the Valuation Process

The main purpose of Customs valuation control in the valuation process is to confirm whether:

- (a) The conditions for the use of the transaction value method are fulfilled;
- (b) The declared value includes the total payment made (or to be made) by the buyer for the imported goods;
- (c) The declared value includes all the necessary adjustments as per Para 9 of Part 1 of the Fourth Schedule to the EAC CMA Act, 2004;
- (d) An alternative method of valuation, when indicated, is being used correctly.

CHAPTER 2

2.0 METHODS OF CUSTOMS VALUATION AND THEIR PRACTICAL APPLICATION

Section 122 and the Fourth Schedule to the EAC CMA, 2004 requires that the Customs value of imported goods be determined using one of six methods of valuation.

The methods are as follows:

- (a) The Transaction Value Method; Para 2 and 9 of Part 1 of the Fourth Schedule to the EAC CMA, 2004 (Method 1), the Primary Method;
- (b) The Transaction Value of Identical Goods Method; Paragraph 3 (Method 2);
- (c) The Transaction Value of Similar Goods Method; Paragraph 4 (Method 3);
- (d) The Deductive Value; Paragraph 6 (Method 4);
- (e) The Computed Value; Paragraph 7 (Method 5);
- (f) The Fall-back Value; Paragraph 8 (Method 6).

Conditions for use of Methods:

- (i) These methods, must be applied in sequence (1-6);
- (ii) Method 1 must be attempted first. Method 2 can only be considered if a value cannot be determined under the first method;
- (iii) Methods 3 to 6 follow the same procedure;
- (iv) Method 6 can only be applied if all the previous methods cannot be used;
- (v) The only exception is that the sequence of Methods 4 and 5 may be reversed at the request of the importer. A Customs officer cannot decide to reverse the order of methods.

2.1 THE TRANSACTION VALUE METHOD (METHOD 1)

2.1.1 Actual Value

- (a) The value for Customs purposes of the imported goods must be based on the actual value on which duty is assessed and should not be based on arbitrary or fictitious values;
- (b) The **actual value** must be the price at which such or like goods are sold or offered for sale in the ordinary course of trade under fully competitive conditions;
- (c) When the actual value is not ascertainable, the value for Customs purposes must be based on the nearest ascertainable equivalent of such value (use other valuation Methods).

2.1.2 Price Actually Paid or Payable

- (a) The primary basis for Customs value is “the transaction value” as defined in paragraph 2 read with Para 9 of Part I of the Fourth Schedule to the EAC CMA, 2004;
- (b) The “transaction value” of the imported goods is the total price paid or payable for the imported goods when sold for export to the Partner State in the ordinary course of trade under fully competitive conditions. This is real price which is actually made not nominal price for the imported goods;
- (c) 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 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 Customs value of the imported goods is the transaction value of the goods being valued if all of the conditions have been fulfilled.

2.1.3 Conditions for the use of Transaction Value

The conditions for the use of the transaction value method are as follows:

- (a) There must be evidence of a sale for export to the Partner State, i.e. commercial invoices, contracts, purchase order, etc.
- (b) There must be no restrictions on the disposition or use of the goods by the buyer, other than restrictions which:
 - (i) *Are imposed or required by law or by the public authorities in the Partner State, e.g. license, end-use, etc;*
 - (ii) *Limit the geographical area in which the goods may be resold; or*
 - (iii) *Do not substantially affect the value of the goods, e.g. selling or exhibiting automobiles prior to a fixed date which represents the beginning of a model year;*
- (c) The sale or price must not be subject to conditions or considerations for which a value cannot be determined with respect to the goods being valued, for example:
 - (i) *The seller establishes the price of the imported goods on the condition that the buyer will also buy other goods in specified quantities;*
 - (ii) *The price of the imported goods is dependent upon the price or prices at which the buyer sells other goods to the seller;*
 - (iii) *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 the condition that he will receive a specified quantity of the finished goods;*
- (d) 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 the provisions of Para 9 to EAC CMA, 2004. Sufficient information must be available to permit an accurate adjustment for any such proceeds;
- (e) The buyer and the seller are not related. If the buyer and seller are related, the use of the transaction value method is acceptable if the importer demonstrates that:
 - (i) *The relationship did not influence the price actually paid or payable; or*
 - (ii) *The transaction value closely approximates a test value, as indicated below;*
 - (a) *Transaction value in a sale to unrelated buyers of identical /similar goods for export to the partner states;*
 - (b) *The Customs value of identical/similar goods determined under deductive value method;*
 - (c) *Customs value of identical/similar goods determined under a computed value method.*
- (f) Sufficient information is available to enable the following additions to be made to the price actually paid or payable under Para 9 of EAC CMA, 2004:
 - (i) *Commissions and brokerage, except buying commissions,*
 - (ii) *Packing and container costs and charges, which are treated as being one for customs purposes,*
 - (iii) *The costs of packing whether for materials or labour associated with the imported goods,*
 - (iv) *Assists;*
 - (v) *Royalties and license fees;*

- (vi) *Subsequent proceeds;*
- (vii) *The cost of transport, insurance and related charges up to the Port/Border of entry to the East African Community.*

2.1.4 Exclusions

The Customs value must not include the following charges or costs, if they are distinguished from the price actually paid or payable for the goods:

- (a) Freight after importation into the Customs territory of the Partner State;
- (b) Cost of construction, erection, assembly, maintenance or technical assistance occurring after importation;
- (c) Duties and taxes of the importing Partner State.

2.2 THE TRANSACTION VALUE OF IDENTICAL GOODS (METHOD 2)

2.2.1 Customs Value cannot be Determined Under Method 1

Where the Customs value of the imported goods cannot be determined under the provisions of Paragraph 2 of Fourth schedule to the EAC CMA, 2004, there should normally be a process of consultation with the importer with the aim of determining the Customs value under Method 2. The Customs value under this method shall be the transaction value of identical goods sold for export to the Partner State and exported at or about the same time as goods being valued.

2.2.2 Definition of Identical Goods

- (a) Identical goods are defined as goods which are:
 - (i) *The same in all respects including:*
 - (A) *Physical characteristics,*
 - (B) *Quality, and*
 - (C) *Reputation,*
 - (ii) *Produced in the same country as the goods being valued; and*
 - (iii) *Produced by the producer of the goods being valued;*
- (b) The definition of identical goods excludes imported goods for which engineering, artwork, etc. is undertaken in the Partner State and is provided by the buyer to the producer of the goods free of charge or at a reduced cost;
- (c) Where there are no identical goods produced by the same person in the country of production of the goods being valued, identical goods produced by a different person in the same country may be taken into account;
- (d) Minor differences in appearance would not preclude goods which otherwise conform to the definition from being regarded as identical.

2.2.3 Adjustments for Different Commercial Levels

The transaction value of identical goods can be adjusted upwards or downwards to account for demonstrated differences between the goods being valued and the identical goods, to take account of:

- (a) Trade level differences;
- (b) Quantity differences; and
- (c) Commercially significant differences for transportation costs due to variances in the mode and/or distance of transport.

2.2.4 Time Element

When this method is used, the identical goods must have been exported to the Partner State at or about the same time as the goods being valued. The allowable period is flexible but commercial practice and market conditions must be taken into account. To be pragmatic, it is advisable to allow a 90 day period for comparison but it can be altered if circumstances dictate. Where there is more than one transaction value of identical goods which meets all the requirements, the lowest of such value is to be used.

2.3 THE TRANSACTION VALUE OF SIMILAR GOODS (METHOD 3)

2.3.1 Customs Value cannot be Determined Under Method 2

Where the Customs value of the imported goods cannot be determined under the provisions of Paragraph 2 and 3 of Fourth schedule to the EAC CMA, 2004, there shall be normally a process of consultation with the importer with the aim of determining the Customs value under method 3. The Customs value shall be the transaction value of similar goods sold for export to the Partner State and exported at or about the same time as goods being valued.

2.3.2 Definition of Similar Goods

- (a) Similar goods are defined as goods which:
 - (i) *Closely resemble the goods being valued in terms of component materials and characteristics;*
 - (ii) *Are capable of performing the same functions and are commercially interchangeable with the goods being valued;*
 - (iii) *Are produced in the same country as the goods being valued;*
 - (iv) *Are produced by the producer of the goods being valued;*
- (b) The definition of similar goods excludes imported goods for which engineering, artwork, etc. is undertaken in the Partner State and is provided by the buyer to the producer of the goods free of charge or at a reduced cost;
- (c) Where there are no similar goods produced by the same person in the country of production of the goods being valued, similar goods produced by a different person in the same country may be taken into account.

2.3.3 Adjustment for Different Commercial Level

The transaction value of similar goods can be adjusted upwards or downwards to account for demonstrated differences between the goods being valued and the identical goods, to take account of:

- (a) Trade level differences;
- (b) Quantity differences; and
- (c) Commercially significant differences for transportation costs due to variances in the mode and/or distance of transport.

2.3.4 Time Element

When this method is used, the similar goods must have been exported to the Partner State at or about the same time as the goods being valued. The allowable period is flexible but commercial practice and market conditions must be taken into account. To be pragmatic, it is advisable to allow a 90 day period for comparison but it can be altered if circumstances dictate.

Where there is more than one transaction value of similar goods which meets all requirements, the lowest of such value is to be used.

2.4 THE DEDUCTIVE VALUE (METHOD 4)

2.4.1 The Customs Value cannot be Determined Under Method 3

Where the Customs value of the imported goods cannot be determined under the provisions of Paragraph 2, 3 and 4 of the Fourth schedule to the EAC CMA, 2004, the Customs value shall be determined under the provisions of Para 6 of the same schedule.

2.4.2 Sale in the Partner State

By this method, the Customs value is determined on the basis of the sales in the Partner State of the goods being valued or of identical or similar imported goods, less certain specified expenses resulting from the importation and sale of the goods.

The sales in the Partner State must meet the following conditions:

- (a) The goods have been resold in the Partner State in the same condition as imported;
- (b) Sales of the goods being valued or of identical or similar goods have taken place at the same or substantially the same time as the time of importation of the goods being valued;
- (c) If no sales took place at or about the time of importation, it is permitted to use sales up to 90 days after importation of the goods being valued;
- (d) If there are no sales of identical or similar imported goods in the condition as imported that meet all the above requirements, the importer may choose to use sales of the goods being valued after further processing;
- (e) The purchaser in the Partner State must not have supplied assists, either directly or indirectly;
- (f) The purchaser must not be related to the importer from whom he buys goods at the first commercial level after importation.

2.4.3 Unit Price

The unit price at which the greatest number of units is sold must be established. Commercial invoices will serve as the primary basis for establishing the price per unit (**Appendix II**).

2.4.4 Deductions

A deductive value is determined by making a deduction from the established price per unit for the aggregate of the following elements:

- (a) Commissions generally earned on a unit basis in connection with sales in the country of importation for goods of the same class or kind;
-OR-
- (b) Profit and general expenses generally reflected on a unit basis in sales in the country of importation for goods of the same class or kind;
-AND-
- (c) The usual transport, insurance and associated costs incurred within the country of importation;
- (d) Customs duties and taxes of the importing country;
- (e) Value added by assembly or further processing, when applicable.

2.5 THE COMPUTED VALUE (METHOD 5)

2.5.1 Customs Value cannot be Determined Under Method 4

Where the Customs value of the imported goods cannot be determined under the provisions of Paragraph 2, 3, 4 and 6 of the Fourth Schedule to the EAC CMA, 2004, the Customs value shall be determined under the provisions of Para 7 of the same Schedule.

2.5.2 Costs of Production

Under this method, the Customs value is determined on the basis of the costs of production of the goods being valued, plus an amount for profits and general expenses usually reflected in sales from the country of exportation to the Partner State of goods of the same class or kind.

2.5.3 Calculation of Customs Value under Method 5

The Customs value may be calculated as follows:

- (a) First, determine the aggregate of the relevant costs, charges and expenses or the value of:
 - (i) *Materials and fabrication or other processing employed in producing the imported goods, and*
 - (ii) *Production or other processing costs for the imported goods (direct and indirect labor, factory overheads);*
- (b) The following are to be added if not included in (i) and (ii) above:
 - (i) *Packing costs and charges,*
 - (ii) *Assists (apportioned in a reasonable manner in accordance with generally accepted accounting principles),*
 - (iii) *Engineering work, artwork, etc., undertaken in the country of importation and charged to the producer;*
- (c) Add amounts for profit and general expenses, usually reflected in export sales to the Partner State, by producers in the country of export of goods of the same class or kind;
- (d) Add the cost of transport, insurance and related charge to the port or place of importation.

2.6 THE FALL-BACK VALUE (METHOD 6)

2.6.1 Customs Value cannot be Determined Under the Previous Methods

Where the Customs value of imported goods cannot be determined under the provisions of Paragraphs 2,3,4,6 and 7 of the Fourth Schedule to the EAC CMA, 2004, inclusive, the Customs value shall be determined using reasonable means consistent with principles and general provisions of this schedule and on the basis of data available in the partner State.

2.6.2 Application in a Flexible Manner

Under this method, the Customs value may be determined by applying in a flexible manner whichever of the previous methods most readily enables calculation of the Customs value. In determining Customs value under this residual method, no arbitrary, fictitious or prohibited methods of valuation are to be used. The Customs value should be fair, reasonable, uniform and neutral, and should reflect commercial reality to the extent possible.

2.6.3 Restrictions

Under the fall-back value, the Customs value must not be based on:

- (a) The selling price of goods produced in the country of importation;
- (b) 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, except under the computed value method;
- (e) The price of goods for export to a third country (non-EAC country);
- (f) Minimum Customs values; and
- (g) Arbitrary or fictitious values.

2.6.4 Examples of Cases which can be handled Under Method 6

The following are examples of various uses which could be made of the fall-back value:

- (a) A trotting horse, imported by a buyer three years after its purchase in the country of export was valued by an expert at importation at two times the purchase price on the basis of expert evaluation;
- (b) Transaction value may not be used to value merchandise imported pursuant to a lease agreement, with an option to buy. However, where other bases of valuation may also not be used, a value may be based on the transaction value approach using the "option-to-buy" price in the lease agreement, reasonably adjusted to arrive at a value;
- (c) The Customs value of used machines could be determined on the basis of an expert's estimation of the value of the machines in the condition as imported. No other methods were available in this case, as the machines were disassembled and used partly as spare parts by the importer in the country of importation;
- (d) Waste hydrocarbon oil was collected by an importer from Foreign Service stations, industrial plants etc. and transported to the country of importation, to be used for heating the importer's greenhouses. There was no charge for the waste oil, and its transportation in the country of importation was effected using the importer's own vehicles. The Customs value was determined under Paragraph 8 of the Fourth Schedule to the EAC CMA, 2004 of the Agreement, by flexibly applying Paragraph 7 of the Fourth Schedule to the EAC CMA, 2004, and was composed of the cost of collecting the waste oil plus the cost of transportation to the place of importation.

2.6.5 Where more than one Method can be Applied Flexibly

In applying the fall-back method, if more than one method can be applied flexibly, the normal sequence for using Methods 1 to 5 shall be taken into account.

CHAPTER 3

3.0 CONTROL OF DECLARATION OF VALUE

3.1 RELEASE OF GOODS BEFORE FINAL DETERMINATION OF VALUE

There will be situations where Customs value of the imported goods cannot finally be determined at the time of importation. Pursuant to Section 122(3) of the EAC Customs Management Act, 2004, in these situations, the importer shall nevertheless be able to obtain release of the goods from Customs so long as the importer provides a sufficient guarantee to cover the ultimate payment of duties for which the goods may be liable. One type of guarantee used by Customs is surety, which is often in form of a bond or guarantee underwritten by a surety company.

The bond:

- (a) Secures the payment of duties without imposing substantial burden to the importer;
- (b) Amount should be sufficient to cover the potential duty due;
- (c) Type and amount of the guarantee may vary depending on the nature of goods and circumstances surrounding the transaction.

It should be noted that the guarantee for the release of goods based on Section 122(3) of the EAC Customs Management Act, 2004 applies only to Customs duties. Any potential fines or penalties, for Customs infractions should be handled separately.

3.1.1 Cases where Customs Administration have reasons to doubt the truth or accuracy of the declared value

Customs valuation based on the transaction value method is largely based on documentary input from the importer. Section 122(4) of the EAC CMA confirms the right of the Proper Officers to “satisfy themselves as to the truth or accuracy of any statement, document or declaration.” Decision 6.1 of the Committee on Customs Valuation spells out the steps to be followed when there is doubt, which are indicated hereunder:

1. Declaration to Customs;
2. In case of Doubt of the declaration by Customs;
3. Customs request for further information;
4. Importer provides additional information or no response;
5. Customs still has reasonable doubts;
6. Customs communicates the grounds for doubting the truth/accuracy;
7. Importer should be given reasonable opportunity to respond;
8. Importer responds or, in the absence of response;
9. Customs communicates final decision and the grounds thereof in writing;
10. Importer may Appeal in case not satisfied.

3.2 VALUATION RULINGS

3.2.1 Previous Customs Decisions

One of the main functions during control of the declaration of value is to confirm whether an entry for importation is subject to a previous Customs valuation decision. Valuation rulings are usually issued by the Central Administration in response to decisions made on appeal against valuation decisions by importers, referrals from local Customs offices, self-initiated reviews by headquarters and information requests from importers. Since specific instructions and guidelines included in the rulings must be

followed in the determination of value for Customs purposes, valuation rulings may facilitate the Customs clearance process for the subsequent importation of goods where the same conditions exist.

3.2.2 Ruling Form for Customs Valuation

Valuation rulings could be given on a special valuation ruling form. These forms could be maintained in a loose-leaf format and filed in alphabetical order, by commodity, by issue, e.g. buying commissions and royalties, etc., and by reference to the name of the importer it would be desirable for each form to be numbered. These rulings could be distributed to all Customs offices, but rulings for an individual importer must not be disclosed to other traders. The use of “provisional” valuation rulings might be helpful. These could be printed on paper of a different color to the definitive rulings and used to advise Customs officers that the importations are under review and that security for the duty should be taken on a specified basis.

3.2.3 Ruling Letter for Customs Valuation

Valuation rulings could also be given by letter issued to the importer (an example of a ruling letter is contained in **Appendix III** to this Manual). The original of the ruling would be sent to the importer with copies to the local Customs offices through which the importer or his agents clear goods.

Rulings normally address the following points:

- (a) Complete file and case number;
- (b) Full address of importer;
- (c) Salutation – acceptable business usage;
- (d) The opening paragraph should identify the specific goods under review and point(s) of entry;
- (e) A paragraph stating whether the value for duty declared by the importer is acceptable. If the review has disclosed undervaluation, then this paragraph should make a clear statement as to why the declared values are unacceptable. If, in the course of a review, relationships, restrictions, conditions or considerations are examined and found to be acceptable under the transaction value method, a statement should be included to this effect;
- (f) An indication in general terms of the appropriate section or sections of EAC CMA, 2004 legislation under which the administration has determined the Customs value in this case;
- (g) A paragraph stating, in specific terms, what the administration holds the Customs value of the goods in question to be, and the specific manner in which the importer is to determine Customs value for future importations;
- (h) An explanation of any other sections of the EAC CMA, 2004 as they relate to the case at hand;
- (i) A paragraph stating that the instructions in the ruling are to apply to all future importations of the goods in question, and that the ruling is based on commercial practices at the time of the ruling, with instructions that the importer contact the administration if and when such practices change;
- (j) An expression of appreciation for the importer’s co-operation in ensuring compliance with the valuation legislation; and
- (k) In those instances where the officer is aware of a previous ruling, a notation should be included to the effect that this ruling will cancel and supersede any previously issued valuation rulings covering the specific goods in question.

3.3 DECLARATION OF VALUE AND THE FACTS RELATING TO CUSTOMS VALUE

In order to determine the Customs value for *ad valorem* Customs duty purposes, it is necessary to have full knowledge of the facts relating to the commercial transaction involving the imported goods. The EAC Regulations 2010, Section 197 requires the importer to furnish a written declaration of facts, in Form C36, in addition to the Goods declaration (inward) and the commercial documents.

In the declaration of facts, the declarant must state whether any payment in addition to the invoice price has been or will be made, whether the importer is related to the foreign supplier, whether any part of the proceeds of later resale will accrue directly or indirectly to the seller, etc. If the imported goods are not the subject of a sale, this also has to be stated in the declaration of facts (e.g. goods sent on consignment to an agent or transferred to a branch).

The declaration of facts may also provide a number of other particulars that are of importance when valuing the goods, such as the type of the transaction, the terms of payment, the currency of settlement, freight and insurance costs, commissions, royalties, etc.

3.3.1 Importer's Responsibilities

In EAC Partner States, Importers:

- (a) Are responsible for the self-assessment of their duty and tax liabilities with respect to imported goods. For valuation purposes, this means that the importer is required to calculate and declare a value for duty on Customs entry documents which meet all of the requirements of the valuation provisions of EAC CMA, 2004 legislation and administrative instructions.
- (b) Engage Customs brokers to act on their behalf in clearing goods through Customs and providing advice on valuation and other Customs matters. Nevertheless, it is normally the importer, and not the broker or authorized agent, who is responsible and liable for the correct declaration of the Customs value.

All documentary evidence to support declared values may not need to accompany each entry, but should be available for Customs review when required. It is the importer's responsibility to maintain, in a manner which facilitates Customs review, all information and records used in the determination and declaration of the value for duty.

In this regard, Customs administrations require that the declaration of facts be signed by the person with the most direct knowledge of the commercial facts relating to the Customs value and possessing the required authorization.

3.3.2 Cases Where a Declaration of Facts may be Unnecessary

It is general practice to dispense with the written declaration of facts in certain cases, such as:

- (a) Non-commercial importations by passengers;
- (b) No sale importations e.g. samples, donations, gifts;
- (c) Importations of a value not exceeding USD 500 (EAC Gazette No. 005 of 29.06.2010);
- (d) Where the nature of the Customs procedure and/or the EAC CMA to which the goods are subject do/does not require submission of a declaration of facts.

3.4 CHECKING THE VALUE – DECLARATION FORM C.36

An importer of goods liable to ad valorem duty or at an alternative specific rate shall, at the time of making an entry produce in respect of goods a declaration using Form C36 together with the invoices in his or her possession, relating to the goods.

The declaration on Form C36 (See **Appendix IV**) shall include all the particulars of the goods as detailed in the invoices produced and any other particulars of goods that are liable to duty at specific rate or exempt or which are free of duty.

The importer shall furnish in such form as proper officer may direct, such further particulars, as proper officer may deem necessary for a correct valuation of the goods.

Box 1: Name and address of the buyer

Check that the name and address shown agrees with that on the commercial or seller's invoice. If there is more than one buyer, a list signed by the declarant showing the names and addresses of the buyers may be required to be attached to the declaration form.

Box 2: Name and address of the seller

Check that the name and address shown are the same as that on the commercial or seller's invoice. If there is more than one seller, a list signed by the declarant showing the names and addresses of the sellers may be required to be attached to the declaration form.

Box 3: Number and date of the invoice

Check that the number and date shown are the same as those on the invoice attached.

Box 4: Number and date of the contract

If a copy of the contract of sale is attached, check that the number and date agree. However, if it is not attached, you need not insist on a copy of the contract unless you consider it to be necessary.

Box 5: Terms of delivery

If the terms of delivery are f.o.b., the documentary evidence of transport costs should be attached to the declaration form.

Note:

Care must be exercised in this area as actual charges relating to transport are sometimes not on the invoice or may not be correct. A variety of arrangements, i.e. discounts, rebates, maximum rates, etc., are practiced in the transportation field.

Box 6: Number and date of any previous Customs decisions covering boxes 7 & 8.

Check that the reference and date quoted agree with those on the valuation rulings file. In cases where:

- (a) The instructions given in the valuation ruling have not been followed, or
- (b) The Customs value on the import entry has not been calculated correctly, or
- (c) A reference is not quoted.

Ask the declarant for an explanation. If a satisfactory explanation cannot be provided by the declarant, a further verification of the entry will be required.

Box 7: Relationship between the seller and the buyer (Para 3 & 4, Part 1, of Fourth Schedule EAC CMA, 2004)

7.1. Pose "YES" "or " NO" questions about relationship. A typical form of such questions is:

Example:

Box 7:

- (a) Are the buyer and seller RELATED in the meaning of provisions of Part 1, Para 1(3) & 1(4) of Fourth Schedule EAC CMA, 2004?

☐ YES ☐ NO

"If "NO", go to Box 8.

- (b) Did the relationship INFLUENCE the price of the imported goods?

☐ YES ☐ NO

- (c) Does the transaction value of the imported goods closely approximate to a test value mentioned in the provisions of the Part 1, Para 2(2) (b) of EAC CMA, 2004?

☐ YES ☐ NO

"If "YES", give details:

7.2. If Box 7 (a) is answered "NO", proceed to Box 8. If Box 7 (a) is answered "YES", check that Box 7 (b) has been completed.

Note:

If there is an office file on relationship, you should check from time to time whether the files are up to date. Every day, there are mergers and cases of companies coming under the control of industrial groups. Therefore, the situation may be highly fluctuating and complex.

If you have any doubts to believe that there is a relationship "which the declarant denies, a report should be prepared for the proper valuation unit for verification of the entry.

7.3. If Box 7 (b) is answered "NO" confirm that there is no need to examine the circumstances surrounding the sale. If there is no doubt about the acceptability of the price, proceed to the next Box.

7.4. If Box 7 (b) is answered "YES", check whether there is a valuation ruling. If so, proceed as for paragraph 6 above. If there is no ruling, ask the declarant to explain how the relationship has influenced the price. If price influence is confirmed, proceed to next Box (c).

7.5. If Box 7 (c) has not been completed, and if Box 7 (b) has been answered "NO", take no action. If the answers to both Box 7 (b) and 7 (c) are "YES", confirm that the transaction value of the goods meet one of the requirements of "test", set out in Part 1, Para 2(2) (b) of EAC CMA, 2004. If there is any difficulty with this test, report to the proper valuation unit for verification of the entry.

7.6. If Box 7 (b) has been answered "YES", and Box 7 (c) has been answered "NO", confirm with the declarant that "NO" is correct (as it is often the case that this question is misunderstood). If "NO" is confirmed, the transaction value method cannot be used. The goods should be valued under one of the alternative methods.

Box 8(a): Restrictions as to the disposition or use of the goods Para 2(1)(a), Part 1 of the Fourth Schedule to EAC CMA, 2004.

If the declarant answers on the declaration form that there are some restrictions as to the disposition or use of the goods, ask the declarant to give details of the restrictions.

Establish whether the restrictions are any of the following:

- (i) Imposed or required by law or by the public authorities in the country of importation;
- (ii) Limit the geographical area in which the goods may be resold; or
- (iii) Do not substantially affect the value of the goods.

In the cases mentioned above, the transaction value should not be rejected. Otherwise, a report should be prepared for the proper valuation unit for verification of the entry.

Box 8(b): Condition or consideration for which a value cannot be determined with respect to the goods being valued. Part 1 Para 2(1) (b) of the Fourth Schedule of EAC CMA.

If the declarant answers on the declaration form that there is a condition or consideration applicable to the sale, check for any valuation ruling. If there is no ruling, ask the declarant to give details of the condition or consideration. If "YES" is confirmed, report to the proper valuation unit for verification of the entry.

Note:

- (i) *It is important to remember that conditions or considerations relating to the production or marketing of the imported goods should not cause the transaction value to be rejected.*
- (ii) *The existence of a condition or consideration would result in rejection in cases where the seller:*
 - (a) *Makes the sale subject to the subsequent purchase of other goods;*
 - (b) *Requires the buyer to sell other goods to him;*
 - (c) *Indicates that the price has been established on the basis of a form of payment which is extraneous to the imported goods.*
- (iii) *It may be more judicious to determine the amount of any consideration in consultation with the importer. If the amount is considered to be indirect payment to or for the benefit of the seller for the imported goods, the amount should be included in the price actually paid or payable and, hence, in the Customs value.*

Box 9: Royalties and license fees

Pose "YES" or "NO" questions about royalties. A typical form of such question is:

- (a) Have any ROYALTIES or LICENCE FEES related to the imported goods payable either directly or indirectly by the buyer as a condition of the sale? (Part 1 paragraph 9(1) (c) of the Fourth Schedule to the EAC CMA, 2004)

☐ YES

☐ NO

If the box is answered "YES", check to see if there is a valuation ruling. If there is a ruling, check that the amount declared agrees with the terms of the valuation ruling. If there is no ruling, or the ruling does not specify royalties, gather as much information as possible concerning these financial transfers (royalty contract, commercial contract, etc.) and prepare a report to the proper valuation unit for verification of the entry.

Note:

Amounts paid as royalties or license fees may be considerable and these may be undeclared.

- (b) Is the sale subject to an arrangement under which part of the proceeds of any subsequent resale, disposal or use accruing directly or indirectly to the seller?

If "yes" to either of the questions, specify conditions (on a separate sheet) and if possible indicate the amount in boxes 15 and 16.

If the declarant answers on the declaration form that the sale is subject to an arrangement under which part of the proceeds of any subsequent resale, disposal or use accrues directly or indirectly to the seller, check for a valuation ruling. If there is a ruling, check that the amount declared corresponds to the terms of valuation ruling. If there is no ruling, or the ruling does not specify the amount, gather as much information as possible concerning these financial transfers and prepare a report to the proper valuation unit for verification of the entry.

Note:

Profit-sharing is a frequently occurring example of subsequent proceeds. It should be noted that profit-sharing is often shown in the accounts, as a commission.

Box 1: Signing declaration by the importer

Confirm the signature, place and date.

A. Basis of calculation

Box 11: Net prices on the INVOICES

Check that the amount shown on the declaration form agrees with:

- (a) Net prices shown on the invoices (price actually paid or payable for settlement, and
- (b) Indirect payment (see box 8(b));

Check the unit value of the goods against previous importations, valid price lists and price information which is available to Customs in making this decision. If you find the invoice price inconsistent or irregular, inform the proper valuation unit for verification of the entry.

Box 12: Total of direct and indirect payment (in currency of invoice) as in 11 above.

B. Adjustment of the Price paid or Payable

Box 13: Costs incurred by the buyer

Additions: commissions (except buying commissions) brokerage, the cost of containers, the cost of packing.

Check that the amounts declared in the declaration form correspond to the amount on the invoice and that they are included in the calculation of value on the import entry.

Note:

Buying commissions are not to be included in the Customs value if they are separately identified. Confirm that these charges are consistent with the functions specified in the contract. If there is any doubt about the validity of the buying agency agreement or the buying commission, inform the proper valuation unit for verification of the entry.

Box 14. Assists: goods and services supplied 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.

Check that the amount declared in the declaration form has been included in the calculation of value on the import entry.

Check whether there is a valuation ruling. If so, check that the amount declared corresponds to the terms of the valuation ruling. If the amount declared differs from that required by the ruling, and a satisfactory explanation cannot be provided by the declarant, report to the proper valuation unit for verification of the entry. If there is no ruling, gather as much evidence as possible and inform the proper valuation unit for verification of the entry.

Box 15. Royalties and license fees (see box 9(a)).

Box 16. Proceed of any subsequent resale, disposal or use accruing to the seller (see box 9(b)).

Box 17. Cost of delivery to the community.

These refer to transport costs, loading and handling charges and insurance. Check that the amount declared corresponds to the supporting documents, and that it is taken into account in the calculation of value on the import entry.

Note:

It often happens that value for insurance purposes is higher than the selling price. However, if the insured value is considerably higher, this may be an indication of undervaluation.

Box 18. Total of “B” (in currency of invoice)

C. Post landing Expenses

These may be included in “A”:

Box 19-22. Deductions : costs of transport after importation, charges for construction, erection, assembly, maintenance or technical assistance undertaken in the country of importation, duties and taxes in the country of importation, if these costs or charges are distinguished from the price actually paid or payable for the imported goods.

Check that the amounts declared correspond to the supporting documents and the invoice terms. Check that the correct amount has been excluded from the calculation on the import entry. Check whether there is a valuation ruling. If there is a ruling, check that instructions regarding the deductions have been followed.

Box 23. Total of “C”

Box 24: Total Customs Value (A+B) or (A+B-C) If “C” is included in “A”.

Box 25: Exchange Rate

Establish which currency is used for payment to the seller.

- a) When the seller is to be paid in a foreign currency, that amount must be converted into the currency of the Partner State. The exchange rate is to be published by the competent authorities of the country of importation (usually Customs itself). The main foreign currencies could be published in a poster displayed in local Customs offices where entries are checked;
- b) When an invoice amount, expressed in foreign currency, is to be paid to the seller in the currency of the Partner State at a fixed rate provided for under the terms of sale of the goods, the fixed rate agreed upon by the buyer and the seller will determine the price actually paid or payable in the currency of the Partner State and no further conversion will be necessary;
- c) Sometimes an invoice is shown in the currency of the Partner State, but payment is to be made to the seller in a foreign currency at a fixed rate provided for under the terms of sale of the goods. In these circumstances, the invoice amount is to be converted into the foreign currency using the fixed rate. The resulting amount of foreign currency is the reconverted into the currency of the Partner State using the official Customs rate.

Note

The rate of exchange to be used for determining the equivalent of a Partner State Currency of any foreign currency shall be the selling rate last notified by the Central bank of the respective Partner State when an entry is presented to and accepted by the proper officer.

3.5 CHECKING THE SUPPORTING DOCUMENTS**3.5.1 Documentary Evidence Required**

The number and nature of the documents which are required for establishing the Customs value will vary according to the method of valuation used. It is not possible to cover all eventualities but generally the following may be required:

3.5.1.1 Method 1:

- (i) The seller's invoice detailing the price, quantity and description of each item or type of Item imported;
- (ii) Evidence of transport and insurance expenses;
- (iii) Purchase orders
- (iv) Insurance contracts
- (v) Proof of payments for example remittances, telegraphic transfers, letters of credit, bills of exchange, debit notes
- (vi) Sales contracts or agreements to show how the transactions were conducted
- (vii) Packing list
- (viii) Bill of lading or air way bill
- (ix) Certificates of origin
- (x) Export documents from the country of export
- (xi) Any relevant correspondences between the importer and the seller
- (xii) Evidence relating to other additions and/or deductions:

- (a) Commissions and brokerage;
- (b) Cost of containers which are treated as being one with the goods in question;
- (c) Cost of packing whether labour or material;
- (d) Assists;
- (e) Royalties and license fees;
- (f) Value of any parts of proceeds of any subsequent resale accruing to the seller;
- (g) Loading, unloading and handling charges associated with the transport of the imported goods;
- (h) Foreign bank charges
- (i) Inland transport charges in the country of export (if the term of sale is EX-Work);
- (j) Associated cost incidental to delivery such as:
 - Warehouse/storage charges and other associated costs incurred in the country of export in connection with transportation of the imported goods from the supplier's premises and placing it on board at the port or place of export.
 - Cost of bills of lading, airway bills, Customs clearance, packing charges, delivery costs
 - Demurrages, dock dues, cartages in the dock areas
 - Drayage
 - Fumigation or gas charges (the cost incurred to gas or fumigate goods to protect against infestation by insects).

The need to present all or some of these documents will vary from transaction to transaction.

3.5.1.2 Method 2

- (i) An invoice or other evidence clearly showing the quantity and description of the goods imported);
- (ii) Documentary evidence of an entry plus all accompanying documents of identical goods valued under Method 1;
- (iii) Evidence of transport and insurance expenses);
- (iv) Evidence relating to other additions and/or deductions; and
- (v) Evidence to make adjustments for quantity and trade-level differences.

3.5.1.3 Method 3:

- (i) An invoice or other evidence clearly showing the quantity and description of the goods imported;
- (ii) Documentary evidence of an entry plus all accompanying documents of similar goods valued under Method 1;
- (iii) Evidence of transport and insurance expenses;
- (iv) Evidence relating to other additions and/or deductions;
- (v) Evidence to make adjustments for quantity and trade-level differences.

3.5.1.4 Method 4:

- (i) An invoice or other evidence indicating the quantities and description of the goods imported;
- (ii) A sales invoice or other evidence which shows that the imported goods or identical or similar imported goods have been sold in the Partner State, and the calculation based on the unit price of sales in the Partner State in the greatest aggregate quantity;
- (iii) A statement or other evidence detailing the deductions claimed from the unit price; a statement that the deduction of amounts for commissions, or for profit and general expenses, are consistent with the industry;

- (iv) Where appropriate, the costs and charges referred to in Para 9(2) of Part 1 of the Fourth Schedule to the EAC CMA;
- (v) Custom duties and other national taxes payable in the Partner State;
- (vi) Cost of transport and insurance and associated costs incurred within the Partner State;
- (vii) Audited financial statements;
- (viii) Costing sheets;
- (ix) Any information to justify costs such as questionnaires, survey report;
- (x) Evidence to support the costing;
- (xi) A worksheet indicating the costing and how the value was determined.

3.5.1.5 Method 5:

- (i) A worksheet indicating how the value was computed, supported by detailed costs of production, additions for profit and general expenses, and a statement that these amounts are consistent with those generally prevailing in the industry, to the best of the importer's knowledge;
- (ii) Evidence of transport and insurance expenses, if required;
- (iii) Evidence relating to other additions and/or deductions.

This method is to be considered in the hierarchical sequence of methods, although at the importers request. Method 5 can be considered before Method four. The use of method 5 is very restricted, as the evidence required are so stringent. Effectively only related companies will diverge the required information to attest the various elements that make up the Customs value.

As all details required to compute the Customs value will be in the country of exports, normal verification is not possible. Accordingly, the producers must provide all the elements of the buildup value.

3.5.1.6 Method 6:

- (i) An invoice or other evidence indicating the quantities and description of the goods imported;
- (ii) Suitable information to support the method used to calculate the declared values.

Method 6 allows any value to be used as long as it is consistent with the principle of Section 122 and Fourth Schedule to EAC CMA, 2004.

This Method is often used when particular scenario does not meet the exact conditions of the other methods. When using this method, the other methods should be re-examined using more reasonable means in the same hierarchical order. Where necessary and if available data from foreign sources can be used to establish Customs value.

3.5.1.6.1 Restrictions under Method 6

Customs value shall not be determined under the provisions of method on the basis of:

- (a) Selling price in the Partner State of goods produced in that Partner State;
- (b) A system which provides for the acceptance for Customs purposes of two alternative values;
- (c) The price of the goods of 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 the provision of Para 7 of the Fourth Schedule to the EAC CMA, 2004;
- (e) The price of goods for export to a country other than the Partner State;

- (f) Minimum Customs values; or
- (g) Arbitrary or fictitious values.

3.5.2 Procedures for Checking the Transaction Value

- (a) Check whether there is sale for export for the imported goods;
- (b) Check that either the seller's invoice(s) showing the price of each article or other evidence of value is attached;
- (c) Check that evidence of freight charges is attached, up to the point of entry into the EAC region. If the sale terms are C.I.F., the freight charge is usually shown on the seller's invoice, but evidence of actual freight costs may be required. If it is F.O.B., evidence of transport cost, e.g. bill of lading, air waybill or sea waybill, should be attached;
- (d) All the other documents presented should be checked for their authenticity and relevance. If the evidence of value is inadequate and there is no reason to suspect fraud, prepare a report to the proper valuation unit for verification of the entry.

3.5.3 Procedures for Checking other Methods

In cases of applying valuation methods other than the transaction value method (method 1):

- (a) If there is a valuation ruling. Check whether documentary evidence to support the requirements specified in the ruling is attached;
- (b) If there is no valuation ruling, obtain the supporting documents and report to the proper valuation unit for verification of the entry.

Note:

a) Invoice

Basically an invoice is a document which lists goods shipped, sent or consigned, together with the relevant prices of the goods and the charges for their dispatch. Shipping marks, quantity, description of goods and adjustments to a final total may be contained within the document. It is usually the document against which payment for the goods is required to be made.

Invoices can come in all kinds of different formats. They may be quite sophisticated and professionally set out and typed, or they can be plain, simple and handwritten. Provided they furnish all the necessary costing elements required to determine the Customs value, any format is quite acceptable. Sometimes, a handwritten invoice could suggest the supplier is either a small company or perhaps has limited experience with export documents. In such circumstances, a closer examination of documents may be appropriate.

It is normal practice for the overseas manufacturer or supplier of the goods to send the invoice directly to the buyer. On occasion, however, an overseas third party (such as a selling or a buying agent) may become involved with the sale of goods and an invoice from the agent reflecting the price of the goods, together with his commission, would be sent to the buyer. Alternatively the buyer may receive two invoices, one from the manufacturer/supplier and one from the selling agent or buying agent. The mere fact of re-invoicing does not necessarily deny the existence of a sale for export to the country of importation, nor the acceptability of the transaction value. If, however, Customs has any doubt about the transaction, the contract of sale may be required to be presented for further verification.

b) Telex or fax documents

Where telex or similar messages are presented as invoices in their own right, these may be accepted as final documents. However, if a telex or fax message is presented as advance information instead of the final invoice, the declarant should be required to produce the invoice for Customs examination.

If you consider the telex information to be inadequate or suspect (e.g. the value of the goods is not shown or values have been entered by hand), but fraud is not suspected, the declarant should be required to produce the invoice within a certain period. The goods may be released under sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, while the invoice is awaited.

c) Split shipment

When goods on a single invoice are entered in more than one shipment, a copy of the invoice is to be produced for each import entry. The original invoice is also to be produced by the declarant. You are to certify this, stating which goods have been allocated to the import entry. The original certified invoice would then be returned to the declarant.

d) Bill of lading

A bill of lading is a receipt for goods received for a shipment with a written undertaking by the carrier (usually a shipping company) to the consignor that goods received for carriage overseas will be delivered to the consignee in the same order and condition as received.

As a document of title to the cargo concerned, possession of the bill of lading is “prima facie” evidence of ownership of the goods and the document is negotiable. Because the bill of lading is a document of title and may be lost, the common practice is that there be “sets” of two or three. When one is endorsed, the original of the set is surrendered in receipt for the goods.

A bill of lading should be required if the invoice lacks any details concerning Customs matters, because:

- (i) The bill of lading normally contains information about the freight charges for the goods;*
- (ii) The bill of lading, in addition to freight charges, may also include other costs for the shipment of the goods such as container stuffing charges and dock and port charges;*
- (iii) The name of the shipper and of the buyer, the port of lading, the marks and numbers to identify the shipment together with quantities, weights and a brief description of the goods are also included in a bill of lading.*

e) Air waybill

The document covering the carriage of goods by air is the air waybill. An air waybill issued to the shipper is an acknowledgement by an airline company that it has received the goods detailed therein for dispatch by air to the named consignee. The carrier has an obligation to notify the consignee of the arrival of the goods by issuing a delivery order to him. The air waybill is not a document of title, nor is it negotiable.

It serves as:

- (i) A receipt of goods for shipment;*
- (ii) A dispatch note on which the accompanying documents and, if appropriate, the shipper's special instructions are listed;*
- (iii) A form of invoice evidencing transportation charges;*
- (iv) An insurance certificate, if insurance coverage is affected through the airline;*
- (v) A document for import, export and transit requirements of Customs;*
- (vi) A delivery receipt.*

Section 34 of the EAC CMA, 2004 requires the owner or importer to furnish with the Custom bill of entry full particulars supported by documentary evidence of the goods referred to in the bill of entry.

3.6 VERIFICATION AND DETERMINATION OF CUSTOMS VALUE

In certain cases, Customs may need to make enquiries concerning the truth or accuracy of statements, documents or declarations presented for Customs valuation purposes. According to Section 122(4) of the EAC CMA, 2004, nothing in the Fourth Schedule shall be construed as restricting or calling into question the rights of the Proper officer to satisfy himself as to the truth or accuracy of any statement, document or declaration. Enquiries may be made, for example, to verify that elements of value declared to Customs are complete and correct. This verification function is carried out through the examination of information on entry documents, information provided by the Customs official who is responsible for the control of the value, where necessary, correspondence with importers, exporters, brokers and personal visits to an importer's premises. Importers should give their full co-operation to Customs in these enquiries, as provided for in Section 34 of the EAC CMA, 2004.

3.6.1 Preparing for the Visit to an Importer's Premises

It is usually advisable for the importer to be informed of the visit. Mutual co-operation and consultation between Customs and importers are necessary for successful verification. However, it may not be necessary to advise the importer of the details of the entry/entries under consideration. Although well-prepared answers and evidence by the informed importer might facilitate verification, it could be beneficial to get unprepared answers and import documents filed for the importer's own purposes (not prearranged for the Customs verification). Before leaving for the visit:

- (a) Note any specific points requiring investigation;
- (b) Analyze the risk areas and determine the risk rating of the entry;
- (c) Study the entries and supporting documents carefully. Note any features which may require further enquiry;
- (d) Obtain the following information concerning the importer:
 - (i) The past history of importation,
 - (ii) Valuation rulings related to the importer and the commodity,
 - (iii) Similar rulings which may be applicable to the case under review,
 - (iv) Previous visit reports concerning the importer,
 - (v) Information from other sources, e.g. internal taxation,
 - (vi) Other information;
- (e) Consult with other Customs sections (e.g. investigation, classification, etc.) to confirm whether there is any involvement under their jurisdiction.

3.6.2 Report of Visit

A report of visit may include the following items:

- (a) Dates of visit;
- (b) Name and position in company of person(s) seen;
- (c) Company status:
 - (i) Legal form (e.g. incorporated company, partnership, single ownership, etc.),
 - (ii) Objective,
 - (iii) Capital. Held by whom?
 - (iv) List of related persons,
 - (v) List of buyers who import similar goods;
- (d) Confirmation that the signature on the value declaration form was made by an officer or agent of the company, and that the signatory was in full possession of the facts and entitled to sign the forms;
- (e) Principal types of goods imported. Are they branded articles, raw materials, or finished goods?
- (f) Principal countries from which the goods are imported;
- (g) Purposes for which the goods are imported, e.g. own use, stock, further manufacture, resale as imported;
- (h) Importer's function, e.g. manufacturer, distributor, buying or selling agent, distribution or stock agent, broker;
- (i) Nature of the transaction, e.g. purchase, leasing, hiring or free consignments, etc;
- (j) Details of procedures undertaken in auditing records and documents, whether held in the computer or not;
- (k) Settlement details with respect to the procedure followed by the importer in paying for his goods;
- (l) Details of any irregularities;
- (m) The importer's estimation of the level of future imports in similar circumstances;
- (n) Any specific action you have instructed the trader to take.

3.6.3 Risk Rating

AREAS OF RISKS	RISK RATING			
	A	B	C	D
LOADING	Low 1	Med 2	High 3	V. High 4
1. Undervaluation (double invoicing) 2. No-sale situations 3. Subsequent sale 4. Package deals/split shipments 5. Discounts 6. Financial accommodation (indirect payment) 7. Averaging 8. Deposits - Part payments 9. Credits - Previous transactions 10. Rate of exchange 11. Use of domestic currency on invoice 12. Buying/selling commissions 13. Brokerage charges 14. Services - Advertising, warranty 15. Assists 16. Testing & inspection fees 17. Packing charges 18. Tooling cost, etc. 19. Royalties, etc. 20. Freight & Insurance 21. Associated costs incidental to delivery 22. Proceeds of re-sales 23. Profit sharing				
Total				
GRAND TOTAL (Risk rate score (A+B+C+D))				

The risk-rating sheet will be used by the officer reviewing the value-declaration form. The areas identified on the sheet are those which most commonly give rise to mis-declaration and corresponding revenue loss. In using this rating form, the officer will judge from his knowledge of the various factors involved in the process of importation (e.g. product, importer, country of exportation, etc.) what is the risk of incorrect or false declaration. Based on a numerical factor to be established by management, entries with ratings above a certain level would require further examination.

3.6.3.1 How to Use the Risk-Rating Sheet

- Where there seems to be no risk, nothing will be marked.
- Where there is a low level of risk, use 1. For a medium level of risk, give a 2. For a high level, 3. Very high levels of risk will be divided into those which are more serious and not so serious. Where a 4 is assigned to two or more areas, the entry should be subject to further detailed review.
- The total sum indicates the review priority of the entry and the thoroughness of the examination that will be necessary.

3.7 ACTION IN RESPECT OF UNDERVALUATION

Subject to specific procedures prescribed in Community legislation, policies or practices, in cases where, during the enquiries into an entry, it becomes evident that that declaration is undervalued, the following action shall be taken:

Suspected fraud: When deliberate undervaluation is suspected, inform the investigation unit, if appropriate, at the earliest possible stage. Such cases may involve false documents e.g. double-invoicing, false freight accounts, false statements as to unit price, etc.

Cases where fraud is not suspected (inadvertent errors or errors of interpretation): The following action should be taken:

- (i) Rectify the inadvertent errors;
- (ii) Establish the extent of undervaluation;
- (iii) Ask the trader to prepare a schedule of previous entries of goods (the schedule must cover whatever period is specified by the Community legislation or policy up to the date when the enquiries first began), indicating;
- (iv) Prepare a schedule corresponding to (iii) above based on information available to Customs;
- (v) Check the calculations and selection of entries against the trader's records when the schedule is complete;
- (vi) Issue a formal demand letter for payment of the outstanding duty;
- (vii) Prepare an undertaking for the declaration of correct values in the future;
- (viii) Ensure that enforcement procedures are in place for future monitoring.

3.8 TYPES OF CASES WHERE THERE ARE NO VALUATION RULINGS AND FURTHER VERIFICATION IS REQUIRED

- (a) The transaction value of identical goods method is used.
- (b) The transaction value of similar goods method is used.
- (c) The deductive value method is used.
- (d) The computed value method is used.
- (e) The fall-back value is used.
- (f) Price influence due to relationship is declared or suspected
- (g) Restriction on the disposition or use of the imported goods.
- (h) Conditions or consideration affecting the sale of the imported goods are declared or suspected.
- (i) Royalties or license fees are declared or suspected
- (j) Proceed of any resale, use or disposal being to the seller is declared.
- (k) Goods supplied free of charge, or at a reduced cost, to the supplier and no valuation reference or value has been declared.
- (l) Tooling costs are declared or suspected.
- (m) Commissions are declared or suspected.
- (n) Fraudulent entries in respect of which criminal proceedings are to be initiated.
- (o) Verification of value at importer's premises are considered necessary.
- (p) Deductions from invoice price are declared.
- (q) The declared price is unreasonably low.

CHAPTER 4

4.0 VERIFICATION OF CUSTOMS VALUE

4.1 STAGES OF CUSTOMS VALUATION

Verification can be conducted in three stages:

- (a) Verification at Pre-Clearance stage,
- (b) Verification at Clearance stage,
- (c) Verification at Post - Clearance stage.

4.1.1 Verification at Pre-Clearance Stage

At this stage, Customs may collect information on importation and analyze it in order to identify the possibility of an initial indication of valuation irregularities. To this end, there is need for Customs Administrations within the Partner States to develop a proper intelligence framework incorporating importer/exporter profile data, commodity data, and existing intelligence on imported products. Such intelligence system can be developed as part of the Risk Management System.

For pre-clearance verification system, documents for transportation such as manifests, bills of lading and the like can be good sources of information. Valuation advice given to the importer would be another source of information. Information on specific issues provided at the time of advice along with specific intelligence can be an indication for Customs to take precautionary measures.

The above sources of information may provide an indication of valuation irregularity including infringements. Such indications should be carefully examined and provided, if appropriate, to relevant Customs office for further action in the subsequent control stages.

4.1.2 Verification at Clearance Stage

In certain cases, Customs may need to make enquiries concerning the truth or accuracy of statements, documents or declarations presented for Customs valuation purposes. According to Section 122(4) of the EAC CMA, 2004, nothing in the Fourth Schedule shall be construed as restricting or calling into question the rights of the Proper officer to satisfy himself as to the truth or accuracy of any statement, document or declaration. Enquiries may be made, for example, to verify that elements of value declared to Customs are complete and correct. This verification function is carried out through the examination of information on entry documents, information provided by the Customs official who is responsible for the verification of the value, where necessary, correspondence with importers, exporters, brokers and personal visits to an importer's premises. Importers should give their full co-operation to Customs in these enquiries, as provided for in Section 34 of the EAC CMA, 2004.

Verification at the clearance stage can take the form of documentary check (where necessary) and in certain cases physical examination of goods. These checks help to establish whether:

- (a) The declaration of Customs value (and where required, the declaration form) has been fully and correctly completed;
- (b) Supporting documents such as invoices, packing list, bills of lading, insurance policy and other documents required by related laws and regulations have been submitted;
- (c) Details of value declaration form correspond to the supporting documents;
- (d) Import declaration was completed on the basis of any valuation advice provided;
- (e) Mathematical calculations are correct;

- (f) There is compliance with the requirements or constituent elements of transaction value method and other methods.

Substantive verification to determine the accuracy of declaration of value is limited at the clearance stage. Therefore there is a worldwide tendency to move valuation verification to the post clearance audit stage.

4.2 VERIFICATION OF CUSTOMS VALUES DECLARED UNDER THE SIX METHODS

As earlier mentioned in Chapter 2, Section 122 and the Fourth Schedule to the EAC CMA, 2004 requires that Customs value of imported goods be determined using one of the six methods, with transaction value being the first method to be attempted.

4.2.1 Verification of Value Declared Under the Transaction Value Method

4.2.1.1 Element of Transaction Value

- (a) First method of Customs Valuation to be applied is the transaction value method, provided there is no limitations as set out in Paragraph 2(1)(a-d) of Part I of the Fourth Schedule;
- (b) The method is defined in Para 2(1) of Part I of the Fourth Schedule as the price actually paid or payable for the imported goods when sold for export to the partner state adjusted in accordance with the provision of Para 9 of Part I of the Fourth Schedule and has the following elements:
 - (i) It relates to the imported goods;
 - (ii) There has to be a sale;
 - (iii) The price relates to the imported goods when sold;
 - (iv) The sale has to be for exports to the partner state;
 - (v) It is the price actually paid or payable;
 - (vi) The sale is not subject to terms or conditions, for which a value cannot be determined;
 - (vii) The payment for the goods does not include proceeds of any disposal, use or subsequent resale of the goods;
 - (viii) The price is not influenced by the relationship;
 - (ix) There is no restriction to the disposition or use the goods;
 - (x) It must be adjusted in accordance with the provision of Paragraph 9 of Part I of the Fourth Schedule.

4.2.1.2 Check the Value Declaration Form C.36

- (a) Confirm whether the signatory is authorized to make a declaration of value. If the signatory is not authorized, obtain another value declaration from the proper declarant;
- (b) Check that the answers to the questions on the value declaration Form C.36 have been fully completed;
- (c) Check that the calculation of value on the value declaration Form C.36 and any worksheet attached is correct, and that the amount for the Customs value has been correctly transferred to the import entry;
- (d) Determine whether there was a sale for export to the Partner State.

4.2.1.3 Determine That a Sale for Export to the Country of Importation Exists

Evidence of sale for export to the Partner State might include contracts, commercial invoices, purchase orders, etc. If there is no sale, valuation under Method 1 is not possible.

- (a) Determine whether the importation of the goods being valued is based on one of the following situations. If so, there is no sale.
 - (i) The purported buyer and seller are the same legal entity;
 - (ii) The goods are imported by intermediaries, without purchase, for sale on behalf of the supplier;
 - (iii) The goods are imported on consignment;
 - (iv) The goods are imported under a hire or leasing contract;
 - (v) The goods are imported free of charge;
 - (vi) The sale involves compensation, counter trade or trade-in arrangements;
 - (vii) Other situations in which the goods remain the property of the supplier.
- (b) Determine whether there have been further sales of the goods following exportation but prior to importation i.e. sales in transit.
- (c) Identify the parties to the sale. The seller and buyer:
 - (i) Where a third party is involved in a sale, e.g. a selling or buying agent, that involvement should be examined. The third party may be a principal in the transaction. Rather than bringing the parties together into a legal relationship with regard to the sale of goods, he may purchase from the alleged seller and resell to the buyer. In such circumstances, the third party would be considered as the seller;
 - (ii) The importer may not be the owner of goods being valued. If an entry is made by a person other than the buyer, the contract of sale identified might not be the relevant sale for valuation purposes. Determine the relevant sale.
- (d) Check evidence to substantiate the following:
 - (i) The sale is in the ordinary course of business under fully competitive conditions;
 - (ii) The sale does not involve any abnormal discount or deduction from ordinary competitive price;
 - (iii) The sale does not involve special discounts limited to exclusive agents;
 - (iv) The objective and quantifiable data exist with regards to adjustments required under the provisions of Paragraph 9 of part I of the Fourth Schedule
 - (v) There is no restriction to the disposition or use the goods;
 - (vi) The sale is not subject to any terms or conditions, for which a value cannot be determined;
 - (vii) Proceeds of any disposal, use or subsequent resale of the goods;
 - (viii) The importer and supplier not related or where there is relationship, that transaction value is acceptable;
- (e) Establish whether there are other formal or informal contracts, agreements or arrangements in addition to the main contract of sale. These other arrangements might occur as a result of the supply of services relating to the imported goods, and may be included in the Customs value.

Examples of separate elements and/or payments relating to the imported goods passing from the buyer under other contracts, agreements and arrangements could include:

- (i) Supplying materials, components, parts and similar items incorporated in the imported goods;
- (ii) Tooling, molds, testing;
- (iii) Engineering, artwork, design work, and plans and sketches;
- (iv) Inter-company transfers for management fees, advertising and assessments for research and development;
- (v) Finishing operations or processing;
- (vi) Royalties and license fees;
- (vii) Selling commissions, brokerage fees, etc.

4.2.1.4 Verify the Amount of Value Declared

- (a) Trace the settlement of sale through the trader's books from order to final settlement;
- (b) Check details of payment: amount paid, date paid, method of payment and to whom the payment was made;
- (c) Confirm that all invoices relating to the goods have been taken into account in the Customs value;
- (d) Check documents and accounts relating to the goods for any further payments made to, or for the benefit of, the supplier;
- (e) Check that the delivery terms declared on the entry are consistent with those stated on the invoice, e.g. C.I.F., F.O.B.;
- (f) Confirm that the correct costs of transport and insurance have been included in the Customs value if they are not included in the invoice;
- (g) Check that the amount invoiced in foreign currency has been correctly converted to the currency of the Partner State;
- (h) Verify that any deduction claimed is allowable and correctly calculated;
- (i) Review relevant correspondence files;
- (j) Deposits or earlier payments by installments, cash, cheques etc. may not be reflected in the invoices provided. Invoice notations such as the following may indicate the existence of such situation:
 - (i) First or part payment only;
 - (ii) Deposit only; as per contract terms; and/or
 - (iii) Final invoice.

Determine the amount of further payments made to the seller or to a third party identified in the paragraph (d) above. Obtain full details of the amounts paid and the reason for the payments. Obtain copies of any document giving details of the reason for the payments.

4.2.1.5 Verify Contract of Sale

A contract of sale will usually describe all aspects of a transaction. A contract may be:

- (a) Formal, i.e. signed, sealed and delivered;
- (b) In simple written form.

A contract in writing would normally include:

- (i) Precise descriptions of the parties to the sale, and the goods;
- (ii) Services' arrangements, i.e. advertising, warranty, etc;

- (iii) The price to be paid, the currency and exchange rate to be used, and the payment particulars;
- (iv) (including any deposit required, progress payments, termination payment, retention arrangements and escalation clauses);
- (v) Delivery terms of the contract preferably expressed in “Inco terms”;
- (vi) Special arrangement;

The existence of a valid contract of sale and the time at which it was entered into must be established according to fact. A contract is considered to have been entered into when the seller and buyer are brought into a legally enforceable relationship in respect of particular goods. This may occur when the goods have yet to be produced, are stored overseas or are in transit, i.e. “on the high seas” en route to the country of importation in a second sale situation. Some countries exclude, for valuation purposes, contracts of sale entered into after the goods become subject to Customs control. In these countries, sales of warehoused goods are considered to be domestic sales.

Note:

When there are technical Annexes to the contract of sale, these should be examined as they may provide further indications.

4.2.2 Verification of the Value Declared under Identical/Similar Goods Method

- (a) Confirm that the goods could not have been valued under Method 1. If Method 1 should have been used, obtain a complete value declaration and check in accordance with Chapter 2 of this manual - if Method 2 or 3 is confirmed, continue as follows.
- (b) Confirm that the goods being valued are identical or similar to the goods valued under Method 1 by referring to specifications and/or by physical examination (if possible). Identify any differences.
- (c) Confirm that the declared values are based upon values of identical or similar goods exported at or about the same time as the goods being valued.
 - (i) The shipped on board date must be used as the starting procedural step number to determine the time frame; and
 - (ii) The “at or about the same time” period extends 90 days prior to and 90 days following the exportation of the goods being valued; or

If the marketing or the manufacturing conditions are such that the price of the goods in question remains relatively stable over a longer period of time more than three months, the transaction value of the goods exported outside that period may be considered; or result in frequent changes in the price of identical or similar goods, a shorter period of time may be more appropriate, for example, perishables, computer equipments or cell phones.

- (d) Confirm whether an adjustment is necessary to take account of different quantities or a different commercial level, and obtain full details of the basis of calculation. Wherever possible, the sale of identical or similar goods to be used should be that which corresponds most closely in respect of quantity and commercial level to that of the goods being valued. If such conditions do not exist, the sale of identical or similar goods to be used may be:
 - (i) A sale at the same commercial level but in different quantities;
 - (ii) A sale at a different commercial level but in substantially the same quantities;
 - (iii) A sale at a different commercial level and in different quantities.

- (e) Check that the amounts declared as international transport and insurance costs are correct, and that the difference in costs has been adjusted correctly.
- (f) Confirm whether any other adjustment is necessary to take account of, for example, differences between the transportation and associated costs incurred within the country of exportation with respect to the imported goods and the identical and similar goods, and obtain full details of what they are for and how they have been calculated.
- (g) Obtain all supporting documents and determine the Customs Value.

4.2.3 Verification of the Deductive Value Method

4.2.3.1 General

- (a) Confirm that the goods could not have been valued under Method 1, 2 or 3. If one of these methods should have been used, proceed in accordance with the appropriate chapter. If Method 4 is appropriate, continue as follows:
- (b) Check that the signatory of the value declaration is entitled to sign. Confirm that the details on the declaration agree with the entry and supporting documents.
- (c) Confirm that there is evidence of a sale, e.g. sales contract, invoice and evidence of payment.
- (d) Confirm that the goods were sold after importation to persons who:
 - (i) Were not related to the persons from whom they buy goods;
 - (ii) Had not supplied, directly or indirectly, free of charge or at a reduced cost, any of the goods or services for use in the connection with the production and sale for export of the imported goods listed in Para 9(1) (b) of Part 1 of the Fourth Schedule to EAC CMA, 2004.

4.2.3.2 Unit Price

- (a) Confirm the prices paid by the domestic purchaser by reference to the trader's records, computer printout of sales and payments, photocopy of sales ledger, inventory records, sales invoices and documentary evidence submitted to the internal revenue agency.
- (b) Confirm that the unit price has been calculated correctly:
 - (i) If there is one sale of the imported goods being valued or of identical or similar imported goods, the unit price of the goods will be calculated from that sale;
 - (ii) If there is more than one sale, the unit price will be calculated from the first commercial level sales of the imported goods or of identical or similar imported goods, which involve the greatest number of units sold at a common price;
 - (iii) In determining the price per unit, no account is taken of the trade level, i.e. whether the sale is to a wholesaler, a distributor or a retailer.
- (c) Confirm that the imported goods or identical or similar goods have been sold, either at or about the time of the importation of the goods being valued, or in the condition as imported before the expiration of 90 days after they have been imported.
- (d) Confirm that a sufficient number of units have been sold. The decision as to what is a sufficient number will be made on a case-by-case basis, depending on the circumstances

and the marketing practices surrounding the importation and the sales in the Partner State. For example, the price per unit at which the greatest number of goods is sold might not be acceptable if the number of goods sold within the time-limits established in paragraph (c) above is only a small percentage of the total sales of those goods. However, these sales may be acceptable for the purposes of establishing a price per unit if the price at which they are sold is consistent with the usual selling price of the goods.

- (e) Confirm that the use of sales of goods being processed further after importation is justifiable:
 - (i) When the imported goods lose their identity as a result of the further processing, the deductive value method would normally not be applicable;
 - (ii) When the value added by the processing can be determined accurately without unreasonable difficulty, although the identity of the imported goods is lost, the application of deductive value method may be justified;
 - (iii) Sales of goods further processed should be made within a reasonable period from the time of importation of the goods being valued;
 - (iv) The importer must indicate selection of this method in writing.

4.2.3.3 Deductions

- (a) Establish that the amount of commission or profit and general expenses is one usually obtained in sales in the Partner State of imported goods of the same class or kind. This usual amount could constitute a range of amounts which is obvious and easily discernible in order for it to be the “usual” amount. The usual amount can be calculated, for example, by simple or weighted averaging, or by the use of a preponderant amount.
- (b) Establish whether the sale in the Partner State of the goods being valued is or is not made on a commission basis. The deduction for profit and general expenses would normally be resorted to in transactions which do not involve commissions.
- (c) Confirm that other deductions, for example transportation costs within the Partner State, duties and taxes, overseas freight charges, have been calculated correctly.
- (d) Confirm that costs of further processing have been calculated correctly.
- (e) Obtain all supporting documents from the importer and determine the Customs Value.

4.2.4 Verification of Value Declared under Computed Value Method

- (a) Confirm that the goods could not have been valued under the Transaction Value Methods, Transaction Value of Identical/Similar goods Method or the Deductive Value method (if the importer requests to change the order of application of Deductive Value Methods and the Computed Value Method, the Computed Value Method must be applied before the Deductive Value Method). If one of these methods should have been used, proceed in accordance with the appropriate chapter. If the Computed Value Methods appropriate, continue as follows.
- (b) Confirm that the producer is prepared to supply to Customs the necessary costing and to provide facilities for any subsequent verification which may be necessary. If Customs is unable to satisfy itself as to the truth or accuracy of the information presented, the Computed Value Method may not be used.

- (c) Confirm that the declared “cost or value” under this method is based upon the commercial accounts of the producer, and that such accounts are consistent with the generally-accepted accounting principles applied in the country where the goods are produced.

Note:

There is a major distinction between the terms costs and value. Customs will use the value of the material only if the costs are not available.

- (d) Check that the cost or the value of materials used in producing the imported goods has been identified correctly.

Note:

Materials would include:

- (i) Raw materials, such as lumber, steel, lead, clay, textiles;*
 - (ii) Costs associated with the transportation of the raw materials to the place of production;*
 - (iii) Partly assembled or semi-finished goods such as integrated circuits;*
 - (iv) Components which will eventually be assembled or used in the production of the finished product.*
- (e) Check that the cost of the production or other processing of the imported goods has been identified correctly.

Note:

The cost of production would include:

- (i) The costs for direct and indirect labor;*
 - (ii) Any costs for assembly where there is an assembly operation instead of a manufacturing process;*
 - (iii) Indirect costs such as factory supervision, plant maintenance, overtime;*
 - (iv) The amount of internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition. However, if the tax is remitted or refunded upon the exportation of the merchandise, it should not be included in the Customs value.*
- (f) Check that the cost of containers which are treated as being one with the imported goods for Customs purposes has been identified correctly.
- (g) Check that the cost of packing, whether for labour or materials, has been identified correctly.
- (h) Check that the value of assists has been calculated correctly and that the seller has not included the value of an assist in his selling price. Note that the value of any assist is not to be counted twice.

Note:

The value of engineering, development, artwork, design work, and plans and sketches undertaken in the Partner State must be included if the value of such assists is charged to the producer.

- (i) Check that the costs of transport, insurance and related charges have been calculated correctly.
- (j) Confirm that the amount for profit and general expenses has been identified correctly.

Note:

- (i) *The amount for profit and general expenses must be determined on the basis of information supplied by or on behalf of the producer, unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind.*
- (ii) *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 his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind.*
- (iii) *Where the producer can demonstrate that he is taking a low profit on his sales of imported goods because of particular commercial circumstances, his actual profit figures should be taken into account if he has valid commercial reasons to justify them (such as an unforeseeable drop in demand) and his pricing policy reflects usual pricing policies in the branch of industry concerned.*
- (iv) *Where information other than that supplied by or on behalf of the producer is used for the purpose of determining a computed value, Customs should 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 10 of the GATT Valuation Agreement.*

- (k) Obtain all the supporting documents and determine the Customs Value.

4.2.5 Verification of Fall-Back Value

- (a) Confirm that the goods could not have been valued under the Transaction Value Method to the Computed value method (previous methods).
- (b) Establish how the declared value was calculated.

Note:

The following are examples of how the Fall-Back Value might be used:

- (i) *If there are no sales of similar goods produced in the same country as the country in which the goods being valued were produced but there are sales of similar goods produced in another country, it may be possible to use the latter as the basis for determining the Customs value under fall-back method, provided the requirements of the transaction value of similar goods method are otherwise met;*
- (ii) *If there are no sales which meet the 90-day requirement under the deductive value method but there are sales which occurred, for example, 100 days after the importation of the goods being valued, it may be possible to use the latter as the basis for determining the Customs value under the fall-back method, provided the requirements of the deductive value method are otherwise met.*

The fall-back value permits the requirements of previous methods to be applied flexibly but not disregarded completely. In applying the previous methods flexibly, the principles of valuation must be respected and care taken to ensure that the value derived from the method of valuation is not distorted either upwards or downwards.

In determining Customs value using a fall-back value method, one must:

- (a) Confirm that the declared value is not based on a prohibited method under the paragraph 8(2) of part I to the EAC CMA, 2004;
- (b) Confirm that all transport and insurance costs and related charges associated with the imported goods have been correctly taken into account;
- (c) Confirm that any additions (e.g. tooling costs, materials supplied) that have been incurred are declared;
- (d) Refer to Chapter 3.7 of this manual if any undervaluation is discovered;
- (e) Obtain all the supporting documents and determine the Customs Value.

CHAPTER 5

5.0 OTHER VERIFICATIONS ON CUSTOMS VALUE

5.1 VERIFICATION OF RELATED PARTIES

- (a) According to Para 2(1) (d) of Part I of the Fourth Schedule to the EAC CMA, 2004, the transaction value is the Customs value provided that the buyer and seller are not related or, where they are related within the meaning of Para 1(3) and (4) of Part I of the Fourth Schedule to the EAC CMA, 2004 (see paragraph 5.1.1.1 (b) below), that the provisions of Para 2(2) of part I of the Fourth Schedule to the EAC CMA, 2004 apply. For the purposes of Para 2(2) of Part I of the Fourth Schedule to the EAC CMA,2004, the transaction value shall be acceptable where:
 - (i) The circumstances surrounding the sale have been examined and it is determined that the relationship did not influence the price actually paid or payable for the goods or;
 - (ii) The importer of the goods demonstrates that the transaction value of the goods meets one of the requirements (“test” values), set out in paragraph 2(2) (b) of Part I of the Fourth Schedule to the EAC CMA, 2004.
- (b) In making a declaration of value, it is the responsibility of the importer to ensure, to the greatest extent possible, that any relationship between himself and the seller has not influenced the selling price of the goods.

Note:

It is to be expected that importers will be able to make sure more easily and more often that the price has not been influenced, than they will be able to demonstrate that the transaction value meets one of the tests in Paragraph 2(2(b)) of Part I of Fourth Schedule to the EAC CMA,2004).

- (c) Section 122 and the Fourth Schedule to the EAC CMA,2004 do not detail the information to be used in establishing that a relationship has not influenced the price in a sale of goods for export. Once again, on account of the need to operate the EAC CMA Valuation System, i.e. Section 122 and the Fourth Schedule to the EAC CMA, 2004 in an effective and efficient manner while, at the same time, recognizing the flexibility necessary under current international trading realities, there can be no real hard and fast rules laid down when it comes to deciding whether or not a relationship between the seller and the buyer influenced the price for the imported goods.
- (d) Whichever way an importer chooses to claim the acceptability of the price, his conclusions should be supported by factual evidence. The importer must explain how the price was determined between the related parties and keep that evidence on file to support his claim to use the transaction value method in determining the Customs value of the goods. The main point of valuation control by Customs in this respect is to establish that the selling price is not significantly different from that which would have been charged to an unrelated buyer, given identical circumstances except for that of relationship. In other words, the Customs could accept the price if unrelated buyers are able to purchase the goods at the same price as that charged to related buyers.
- (e) Relationship is defined in paragraph 1(3) and (4) of Part I of the Fourth Schedule to the EACCMA, 2004. However, while the buyer and seller may be related under the Section 122 and the Fourth Schedule to the EAC CMA, 2004, the relationship may be so insignificant that there will be little or no likelihood of the price being influenced. 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 is unable to accept the transaction value without further enquiry, it should be prepared to examine the relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relationship 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, for example, the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the seller settles prices for sales to buyers who are not related to him, 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.

- (f) It should also be emphasized that where the price actually paid or payable by the related buyer compares favorably with that of an unrelated buyer, this would not necessarily meet the restrictive requirements of the test value method referred to in Paragraph 2(2)(b) of Part I of the Fourth Schedule to the EAC CMA, 2004. On the other hand, Customs must be cognizant of the fact that information provided by an importer with respect to a previous importation which meets all of the criteria necessary to be considered a valid test automatically confirms the acceptability of the price paid or payable as the transaction value. In fact, information obtained during the course of a Customs officer's work may satisfy him as to the acceptability of a price, without further enquiry. In such a case, there would be no reason to make further enquiries.

5.1.1 Procedures for Verification

5.1.1.1 Establishing the Relationship

- (a) Inform the importer that the circumstances surrounding the sale are being examined and request for the following information concerning the sale:
 - (i) A copy of the commercial invoice, the contract of sale and commercial agreement;
 - (ii) A brief explanation of the relationship between his firm and the seller;
 - (iii) Any information which would demonstrate the absence of influence on the price of the goods imported from the related seller;
 - (iv) Any information on what is needed to establish a test value.
- (b) Obtain full details of the nature of the relationship and establish what relationship the buyer has with the seller:
 - (i) They are officers or directors of one another's businesses;
 - (ii) They are legally recognized partners in business;
 - (iii) They are employer and employee;
 - (iv) Any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or share of both of them;
 - (v) One of them directly or indirectly controls the other; (Both of them are directly or indirectly controlled by a third person;
 - (vi) Together they directly or indirectly control a third person; or

- (vii) They are members of the same family – see **Appendix I** for definition of “same family”;
- (c) The relationship can be verified through authoritative publications (e.g. “Who Owns Whom”, Directory of Corporate Affiliation), statements by the importer, company office records, company file in the Registrar of Companies, information file on member companies of the Chamber of Commerce, annual review of company (including balance sheet, list of shareholders, etc.);
- (d) Determine whether the buyer is a branch office of the seller or the seller’s own employee. If so, according to Advisory Opinion 1.1. in the WCO Compendium, the parties may be regarded as being part of the same legal entity. A company cannot sell to itself and therefore the transaction would normally not be regarded as a sale. The transaction value can not be applied in this case. If the buyer is not a branch of the seller, proceed to the next paragraph.

5.1.1.2 Cases where there are Sales to Unrelated Buyers

- (a) Establish whether the same goods are sold to unrelated buyers within the Partner State. If there is no sale to an unrelated buyer within the Partner State, proceed to paragraph 5.1.1.3 below.
- (b) Determine whether unrelated buyers in the Partner State are able to purchase the same goods at the same price as that charged to the related buyer, taking into account different quantities and different commercial levels. A price difference attributable to sound commercial reasons would be acceptable in this context. If so, obtain copies of any available documentary evidence.
- (c) If the related buyer obtains a lower price than unrelated buyers, then:
 - (i) Where the goods have been bought by the seller and subsequently resold to the related buyer (importer), establish how the invoice price to the related buyer reconciles with the buying-in price of the seller;
 - (ii) Where the goods are manufactured by the seller, obtain details as to how the invoice price is calculated. It may be necessary for the seller to provide such details. Request the buyer to confirm that the following elements are included in the invoice price and request a statement of the costs, including:
 - (A) Costs of materials;
 - (B) Labor costs;
 - (C) Overheads (direct and indirect);
 - (D) Selling expenses; and
 - (E) Profits.

Note:

In both cases, if the price is sufficient to recover all costs plus a profit which is representative of the firm’s overall profit, Transaction Value Method may be applicable.

5.1.1.3 Cases where there are no Sales to Unrelated Buyers

If there are no sales of identical goods to unrelated buyers within the Partner State, determine whether the related buyer is able to purchase the goods at a comparable price to that charged either to an unrelated buyer in the country of exportation or in a third country, or to other related buyers in the Partner State. The intention here is that this information would add to the weight of circumstantial data available to judge whether the price actually paid or payable has been influenced or not. As such, this comparison is not to be used as a test value within the meaning of Paragraph 2(2) (b) of Part I of the Fourth Schedule to the EACCMA, 2004.

Note:

The use of a price in the country of exportation or a third country for purposes of comparison must be exercised with great care. This basis of comparison would only be valid where the level of market development of the country of exportation or of the third country, as the case may be, and of the Partner State or the global marketing strategy of the seller allows such a comparison to be made.

5.1.1.4 Conclusion

If the price has been influenced by the relationship, the transaction value should not be accepted for the purposes of Paragraph 2 of Part I of the Fourth Schedule to the EACCMA, 2004. An alternative valuation method has to be used.

5.2 TRANSFER PRICING

Transfer pricing is the practice adopted by multinational corporations in fixing the prices of goods and services traded between the corporation and its affiliates located in different countries. The multinational corporations may adjust the price of goods to enhance the profitability of the whole enterprise or to achieve other goals. In some cases the final price is dependent on the amount realized in the resale in the country of importation, with the transfer price being adjusted up or down in consequence.

5.2.1 Transfer Pricing Methods

- (a) Customs officers must always remain aware that a large percentage of today's international trade is made up of the transfer (or movement) of goods and/or services between multinational enterprises (MNE's) and their subsidiaries. In doing their business, MNE's will develop transfer pricing policies between the parent company and its subsidiaries. Transfer pricing with MNE's is an everyday practice in international trade.
- (b) Transfer pricing is defined as the means by which MNE's set prices for transfer of goods/property and/or services between (or within) their related companies. The main objective is to maximize profitability within the group as a whole and transfer pricing is the consequence of the means to reach this target. By taking advantage of the differences in tax rates (e.g. Customs and corporation tax), MNE's in practice might distribute their taxation liability to reduce their overall tax burden and/or Customs revenue collected at a national level in some countries.
- (c) Transfer is characterized by minimization of a MNE's tax liability to a single economy. This is generally achieved by adjusting the declared Customs value of the imported goods in order to maximize any related tax benefits. If a country's Customs duty rates is lower than its corporate tax rates, an overstatement of value of the imported goods occur in order to gain an overall revenue/tax liability advantage for that MNE.

- (d) The MNE will benefit from transfer price by minimizing or maximizing the “price” of the imported goods in order to take advantage of the most favorable tax/duty rate. From the basis of the WTO Valuation Agreement and its supporting rules and regulations, this can be seen as an over or undervaluation methodology.
- (e) Most MNE parent companies are based / headquartered in developed countries and use a transfer pricing methodology based on the Organization for Economic Co-operation and Development (OECD) Guidelines for MNE’s and tax administrations. The OECD Guidelines establish parameters for MNE’s to adhere to when determining the amount of profits that will be allocated to each country with whom the MNE deals.
- (f) For transfer pricing purposes, the OECD has provided an international standard for direct taxation authorities, that is, national tax offices. This standard requires that the determination of a corporate tax liability in each taxing jurisdiction is based on “arms length price” incurred. The main emphasis on this standard is that transfers (or sales) within a MNE should approximate those that would be negotiated between independent firms, that is, an arms length price in an arm length transaction. This then allows for treatment of “controlled taxpayers” to be on a level footing with “uncontrolled taxpayers”.
- (g) The OECD guidelines provide a generally accepted framework within which controlled taxpayers may trade internationally applying normal commercial principles on the same basis as uncontrolled taxpayers without uncertainty and the potential penalty of unwarranted price adjustments, arbitrary additional tax liabilities and double taxation.
- (h) What is an “arms length “ transfer pricing?

Under the OECD Guidelines, transfer pricing methodologies can be based on three central approaches – the comparable uncontrolled price (CUP); the resale price and the cost plus method. These methodologies are very similar to the provisions in paragraph 3 to 7 of Part I of the Fourth Schedule to the EAC CMA, 2004 (Articles 2 to 6 of the WTO Valuation Agreement). There are also two other methodologies available to the users, which are known as “transactional profits methods” being the profit splits and the transactional net margin method. The last two are generally seen to be methods of last resort when the first three cannot be used for whatever reason and broadly speaking, this can be seen to reflect provisions in paragraph 8 of Part I of the Fourth Schedule to the EAC CMA, 2004 (Article 7 of the WTO Valuation Agreement).

(i) Comparable Uncontrolled Price (CUP)

This method is based on a comparison being made to the price charged in an uncontrolled (unrelated party) transaction on identical goods. The uncontrolled transaction must relate to a similar business enterprise trading in the identical goods in similar quantities at the same commercial level in the same market, that is, in the same country of importation. Or, the price at which the importing company trades in the same goods with independent suppliers/persons. In the application, this method is similar to **Paragraph 3 and 4, Part 1 of the Fourth Schedule to the EAC CMA, 2004.**

(ii) Resale Price Method

This method is normally applied to distributors selling to independent customers. It basically works back from uncontrolled price to third party customers. It

requires the identification a similar independent entity with the same type of business related risks and functions and similar (not necessarily identical) products brought and sold independently. The gross margins are identified and these are then applied to transaction of the subject importing company. This method is similar to **Paragraph 6, Part 1 of the Fourth Schedule to the EAC CMA, 2004**.

(iii) Cost – Plus Method

This method is similar to **Paragraph 7, Part 1 of the Fourth Schedule to the EAC CMA, 2004** and is most commonly used where there is a sale of half – finished /manufactured goods or for the provision of services to related party. Essentially, this method is based on the premise that they are uncontrolled costs and requires identification of direct cost incurred by the supplier of the goods or services. A mark up/adjustment upwards is added to the cost comparable to that achieved by independent companies carrying out a similar business in the same market.

(iv) Transactional Profit Method

(A) Transactional Net Margin Method

The basis of this method is the comparison of net margins (costs, sales, assets used etc.) in the importing company with those of other comparable entities in similar transactions. This method is similar to the cost – plus and resale price methods.

(B) Profit Split

This methodology requires details of an MNE's global profits on the provision goods and services allocated between all the related importing companies in all importing countries involved in the production and sale of those goods and services the basis of assets used, risk assumed (etc.) by each of those related companies (subsidiaries). This methodology therefore requires knowledge of contributions of all companies/subsidiaries within any given group and global profits on each transaction and this information is not always easy to access.

5.2.2 Transfer Pricing Agreement

Transfer pricing agreements are usually drawn up by the parent company on a worldwide basis. It will include all aspects of the business relationship and their business dealings with their subsidiaries/related companies and will provide the basis of the transfer pricing policy and the obligations of those subsidiaries. In most cases, transfer pricing agreements between parent companies and their subsidiaries are determined by the parent company. Depending on the structure and policy of the MNE however, some subsidiaries may be able to negotiate an individual transfer price on an arms-length basis with their parent company.

It may state that all goods exported to the subsidiary's country are merely transfers and that there is **no sale**. For customs value purposes this is critical information and provides the basis for a straightforward decision, as Article 1 could not apply in such cases.

Where Customs is dealing with a declared related party transaction and the parties were not previously known to Customs, the transfer pricing agreement is an essential document to review as it contains all aspects of the transfer pricing arrangements as well as (usually), the formulae.

As it is a matter for a parent company and its subsidiaries to agree on a transfer price, a MNE can approach its transfer pricing policy from varying perspectives. For example:

- (i) recovery of all costs for each product plus a nominal profit (most common);
- (ii) fixed different prices for their products to different importing countries;
- (iii) marginal product costs plus variable percentage mark-up depending on whether buying was from another subsidiary in the parent company's country (say, 10% mark-up); if bought from a subsidiary in other countries A to Q, say 35% mark-up, if from countries R to Z, 25%. Labour and production costs can influence these transfer pricing considerations;
- (iv) fixed prices on the basis of costs for material, labour and overheads plus a 25% mark-up from both general and administrative expenses and profits.

These are merely a small number of examples of how MNE's can go about setting transfer prices. These "price" breakdowns would be examined in a post clearance audit situation or, as a result of Customs seeking to establish the price actually paid or payable at importation.

5.2.3 Transfer Pricing and the Price Actually Paid or Payable

In related party transactions, the majority of MNE's openly declare their related party and subsidiary status regarding imported goods. As earlier mentioned, just because an importation is between related parties, there is no need for Customs to jump to the conclusion that there will be some form of price manipulation. A related party transaction does not mean that the price has been influenced by the relationship. Paragraph 3 of the Fourth Schedule to the EACCMA, 2004, informs us that the transaction value can be accepted but that "... *the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price*". This of course is conditional on the fact that there was a sale.

To assist, the Fourth Schedule to the EACCMA, 2004, provides a definition of "persons deemed to be related" in Paragraph 1 (3) of Part 1 of the Fourth Schedule, of the EAC CMA 2004. If the parties "relationship" does not fit within any of the categories contained in Paragraph 1 (3), for the purposes of the EAC CMA, 2004, they are not deemed to be "related parties". Also, if importations are by sole agents, sole distributors or sole concessionaires, unless the status of the transaction falls within any of the criterion of Sub-Paragraph 3, they are not related party transactions.

In regard to transfer pricing, there is no legal requirement that the transaction value and the transfer price for imported goods between related parties should be the same. It is apparent however that when dealing with transfer pricing from the perspective of the importer's direct and indirect tax obligations, that the two types pull in opposite directions, that is, the customs duty obligation at the front end and the corporate tax obligation at the back end. To many importers, priority is given to direct tax obligations while Customs duty obligations are minimized in importance largely due to the fact that customs duty rates are generally lower than direct tax rates, especially in developed countries.

In regard to the price actually paid or payable in a transfer pricing situation, Customs officers must establish two important facts:

- (i) Did the relationship between the parties to the transaction influence the price for the goods?
and;
- (ii) If it's a transfer price, is that the actual price for the goods at the time of importation?

If the price is not influenced by the relationship between the parties and, if the price is in fact the then legitimate price (albeit a transfer price) for those goods at the time of importation, Customs may accept it as the price actually paid or payable as described in Para 2, Part 1 of the Fourth Schedule,

adjusted as necessary in accordance with Para 9, Part 1 of the Fourth Schedule to the EAC CMA, 2004, (for example, commissions, royalty payments, etc. Warranty considerations may also need to be taken into account).

Importantly however, what must be remembered by Customs officers is that when dealing with transfer priced importations, ultimately there is likely to be a global upwards or downwards adjustment made to that price by the parent company. This may occur quarterly, bi-annually or annually.

For example, where a transfer price has been adjusted downwards, will Customs administrations refund duty overpaid? Or where a transfer price has been adjusted upwards, will Customs Administration collect the additional duty and penalized the importer for nondisclosure?

5.2.4 Transfer Price Audits

General enquiries regarding transfer prices can be made by Customs officers at the time of lodgment of the Customs entry or declaration by the importer or, in a post clearance audit.

It should be remembered that even though a post clearance audit might specifically target transfer pricing, it is in fact based on establishing the correctness of the *price actually paid or payable*.

A transfer price based audit should be conducted in the same way as a regular Customs value post clearance audit. A primary document however is the transfer pricing agreement between the parties to the transaction. If, in accepting the transfer price at importation as the price actually paid or payable, if test value considerations have occurred, the Customs paperwork on this is also especially relevant.

The identified risk or potential risk level of any MNE will have bearing on whether such importers are audited and how regularly. These decisions will be based on, for example, how well known the MNE is and what the local importers importing history is like regarding the integrity of his/her self assessed decisions.

5.3 VERIFICATION OF BUYING COMMISSIONS

- (a) Commissions and brokerage incurred by the buyer in respect of the purchase of goods must form part of the Customs value. The only exception is in respect of buying commissions, fees paid or payable by a buyer to his agent for the service of representing him overseas in the purchase of the goods. It is obvious that if the buyer himself goes abroad to negotiate the purchase, or sends one of his salaried employees, their travel expenses and salaries are costs of the buyer and are not to be added to the price of the goods. Neither is there any reason to include the costs of hiring an outside agent to perform the same function in the transaction.
- (b) The treatment of commissions for Customs Valuation purposes depends upon the exact nature of the services rendered by the intermediaries. The nature of the services rendered by the intermediaries is often not apparent from the commercial documents; therefore Customs officer will need to take necessary and reasonable measures to ensure the proper application of this provision.
- (c) In certain transactions a buying agent concludes the contract and re-invoices the importer, distinguishing between the price of the goods and his fees. The mere act of re-invoicing does not make him the seller of the goods, nor can his fees be considered as a part of the price of the goods. If buying commissions are distinguished, they must not be included in the transaction value of the goods.

5.3.1 Procedures for the Verification of Buying Commissions

- (a) Check whether the agent has made a separate charge for the buying service, i.e. that it is “distinguished” from the price actually paid or payable for the goods.

Note:

If the commission is shown on the agent’s invoice, you would need to check whether the agent is a selling agent or a buying agent.

- (b) Obtain full details of the functions carried out by the agent. Obtain a copy of the agency contract and/or other documentary evidence, such as purchase orders, telexes, letters of credit, correspondence, etc., relating to the agent’s activities and commission.

Note:

- (i) *The treatment of commissions and brokerage for Customs valuation purposes depends upon the exact nature of the services rendered by intermediaries. If the so-called intermediary is acting on his own account and/or if he has a proprietary interest in the goods, he cannot be considered as a buying agent.*
 - (ii) *Sometimes the contracts or documents do not clearly represent or reflect the nature of the activities of the so-called agent. In such circumstances, it is essential that the actual facts of the case be determined.*
 - (iii) *If the agent is related to the seller or to a person related to the seller, despite the existence of an agency contract, Customs is entitled to examine all the circumstances to determine whether the agent is, in fact, acting on behalf of the buyer and not on the account of the seller, or even on his own account.*
 - (iv) *Export houses or so-called independent agents who carry out similar activities but, unlike buying agents, have a proprietary interest in the goods and exercise control over the transaction or over the price paid by the importer, cannot be considered as buying agents.*
- (c) Obtain full details of the amount of the commission and the method by which it is calculated.

Note:

- (i) *If the buying agent re-invoices the importer, the supplier’s invoice could be submitted to Customs to determine the price actually paid or payable to the seller of the goods as well as the amount of the buying commission.*
- (ii) *The compatibility of fees charged in relation to services rendered should be examined. A buying agent may sometimes perform other services which are outside the scope of the usual functions of a buying agent. These additional services would affect the fees charged to the buyer.*
- (iii) *If the amount of the commission appears to be inconsistent with commercial practice, the circumstances of the sale should be examined. There are cases in which companies purchase goods through branch offices located in the country of importation and pay buying commissions to their branch offices. Buying commission may possibly have been paid for the purposes of undervaluation.*

5.3.2 Questionnaire to Assist in Determining the Dutiable Status of “Commissions”

- (a) Is the agent related to the seller?
- (b) In the case of orders cancelled or amended by the buyer, did the agent have to take a proprietary interest in the goods or necessarily assume responsibility for reselling them?
- (c) Where shipping and handling costs exceed or are less than the amount agreed to by the buyer, would the agent have to absorb the excess or retain the difference?
- (d) Does the agent at any time acquire, or is he liable to acquire a proprietary interest in the goods, or assume the risk of their ownership?
- (e) Does the agent, at any time, assume the risk for damaged or lost goods?
- (f) Does the agent, over and above his remuneration, benefit from discounts or rebates given by the seller?

If the answer to any of questions (a) to (f) is “yes”, the agent is probably not acting as a bona fide buying agent and any fees paid by the buyer would be added to the price paid or payable, if not already included therein. If the answer to all of questions (a) to (f) is “no”, continue with questions (g) to (i).

- | | |
|---|--------|
| (g) Does the buyer control the activities of the agent by specifying? | Yes/No |
| (i) The quantities to be purchased? | |
| (ii) The name(s) of the seller(s)? | |
| (iii) The price to be paid? | |
| (iv) The type and quality of the merchandise? | |
| (v) The method and timing of the shipment? | |
| (h) Does the agent receive all necessary funds from the buyer prior to being responsible for paying the seller for the goods? | |
| (i) Is the commission charged based on a percentage of the invoice price? | |

If the answer to all of questions (g) to (i) is “yes”, then although all the circumstances surrounding the transaction should be taken into account, this would serve as a strong indication that the agent is a bona fide buying agent. However, the fact that the answer to some questions may be “no” (e.g. if the agent is remunerated on a flat fee basis) is not, in itself, reason to reject the agent as a genuine buying agent, and therefore add the fee to the price paid or payable.

5.4 VERIFICATION OF ROYALTIES OR LICENCE FEES

5.4.1 General Principles

- (a) When the buyer pays a royalty or license fee related to the imported goods as a condition of sale, the amount of this payment must be added to the price actually paid or payable if it is not already included therein.
- (b) The Agreement does not attempt to define the terms “royalties or license fees”, but refers to payments of any kind paid as a consideration for use of, or the right to use any copyright of literary or artistic or scientific work including cinematography films, any patent, trade mark, design or model, plan, secret formula or process, for the use of, or the right to use, industrial,

commercial or scientific equipment, or for information concerning industrial, commercial, or scientific experience.

- (c) The key requirements of Para 9 (1)(c) of Part I of the Fourth Schedule to the EACCMA, 2004 are that the royalties or license fees must be included in the transaction value only if:
 - (i) They are related to the goods being valued; and
 - (ii) The buyer must pay them, either directly or indirectly, as a condition of sale of the goods being valued.

These two conditions are of crucial importance and must always be to the forefront when royalty cases are considered. It is essential to note that both conditions must be satisfied before any addition can be made to the price actually paid or payable for the imported goods.

- (d) For example, when a machine manufactured under a patent is sold for export to the Partner State at a price exclusive of the patent fee, which the seller has required the importer to pay to a third party who is the patent holder, the royalty should be added to the price actually paid or payable in accordance with the provisions of Para 9 (1)(c) of Part I of the Fourth Schedule to the EACCMA, 2004, since the payment of the royalty by the buyer is related to the goods being valued and is a condition of sale of those goods.

5.4.1.1 Related to the Imported Goods

In order to establish the extent if any, to which the value in respect to which royalties and license fees are paid, is related to the imported goods, the first question to be resolved in all cases is the true reason for additional payments.

The assigned right to whom a royalty is paid may reside:

- (a) Wholly in the imported goods; or
- (b) Partially in the imported goods and partially in other things (e.g. ingredients or component parts added to the goods after importation); or
- (c) Wholly outside the imported good.

The first step is to call for and to scrutinize and analyze carefully, any agreement and related correspondences between the seller and the buyer (or between either or both and any other interested party or parties) and any relevant patent specifications. Care must be taken to determine the realities of the arrangement made, which may not always be fully disclosed by written agreement or by initial enquiries to the importer (especially where relationship exists).

5.4.1.2 Conditions of Sale

This requirement means that royalties and license fees will form part of the Customs value if their payment by the buyer to the seller or a third party is required by the seller as condition of the sale of the imported goods. Royalties or license fees which the buyer pays directly or indirectly to the seller or to the licensor who is related to the seller can normally be regarded as being paid as a condition of sale even when the fee is not payable until after the goods are resold, used or otherwise disposed of after importation.

5.4.1.3 Third Party Royalties

When a buyer pays royalty to unrelated third party, such a payment can only be considered to be a condition of sale when the seller (or a person related to the seller) requires the buyer to make that

payment. Where such payment is not considered to be made as a condition of sale, no part of the royalty or license fee is ever included in the Customs value even when it clearly relate to the imported goods. The position must be resolved in each individual case on the basis of the best information obtainable, but case will vary considerably in complexity.

5.4.1.4 Procedure for Audit

The fact that a royalty is paid by the buyer to the seller is not, however, in itself sufficient reason for assuming that the whole or indeed any part of it is necessarily related to the imported goods and therefore included in the Customs value. The aim must be to ensure that any proposal for addition to the price actually paid or payable are fully supported by relevant facts and based on objective and quantifiable data. The right for which royalty and license fee are paid will vary and may include one or more of the following:

(a) Trademarks

Note to Para 9 (1)(c) of Part 1 of the Fourth Schedules to the EAC CMA, 2004 provides that a royalty or license fee paid for the right to use a trademark falls under the general provisions. However, when establishing that the royalty or license fee is “related”, it can be useful to consider the following:

- (i) That the royalty or license fee refers to the goods resold in the same state or which are subject only to minor processing after importation;
- (ii) That the goods are marketed under the trademark for which the royalty or license fee is paid; and
- (iii) That the buyer is not free to obtain such goods from other unrelated supplier.

(b) Royalties for “Know- How”

The importer is often required to pay the royalty or part of a royalty in respect of the technical information or “know-how” supplied by the seller. The claims that royalty or part of the royalty does not relate to the imported goods may be accepted where it can be established that the particular information or “know-how” has to do with something clearly unrelated to the imported goods and that the amount paid is reasonable having regard to what is supplied. Claims made for exclusion of payments for the provision by the seller to the importer of the information necessary to assemble and/or use the goods for the purpose for which they were designed are not acceptable.

(c) The Right to Reproduction

The note to Para 9 (1)(c) of Part 1 of the Fourth Schedules to the EAC CMA, 2004 provides that royalty payment for the right to reproduce the imported goods in the Partner State are excludible from the transaction value provided that they are distinguished from the price actually paid or payable for the goods.

(d) The Right to Redistribute

Payment made by the buyer for the right to distribute or resell the imported goods are not to be added to the price actually paid or payable if such payments are not a condition of sale for export to the Partner State of the imported goods. In majority of cases, you will find that these payments are made as a condition of the sale between the seller and the buyer and must therefore be included in the Customs value under the provisions of Paragraph 2, part I of the Fourth Schedule.

(e) Patents

You will need to establish what goods are being imported (e.g. Components including kits for assembly, sub-assembly, components, small parts, ingredients). Whether imported goods are complete or in parts, it must be established wherein lays the right or specialty for which the royalty is paid.

The position must be resolved in each individual case on the basis of the best information obtainable; this will vary considerably in complexity. At one end of the scale will be found the simplest case involving the goods imported complete, which incorporate the whole of the specialty value. In such cases, the whole of the royalty payments however expressed must be taken into account when determining the Customs value. At the other end of the scale, because the imported goods are common place articles having no specialty value and the royalty relate to the post-importation operation or added ingredient or component, no part of the royalty is included in the Customs value. This applies where the imported goods are specialized only in the sense that they are made to specification (e.g. non-standardized sizes of nuts and bolts etc.). If there is any doubt, patent specifications should be normally obtained.

5.4.1.5 Procedures for Verification

- (a) Obtain a copy of the sales contract, and/or a copy of the royalty or license agreement.
- (b) Determine whether the royalties or license fees are related to the goods being valued.
- (c) Determine whether the buyer must pay the royalties or license fees, either directly or indirectly, as a condition of sale of the goods being valued.
- (d) Determine whether the payment by the buyer is for the charges for the right to reproduce the imported goods in the Partner State. If so, the charge is not to be included in the price actually paid or payable.
- (e) Determine whether the payment made by the buyer for the right to distribute or resell the imported goods is a condition of the sale for export to the Partner State of the imported goods. If not, the amount of the payment is not to be included in the price actually paid or payable.

5.5 VERIFICATION OF FINANCING ARRANGEMENTS

5.5.1 Decision 3.1

According to Decision 3.1 (Decision 3.1 is contained in **Appendix VI** to this Manual) issued by the WTO Committee on Customs Valuation, where the buyer enters into a financing arrangement relating to the purchase of the goods to be valued, with the seller, with a bank or with another natural or legal person, interest charges incurred under such a financing arrangement do not form part of Customs value provided that:

- (a) The charges are distinguished from the price actually paid or payable for the goods;
- (b) The financing arrangements were made in writing; and
- (c) When required to do so by Customs, the purchaser can demonstrate that:
 - (i) Such goods are actually sold at the price declared as the price actually paid or payable, and;
 - (ii) The claimed rate of interest does not exceed the prevailing rate of interest for such transactions at the time when, and in the country where, the financing was provided.

Any exclusion of the interest charges can only be considered when all the above criteria are met to the satisfaction of Customs.

Besides the interest charges described above, separate financial arrangements between importer and exporter not in respect of the sale of goods have no influence in the determination of Customs value. For example, where a buyer makes a loan to a seller to enable him to purchase the facilities and tools necessary to manufacture the imported goods, this loan would not be considered as an assist under paragraph 9(1)(b) of part 1 of the Fourth Schedule, and therefore the loan and the subsequent interest charges should not be added to the price actually paid or payable.

In this regard, the costs related to financing the sale must be distinguished from the price actually paid or payable for the goods which would generally cover the production costs, general expenses, transportation costs, commissions related to the sale and profits.

5.5.2 Procedure for Verification (only for Interest Charges for Deferred Payment)

- (a) Obtain a copy of the document in which the financing arrangement between the buyer and seller/agent was agreed. The financing arrangement which provides for the payment of interest is usually in the “terms and conditions” clause of the contract of sale (e.g. payment in 180 days with interest at X% to the buyer’s account).
- (b) Where no such document exists, inform the importer that the interest charge is includible in the Customs value.
- (c) Where the interest rate appears to be unreasonable, either obtain details on the basis on which the interest charge is calculated or establish that the price paid or payable for identical or similar goods sold without a financing arrangement closely approximates the price paid or payable for the goods being valued.

Note:

The currency in which the buyer is financed influenced the interest rate. If the exchange rate of a currency is subjected to wide fluctuations the interest rate for financing in that currency may be higher, reflecting the higher risk of dealing in the currency.

5.6 VERIFICATION OF GOODS AND SERVICES SUPPLIED BY THE BUYER FREE OF CHARGE

- (a) The value of any goods and services which have been supplied, directly or indirectly, by the buyer free of charge or at a reduced cost to the overseas supplier must be included in the Customs value. These goods and services are commonly known as “assists”. The list of dutiable assists comprises four categories of goods and services as follows:
 - (i) Materials, components, parts and other goods incorporated in imported goods;
 - (ii) Tools, dies, moulds and similar items utilized in the production of imported goods
 - (iii) Any materials consumed in the production of imported goods; and
 - (iv) Engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in the Partner State and necessary for the production of imported goods.
- (b) When an importer does not declare the value of assists, either intentionally or inadvertently (in a large company, the assist activity might be handled by one department and the

importation of goods by another), it is difficult, especially at the time of importation, for Customs to detect assists. However, the price of imported goods involving assists might be lower than prices of identical or similar goods.

Whenever Customs has any doubt, the importer will be asked about exports of goods or services to the seller. In the Customs enquiry into the circumstances surrounding the sale, a plan or project for the importation of the goods concerned, obtained from the importer's files, might reveal all of the facts relating to the importation including the existence of assists. A file of export documents might be examined in order to establish whether the consignee for the exported assists is the same as the seller of the imported goods concerned. Every overseas payment not involving a transaction of goods to the Partner State must be carefully checked. If a payment is made to a design centre abroad, the purpose of the payment must be examined. It is also important to note that the importer may supply assists indirectly by paying a third party who supplies them to the seller.

(c) Examples of types of goods or services often supplied by buyers are as follows:

- (i) Labels, tags;
- (ii) Instruction booklets;
- (iii) Packaging (e.g. poly bags, boxes, crates, adhesive tape, cans);
- (iv) Leather and cloth, especially where the seller is an assembler (cutting, making, trimming, etc.);
- (v) Ironmongery (e.g. hinges handles. Screws);
- (vi) Tires and parts of motor vehicles;
- (vii) Precious metals for catalysts and electronic goods;
- (viii) Silicon slices; and
- (ix) Dies and moulds;
- (x) Catalysts and reagents;
- (xi) Abrasives and lubricants;
- (xii) Printing and design work for packaging;
- (xiii) Plans, drawings, blueprints, etc.

(d) The value of assists is the sum of:

- (a) The cost of acquisition or cost of production;
- (b) The cost of transportation (including any foreign duties, taxes or charges and landing costs incurred overseas) if paid by the buyer, after their acquisition or production by the buyer, to the place where they are used in the production of the imported goods.
- (c) The value added to the goods by any repairs or modifications made after their acquisition or production by the buyer; and
- (d) Adjustments for previous use.
- (e) The cost of acquisition or cost of production may be determined from:
 - (i) The cost of acquisition or lease incurred by the buyer, if the assists are acquired or leased from a person who is not related to the buyer at the time of the acquisition or lease;
 - (ii) The cost of acquisition or lease incurred by the person from whom the buyer acquires or leases the assists, if that person does not produce the goods and is related to the buyer at the time of the buyer's acquisition or lease;

Or

- (iii) The cost of production, if the assists are produced by the buyer or by a person related to the buyer at the time of the buyer's acquisition of the goods.
- (f) Once a value has been determined for the assist, it will be necessary to apportion that value to the imported goods. Generally, the method of allocation will be that requested by the importer provided:
 - (i) That it is in accordance with Generally Accepted Accounting Principles (GAAP), and
 - (ii) That the requested method of apportionment can be established by documentary evidence.

Various possibilities exist, for example:

- (i) The value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time;
- (ii) The importer may request that the value be apportioned over the number of units produced up to the time of the first shipment;
- (iii) The importer may request that the value be apportioned over the entire anticipated production if a firm contract exists for the total production;
- (iv) Value might be apportioned over the number of years or number of units of useful life of assist.

5.6.1 Procedure for Verification

- (a) Establish whether the buyer supplied any materials or services. If so, obtain full details of what was supplied and when.
- (b) Establish whether the supply was made once only or is on a continuing basis.
- (c) Establish whether the buyer incurred the transportation costs, foreign duties, taxes or other charges, if the national legislation so requires.
- (d) Obtain copies of any documentary evidence relating to the value of assists (e.g. an agreement, invoices if the materials were purchased, details of what was supplied, payments by the buyer, cost of production, etc.).
- (e) Obtain details of the imported goods to which the supply relates.
- (f) Establish whether all the goods contracted for have been imported. If not, obtain details of what has been imported and what remains to be imported. Apportion value of assist to the importations.
- (g) Check whether a value for the goods or services has been declared. If so, obtain details of how the declared value was calculated.

Note:

There are cases in which payments by the buyer to a third party supplier to the seller may be considered as part of the price actually paid or payable rather than as assists. If there is no assist arrangement between the buyer and the third party supplier, there may be a supply agreement between the seller and the third party supplier.

5.7 VALUATION RISK AREAS

(a) Status of Buyer and Seller

(i) *Branch office importing from head office*

In order to use the transaction value method, there must be a sale for export. In circumstances where the ownership of the goods does not change, e.g. the exporter is shipping goods to his employee or a branch office which has no authority to contract on its own behalf, a sale cannot be said to have occurred.

(ii) *The selling or buying agent*

When a third party participates in a sale, it is necessary to examine his role in the transaction. Two situations may arise:

- (A) The third party, paid by the buyer or the seller, participates in the sales contract concluded between buyer and seller. Such an agent acts as an intermediary in the contract, and has the role of representing the buyer or the seller in the conclusion of a contract of sale. A selling agent's commission is to be included in the Customs value;
- (B) The third party buys the goods from the seller and resells them to the buyer. Thus two transactions take place. The buyer-reseller's margin is reflected in the resale value of the goods.

(b) Selling Commissions

Selling commissions or brokerage charges are sometimes not invoiced. However, when the name of a third person appears on an invoice, this may indicate the involvement of a selling agent. During the visit to the importer's premises to conduct verifications of declared values, it should be noted that selling commissions may be recorded under the item COMMISSION ON SALES in the MARKETING (or SELLING AND DISTRIBUTION) account in the importer's financial/accounting records.

(c) Buying Commissions

The treatment of commissions for Customs valuation purposes depends upon the exact nature of the services rendered by intermediaries. Therefore the simple appearance of "buying commission" on the agent's invoice would not be sufficient justification for its exclusion from the Customs value. Customs should conduct checks if the services provided by the agent are more than simply representing the buyer in the purchase of the goods, or if the amount of the commission appears to be inconsistent with the services performed.

(d) Deposits/Part Payments

Deposits or earlier payments by installment, cash, cheque, etc., may not be reflected in the invoices produced. Invoice notations such as the following may indicate the existence of such situations:

- (i) First or part payment only;
- (ii) Deposit only;
- (iii) As per contract terms;
- (iv) Final payment.

These practices are common with capital goods and/or importations for large-scale projects, etc. Examples of such payments could be:

- (i) 1/3 paid on commencement of production of the goods to be imported;
- (ii) 1/3 paid on completion of overseas production;
- (iii) 1/3 paid on arrival of the imported goods in the country of importation.

Exchange rates may also be contracted in phased, part, or split payment situations. The contract of sale may show the details. Check the financial records of the importer if necessary.

(e) Deferred Payments

These payments are sometimes not invoiced but may be identified by reference to the financial records of the importer. Deferred payments may be involved with large cost items (e.g. capital equipment for large-scale projects, etc.), which are often covered by written contract.

(f) Price Escalation Charges

Price escalation charges are a provision for price adjustments over the life of a contract or agreement. A price escalation clause is a normal part of a contract involving the importation of capital equipment or large project goods with long lead times during which the cost of production might be changed. When dealing with importation involving capital equipment for large-scale projects (e.g. factories, assembly plants, power stations), a copy of the relevant contract should be requested to examine how the price escalation charges are to be paid.

(g) Discounts

Cash discounts or quantity discounts are allowed under the provision of Fourth Schedule EAC CMA, 2004. However, such discounts may be due to the following reasons and may not be deductible:

- (i) The buyer undertakes certain activities for or on behalf of the seller as part of the payment under the contract of sale;
- (ii) The buyer provides other goods/services to a third party for or on behalf of the seller as a condition of sale of the imported goods;
- (iii) A party's relationship affects the price;
- (iv) The price of the imported goods has received credits made in respect of earlier transactions.

(h) "Customs Purposes Only" Invoices

Invoices marked "for Customs purposes only" (or some similar notation) may indicate:

- (i) No sale of the goods being valued or;
- (ii) Actual commercial invoice for the goods concerned is not available.

(i) Package Deals

The total price for the goods may be split among two or more invoices so that high duty goods are allocated low prices and goods attracting low duty rates are allocated high unit values. Noting the fact that a case of price manipulation of the kind described above is a matter for the Customs enforcement authorities, this offsetting arrangement can, for Customs valuation purposes, be considered to represent a condition or consideration for which a value cannot be determined with respect to the goods being valued. Therefore, the provisions of Para 2(1) (b) of Part 1 of Fourth Schedule to the EAC CMA, 2004 apply and valuation cannot be based on the transaction value of the imported goods.

(j) Price Averaging

In this type of situation, the total invoice price of the imported goods has been averaged across a range of different goods included in the same consignment. Suitable price breakdowns must be applied.

(k) Price Dependent on Resale Price

The price has been only provisionally fixed and will be adjusted either up or down, depending on the profit margin realized on the resale of the goods. In this case, the transaction value of the imported goods must be the total final price actually paid or payable.

(l) Transfer Pricing by Multinational Corporations

Transfer pricing is the practice adopted by multinational corporations in fixing the prices of goods and services traded between the corporation and its affiliates located in different countries. The multinational corporations may adjust the price of goods to enhance the profitability of the whole enterprise or to achieve other goals. In some cases the final price is dependent on the amount realized in the resale in the country of importation, with the transfer price being adjusted up or down in consequence.

In these circumstances, the following areas would require further examination:

- (i) Whether the transaction in question can be regarded as a sale;
- (ii) Whether or not there is an influence on the price caused by the relationship between the seller and the buyer;
- (iii) The existence of conditions or considerations to which the sale may be subject.

(m) Management fees or contributions to Research and Development

Sometimes in trade between a multinational corporation and its affiliates, a certain percentage of turnover or other amount is paid by the buyer to the seller as so-called management fees or contributions to Research and Development. In such cases, the issue of whether these payments are a condition of sale and whether they are related to the goods imported must be considered.

(n) The cost of transport, Insurance and related charges

(i) *Inland freight in the country of exportation*

Where the terms of delivery do not cover inland transport costs in the country of exportation, the freight should be included in the Customs value.

(ii) *Cost of packing*

The cost of packing for goods is normally included in the selling price. However, the cost of export packing is sometimes not included in the selling price. Export packing is used specifically to protect goods during long-distance transportation and is specifically provided for under Para 9 of Fourth Schedule to the EAC CMA, 2004 as an addition to the Customs value.

(iii) *Container cleaning costs*

There are cases in which container cleaning costs are paid to the shipping company. For example, where the imported goods are chemical goods, the tank for liquid chemicals must be cleaned after transportation. Such charges would be part of the charges related to transport and should be included in the Customs value.

(iv) *Cost of insurance*

The seller and the buyer sometimes conclude insurance package deals covering all their transactions. In that event, the insurance costs related to the transport of the imported goods should be included in the Customs value.

(o) Royalties and license fees

In many cases, the contract of sale for the goods does not explicitly mention that a payment for royalties or license fees has been made for the goods. Rather a separate agreement is made for patents, licenses or technology supply, etc. Goods often involving royalties or license fees are musical recordings, trademark goods, patented machines or processes.

(p) Tooling costs (assists)

Tooling services are often supplied by the buyer in transactions involving electrical appliances and others where the supplier's products have to be specially modified to suit the standards or design specifications of the Partner State.

(q) Profit sharing

If the buyer is to share with the seller the profit on resale of the imported goods, the seller's share must be added to the price actually paid or payable.

(r) Computer software

The value of data or instructions (software) recorded on carrier media, according to Decision 4.1 (**Appendix VII**) of the Committee on Customs Valuation, is to be excluded, if the value of the software is distinguished from the value of the carrier medium.

It should be noted that “carrier media” do include magnetic tapes, disks (including disks for reading by a laser optical reading system) and diskettes, but do not include integrated circuits, semi-conductors and similar devices or articles incorporating such circuits or devices.

The expression “data or instructions” shall not be taken to include sound, cinematic or video recordings.

(s) Quota charges

Under a quota arrangement between countries of exportation and importation, the authorities of the exporting country allocate the quota to domestic manufacturers. Without a quota, they cannot obtain an export license. Manufacturers sometimes use up their quota allocation and buy unused quota from other manufacturers.

Note:

For the time being there is no decision at international level on the uniform application of the valuation treatment of quota charges.

5.8 CUSTOMS VALUATION IN EXCEPTIONAL CIRCUMSTANCES

5.8.1 Free of Charge (FOC) Goods

Goods can be imported free of charge for a variety of reasons. These are such goods as gifts, samples and promotional items. Most of the FOC goods are consigned between related parties, although this is not always the case (e.g. warranty replacement). The valuation of FOC goods should not be confused with goods supplied free of charge to the supplier (assists).

Many FOC goods are of low value (e.g. a small percentage of spares in each consignment). However, it is possible that consignments between related companies will all be FOC. In cases involving FOC goods, the hierarchical order sequence of method should be tried. Method 1 should be rejected immediately, as there may be an earlier sale of identical or similar goods that could be used.

5.8.1.1 Basis of Customs Value

Generally, where goods are supplied without charge to the importer, they cannot be valued under Para 2 Part I of the Fourth Schedule to the EACCMA, 2004 as there is no price payable for the goods. It is some time possible to use Identical or Similar goods methods (Method 2 or 3) and exceptionally, Deductive or Computed value methods (Methods 4 or 5). In other cases, it will be necessary to value the goods under Fall Back Value (Method 6), e.g. What the price for the goods would have been if they had been sold preferably with some evidence to support this price. In all cases, freight, insurance and loading and handling charges associated with transport of the goods are included in the Customs value. Regular importations of FOC goods between the same importer/supplier combination can be covered by a *valuation ruling*.

5.8.1.2 Replacement for Breakage

When replacement goods are sent on FOC separate from the original shipment, the Customs value of this item is assessed as if the replacement goods are included in the same shipment as other items (e.g. the seller includes additional items to cover potential breakage in transit in that shipment), they are regarded as being included in the value of the main consignment.

5.8.2 Damaged Goods

When damaged goods are imported, their valuation depends on the time at which they were damaged. It may be the buyer's intention to import partially or totally damaged goods, in which case the price actually paid or payable is acceptable basis of value. However, if the goods are damaged after agreement of contract but before entry into free circulation, the Customs value should take suitable account of the damaged.

(a) *Damaged Goods with Nil Value:*

Provided the damaged goods have not been used (other than for initial testing) and are destroyed, re-exported or abandoned, there is no liability of duty.

(b) *Partially Damaged Goods (occurring after contract of sale):*

Where goods of residual value are treated as nil value there is no duty liability. If the importer accepts the damaged goods, they must be valued under the normal rules.

Any of the methods are theoretically possible, although the price paid for undamaged goods is not an acceptable basis of value. In practice, one of the following methods is likely to be the most efficient way of arriving at a suitable value.

(i) *Transaction Value (Method 1)*

The Customs value may be based on a renegotiable price taking account of the damage. It should be borne in mind that this price may reflect either an element of compensation by the seller, or the fact that the seller wishes to avoid the expense of having the goods returned, or both.

(ii) *Fallback Value (Method 6)*

The full price originally paid or payable, reduced by an amount equal to any one of the following:

- (A) Estimate of a surveyor independent of the buyer or seller;
- (B) Cost of repair or refurbishment; or
- (C) Insurance settlement.

An insurance settlement may not be accurate as the goods may have been under or over insured. However, even if the price paid to the seller is unchanged and the insurance company makes good difference, the damage must be taken into account.

(c) *Partially Damaged Goods (intentionally imported)*

There are occasions where partially damaged goods are intentionally imported. In some cases there will be a price paid which can be used to establish the basis of value. Sometimes the only payments made are the costs of importing the goods (i.e. freight and insurance). In such cases the goods must have a value to make it viable to import them.

It should be noted that waste is sometimes imported for disposal. Where the only payment is made by the exporter for the disposal of waste, a normal value is acceptable.

5.8.3 Used Goods

(a) *Used or second hand goods fall into two categories:*

- (i) Those not used by the importer before entry into free circulation (home use); and
- (ii) Those used by the importer in a country prior to entry into free circulation (home use).

(b) *Basis of Value*

- (i) In the first category, there is likely to be a price paid in respect of the used goods that can be taken as a basis of valuation, Para 2, Part 1 of the Fourth Schedule to the EACCMA, 2004, (Method 1).
- (ii) In the second category, account should be taken of the reduction in value. The customs calculation may require an estimate of the life span of the product:

$$\frac{\text{Remaining life of the item} \times \text{the original purchase price of the item}}{\text{Full life of the item}} = \text{depreciated value}$$

The normal additions are then made (e.g. transport, insurance).

5.8.3.1 Treatment of Used Motor Vehicles

The valuation of used motor vehicles for customs purposes poses certain practical problems. These problems were the subject of WCO Study 1.1 on Treatment of Used Motor Vehicles which gives various possible solutions. The study itself is designed to cover the broad spectrum of vehicles regarded as used at the time of importation, whether purchased new or second-hand, and does not touch on the limited fields of special purpose vehicles and classic or vintage cars.

(a) *Basis of Customs Value*

Basically there are two types of situation which need to be dealt with in the valuation of imported used vehicles. They are as follows:

- (i) The vehicle is imported pursuant to a purchase without intervening use;
- (ii) The vehicle is imported after additional use since the purchase.

If importation follows upon a sale without intervening use, the price actually paid or payable should serve as the basis for establishing a transaction value under Para 2, Part 1 of the Fourth Schedule to the EACCMA, 2004, (method 1) provided that all other requirements and conditions are fulfilled. If the requirements and conditions cannot be met the customs value must be determined by applying other Paragraphs (Methods 2 to 5) in the sequential order.

Where the vehicle is imported after additional use since the purchase, Para 2, Part 1 of the Fourth Schedule to the EACCMA, 2004, (Method 1) cannot be applied as there is no price actually paid or payable for the vehicle in its condition at the time of importation. The value must, therefore, be determined by another Method.

Both situations can raise problems when trying to establish a suitable basis of value under other methods.

(b) Identical and Similar (Methods 2 & 3)

The application of these Methods presupposes the existence of goods identical or similar to those being valued, exported at or about the same time as those goods. Furthermore, the value of these identical or similar goods must have been determined under Para 2, Part 1 of the Fourth Schedule to the EAC CMA, 2004, (Method 1). It seems doubtful whether these conditions can be fulfilled in the specific case of used vehicles imported by private individuals; however, there might occasionally be scope for applying Para 3 or 4, Part 1 of the Fourth Schedule to the EAC CMA, 2004, (Methods 2 or 3), particularly in the case of importations by traders.

(c) Deductive Value (Method 4)

Failing the use of Methods 2 or 3 if the vehicles or identical or similar goods are sold after importation in the same condition as imported, Para 6, Part 1 of the Fourth Schedule to the EAC CMA, 2004, (Method 4) may be applied whenever the requirements of that Method can be met.

In cases where the requirements cannot be met but the used vehicles are sold after further processing (for example, repair, reconditioning, fitting of accessories) Method 4 may still be applied; the deductions needed to take account of the value added by such processing or reconditioning will then have to be made.

(d) Computed Value (Method 5)

Since used vehicles are obviously not imported in the same condition as when manufactured, a value based on the cost of producing the vehicles cannot be achieved.

(e) Fall-Back Value (Method 6)

It follows, therefore, that in many cases the customs value of used motor vehicles will have to be determined under Method 6. Under this 'fall-back' Method the value may be determined using any reasonable means consistent with the principles and general provisions of GATT and the flexible use of any of the Articles (Methods 1-5) as agreed with the importer.

The customs value could, for example, be based on the price actually paid or payable for the vehicle. In this case the goods would have to be valued with reference to their condition at the time of valuation. The price would, therefore, be adjusted to take account of the depreciation (with reference to age or use) incurred since purchase.

In cases where there is no price actually paid or payable, the value might be determined in consultation with the importer on the basis of the transaction value previously accepted for imported vehicles of the same make and model. This value would then have to be adjusted to reflect the vehicle's condition at the time of valuation by taking into account, on the one hand depreciation resulting from age, wear and obsolescence and, on the other hand, additional accessories that do not normally form part of the equipment of the vehicle in question. Further adjustment might prove necessary, to take into account any differences in level and quantity between the transactions. In the event of there being no importations of new vehicles of the same make and model, the Method described in the previous paragraph could be applied using transaction values already accepted for similar vehicles.

5.8.4 Wrecked Cars imported for use as spares

Where wrecked vehicles, which have been written off for insurance purposes, are imported for use as spares, it is not possible to establish a value under Methods 1-5. WCO Study 1.1 suggests that an appropriate customs value under Para 8, Part 1 of the Fourth Schedule to the EAC CMA, 2004, (Method 6) could be based on the current prices for new and used cars as listed in catalogues or specialized periodical, less a deduction taking account of the vehicles condition and of all elements affecting its value (e.g. abnormal wear).

5.8.5 Rented or Leased Goods

When goods are temporarily imported on a hire or lease basis, customs duties must be brought to account thereon. The customs value will be the rental or hire charge. For example, if the charge for a 36 month contract is 1,000 cu per month, the customs value will be 36,000 cu. Should the rental include a charge for any function, e.g. erection and maintenance, to be undertaken by the supplier after importation of the goods, the customs value must not include such charge.

To ensure that the goods are exported on due date, any additional duty due to a change in circumstances such as an extension of the contract is paid, a provisional payment (deposit) equal to 100% of the customs duties will be secured pending proof of export under customs supervision.

5.8.6 Split Shipment

Split shipments are those which form transaction between buyer and seller but are imported in partial or successive shipments either through the same port or different ports. There are three categories of split shipment:

- (a) The goods constitute a complete industrial installation or plant and are split up because they come from different sources or it would be physically impossible to ship together or it is necessary for the convenience of assembling the plant;
- (b) Where it would be impossible or inconvenience to ship as a whole;
- (c) Where shipments are split for geographical reasons.

5.8.6.1 Treatment of Split Shipment

(a) Industrial installations

Importance of industrial installations are often classified under one tariff heading, in which case there is only the statistical value. It is likely that the basis of value will be the price paid or payable plus appropriate adjustments. It is also likely that the final value cannot be determined until all shipments have been made.

(b) Logistical

This category covers situations where the goods are identical and sold at an agreed unit price. If the shipment is over a period of time, it may be necessary to verify that no adjustments to the price have been made.

(c) Geographical

Where goods are consigned to different ports, each split shipment should be valued by reference to the price paid or payable for the fraction of the whole shipment. This applies even where goods are consigned to different countries.

5.8.7 Packaged Deals

A package deal is an agreement to pay a lump sum for a correlated group of goods or a group of goods sold together, the price paid or payable being the only consideration. Example of package deals transactions involving potential valuation problems:

- (a) Different goods are sold and invoiced at a single overall price;
- (b) Goods of different quality sold and invoiced at a single overall price are only partially declared for home use in the Partner State;
- (c) Different goods, included in the same transaction, are invoiced at individual prices established solely for tariff reasons.

5.8.7.1 Treatment of Package Deals

(a) Different goods sold and invoiced at a single overall price:

Where the transaction meets the requirements of Para 2, Part 1 of the Fourth Schedule to the EAC CMA, 2004, (Method 1), the single overall price does not preclude its use. This applies even where different tariff rates may apply to parts of the consignment. The practical problem of splitting down the consignment for tariff purposes may be solved by:

- (i) The use price of identical or similar goods from previous importations; or
- (ii) Price breakdowns based on generally accepted accounting principles supplied by the importer.

(b) Goods of different quality

If in the situation (b) the entered goods are not an accurate representation of the overall consignment (i.e. the same ratio of qualities) then Para 2, Part 1 of the Fourth Schedule to the EAC CMA, 2004, (Method 1) cannot be used. Since the price paid or payable is in respect of varying qualities, there is no selling price for each different quality. If the imported consignment is an accurate ratio of the whole consignment, a proportional value can be used under Para 2, Part 1 of the Fourth Schedule to the EAC CMA, 2004, (Method I).

(c) Different goods invoiced at individual prices

Product A and B, which have been purchased in a package deal for 100, are invoiced at 35 and 65, the duty rates being 15% for A and 6% for B. the overall transaction value has not changed, but the duty liability is less than if the products were invoiced at equal values. Unless there is specific evidence to support such a split, it is inappropriate and should not be allowed. This type of split can also be used to manipulate anti-dumping measures.

Whilst such manipulation is potentially fraudulent, the goods must still be valued using one of the six methods (tried in hierarchical order). The apportionment example shown above is an example of a condition for which a value cannot be fixed. Accordingly, Para 2, Part 1 of the Fourth Schedule to the EAC CMA, 2004, (Method 1) cannot be used and another method must be found.

5.8.8 Outward Processing Relief (OPR)

When goods which were sent abroad for repair or processing are returned, duty would be normally payable on full value thereof, i.e. the value of the product when exported plus the cost or value of repair or processing. However, duty should be paid on the cost or value of the repair or processing only provided the goods:

- (a) Were exported under Customs supervision;
- (b) Have retained their essential characteristics;
- (c) Are returned to the exporter, no change of ownership having taken place in the interim;
- (d) Are identifiable.

Where the returned goods meet the conditions above the bills entry should be appropriately endorsed. For example, where an article with a value of, say 2,000 when exported and is returned after repair costing 500 (Customs Value 2,500), the endorsement should read:

“Customs duty on 2,000 rebated – duty payable on 500 only”

Only the cost of value of the repair/processing must be reflected in the field “Actual Price” on bills of entry since that is the amount for import control purposes where applicable.

In cases where the conditions prescribed above cannot be met, duty must be brought to account on the full, using the appropriate method.

5.8.9 Goods Exchanged/Replaced

Goods imported as replacement or exchange of exported products are dutiable and no exemption is allowed.

5.8.9.1 Charge Made for the Replacement Product

When charges are made for replacement of products Method 1 can be used and the value will be based on the charge made for the replacement product. If this charge has been reduced to take account of the value of the exported goods, the amount of the deduction must be added back in order to arrive at the value for duty purposes. If the amount of the deduction to be included in the customs value is not known, the export value of the exported goods must be added.

5.8.9.2 No Charge Made for the Replacement Product

As no payment is made, method 1 cannot be used and the following should be tried:

- (i) Use the identical or similar Methods if such goods were imported under hiring method
- (ii) If the above is not possible, use (Para 8, Part 1 of the Fourth Schedule to the EAC CMA, 2004) Method 6. The value can be based on the charge that would have been made for the replacement products.

5.8.10 Private Imports

The value for ad valorem customs duty for private importations, like that of all imported goods, is to be determined in accordance with Section 122 and Fourth Schedule to the EAC CMA, 2004, the primary basis being price actually paid or payable.

5.8.11 Computers

5.8.11.1 Software

In accordance with Decision 4.1, 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.

Software can be carrier medium bearing data and instructions for use in data processing equipment. This covers magnetic tapes and disks (including disks for reading by a laser optical reading system) and diskettes falling within HS code 85.24. It does not include sound, cinematography or video recordings, nor devices that incorporate integrated circuits or semi-conductors.

Observation: this concession was made due to the fact that, in theory, the same data or instructions could be imported by another means such as by telephone or satellite. It would not then be possible to control that type of importation.

5.8.11.2 Hardware

“Computers with Adjustable Memory Capacity”

These are computer systems containing memory capable of being upgraded by the insertion of a pre-set code. For instance the manufacturer makes only one model of 64 Megabyte memory capacity. If the customer orders a system with 32 memory capacity, the remaining unwanted 32 Mb are “blocked off”. Should the customer, at a later date, require use of the remaining 32 Mb, this can be accessed by means of a simple technical operation involving the insertion of a pre-set code (sometimes referred to as post-importation license key) by the manufacturer upon the customer making additional payments.

These additional payments need to be declared for duty purposes post importation.

5.8.12 Processed Film, Video, Cinematographic and Sound Recordings

The value of these goods normally included “rights of reproduction”. Examples are news material, films television programmers or sound recordings for broadcasting, copying or library use. The normal valuation rules apply. The nature of the goods is often unique and even when resold; the sale includes the reproduction rights. If the value of rights is separately invoiced or otherwise distinguishable from the value of the goods themselves, it is not to be included in the customs value.

For free charge goods: goods not produced in quantity for general sale are frequently supplied on a free of charge basis. Para 8, Part 1 of the Fourth Schedule to the EAC CMA, 2004, (Method 6) the fall-back value will generally apply. A nominal valuation per film is acceptable.

5.8.12.1 Film for Broadcasting Transmission

Generally, video tape and cinematographic film is imported for a limited period during which the transmission takes place and it is then returned to the owner. If there is a charge for this loaning, or the film is sold outright to the importer the price is taken as customs value. When there is no charge, the value is to be determined according to the value of the material imported.

In the cases that involve the payment of Loyalties and /or license fees, care must be taken to confirm the facts of the case by examination of the relevant contracts and by verification of the payments made. Such fees are considered payments for ‘rights of reproduction’ and therefore not included in the customs value.

5.9 COMPUTERIZATION OF CUSTOMS VALUATION

- (a) Modern Automatic data Processing (ADP) techniques are widely used to support Customs valuation control. Effective post-importation control can benefit greatly from the application of ADP techniques in selecting the declarations to be examined. The selection could be based on the following criteria:

- (i) Declarations by major importers identified from the most recent list of the top 100 importers;
 - (ii) Large importations identified from the most recent list of the top twenty imported finished products;
 - (iii) Products subject to a significant rate of duty;
 - (iv) Products the importation of which is increasing rapidly;
 - (v) Declarations by declarants who have made errors or have undervalued their goods in the past;
 - (vi) Random selection, etc.
- (b) Any irregularity or importation may be identified by ADP techniques, such as:
- (c) Computerized information on importers would be useful for valuation control. An example of a lay-out form for information on importers could be:

Importer No./ Exporter	Country Code	Commod- ity Code	Customs Code	Entry No.	Date of entry	Date of entry	Value for duty	Unit Price
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This information could be stored and used as required.

- (d) A computerized information “profile” on importers could be used for valuation control purpose. Importer profiles allow Customs access to information regarding an importer’s past and current importing practices. These profiles are designed to assist Customs legislation and those for whom there is a high risk of non-compliance. Each importer who uses a Customs-assigned importer number to transact business with Customs would have an importer risk screen, and may contain up to three additional screens (importer commodities screen, enforcement screen and lookout screen). The various screens may contain the following information:
- (i) *Import risk* – Contains the importer’s name, number, business address, account security number (if possible) and risk factor by Customs region. The importer’s risk factor could be the rate at which an importer’s shipments may be selected for examination and/or data verification prior. The use of value for duty codes on import entries can sometimes alert the administration on incorrect or questionable values.
 - (ii) *Importer commodities* – Lists all known commodities that an importer imports, in respect of which conditions or requirements have to be met (i.e. permits, certificates, etc.) prior to release from Customs control.
 - (iii) *Importer enforcement* – contains historical data detailing an importer’s previous Customs offenses.
 - (iv) *Importer lookout* – May contain either appraisal or enforcement lookouts for an individual importer. Both types of lookouts will result in a mandatory referral to secondary for examination and/or data verification.
- (e) It would be desirable to develop a computerized system to review the value declared. One example of such a system is to specify characteristics of import transactions and their typical values. A range of acceptable unit values is assigned to a commodity field, usually by HS 6-digit number. Import transactions outside the assigned unit value ranges would be selected for further review.

GLOSSARY - ABBREVIATIONS AND DEFINITION

S/No.	ITEMS	DESCRIPTION
1.	Actual Value	(a) The price at which such or like goods are: (i) Sold for export to the Partner State; or (ii) Offered for sale in the ordinary course of trade under fully competitive conditions. (b) To the extent to which the price of such or like goods is governed by quantity in a particular transaction, the price to be considered should uniformly be related to either: (i) Comparable quantity; or (ii) Quantity not less favourable to the importer than those in which the greater volume of imported goods is sold in the trade between the country of exportation and the Partner State. (c) May be represented by the invoice price, plus any non-included charges for legitimate costs which are proper elements of actual value and plus any abnormal discount or other reduction from the ordinary competitive price.
2.	Ad Valorem duty	Duty expressed as a percentage based on the Customs Value of goods, e.g. 10% ad valorem means that the duty is 10% of the Customs Value of the goods.
3.	Agreement	WTO Valuation Agreement.
4.	Airway Bill	A receipt of goods air-lifted, and evidence of the terms and conditions of carriage agreed between the parties.
5.	Appeal	The act by which a person, natural or legal, who is directly affected by a decision made or omission by Customs and who deems himself/herself to be aggrieved thereby seeks redress before a competent authority.
6.	Appraisalment	The determination, by a proper Customs official, of the dutiable value of imported merchandise.
7.	Assessment of Duties and Taxes	Determination of the amount of duties and taxes payable.
8.	Assists	Includes the following if supplied directly or indirectly, and free of charge or at reduced cost by the buyer of imported merchandise for use in connection with the production or the sale for export to the importing country of the merchandise. Type of assists: 1. Materials, components, parts and similar items incorporated in the production of imported merchandise; 2. Tools, dies, moulds and similar items used in the production of imported merchandise; 3. Merchandise consumed in the production of the imported merchandise; and 4. Engineering, development, art work, design work, plans and sketches that are undertaken elsewhere than in the importing country and are necessary for the production of the imported merchandise.
9.	Associated costs	Refer to the costs, charges and expenses related to the physical transport from the port or place of shipment for export to the Partner State, for example delivery cost, demurrage etc.

10.	Bill of Exchange	A Bill of Exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.
11.	Bill of Lading	A receipt of goods shipped, and evidence of the terms and conditions of carriage agreed between the parties. It provides the terms of the contract between the shipper and the transportation company to move freight between stated points at a specific charge.
12.	Bona fide	In good faith.
13.	Bond	An undertaking in due legal form, by which a person binds himself to the Customs to do or not to do some specified act.
14.	Brokerages	Brokerage is a payment to a middleman, who does not act on his/her own account, for his/her participation in the conclusion of a contract of sale.
15.	Buffer Stock	Goods imported in anticipation of orders from specific customers under long term contracts. Such goods are held in stock for delivery to those customers on demand.
16.	Buying Agent	A middleman who acts for the account of an importer, rendering him/her services in connection with finding suppliers, informing supplier/manufacturer of the desire of the importer, collecting samples, inspecting goods and, in some cases arranging insurance, transport, storage and delivery of goods.
17.	Buying Commission	A fee paid by an importer to an agent for representing the importer in the purchase of imported goods. The services performed by a buying agent could include buying, forwarding, quality control and similar services. Buying commissions are not to be added to the price actually paid or payable.
18.	Case Officer	This is an officer who is responsible for initialing the valuation query who was task to examine the Customs value of a case.
19.	CFR (Cost and Freight)	“Cost and Freight” means that the seller must pay the costs and freight necessary to bring the goods to the named port of destination but the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time the goods have been delivered on board the vessel, is transferred from the seller to the buyer when the goods pass the ship’s rail in the port of shipment. The CFR term requires the seller to clear the goods for export. This term can only be used for sea and inland waterway transport. When the ship’s rail serves no practical purpose, such as in roll-on/roll-off or container traffic, the CPT term is more appropriate to use.
20.	CIF (Cost, Insurance and Freight)	“Cost, Insurance and Freight” means that the seller has the same obligations as under CFR but with the addition the he has to procure marine insurance against the buyer’s risk of loss of or damage to the goods during the carriage. The seller contracts for insurance and pays the insurance premium.

		The buyer should note that under the CIF term the seller is only required to obtain insurance on minimum coverage. The CIF term requires the seller to clear the goods for export. This term can only be used for sea and inland waterway transport. When the ship's rail serves no practical purposes such as in the case of roll-on/roll-off or container traffic, the CIP term is more appropriate to use.
21.	CIP (Carriage and Insurance Paid To)	"Carriage and insurance paid to..." means that the seller has the same obligations as under CPT but with the addition that the seller has to procure cargo insurance against the buyer's risk of loss of or damage to the goods during the carriage. The seller contracts for insurance and pays the insurance premium. The buyer should note that under the CIP term the seller is only required to obtain insurance on minimum coverage. The CIP term requires the seller to clear the goods for export. This term may be used for any mode of transport including multimodal transport.
22.	Clearance of goods	The accomplishment of the Customs formalities necessary to allow goods to be exported, to enter for home use, or to be placed under another Customs procedure.
23.	Client	Any person or enterprise conducting business with Customs in the Partner State.
24.	Commercial level	The commercial stage at which a sale is concluded, for example: (a) Between a manufacturer and a wholesaler; or (b) Between a wholesaler and a retailer; or (c) Between a retailer and an end user or a customer.
25.	Commission	Payment made to an intermediary who acts on behalf of either the supplier of the goods (selling commission) or the importer (buying commission).
26.	Commercial Invoice	An invoice signed by the seller or shipper, or his agent, which is acceptable for Customs purposes if it is prepared in accordance with Customs Regulations, and in the manner customary for a commercial transaction involving goods of the kind covered by the invoice.
27.	Community	East African Community
28.	Computed Value	The basis of appraisal used when a transaction value, a transaction value of identical or similar merchandise, or a deductive value cannot be determined. The computed value of imported merchandise is the sum of: 1. The cost of materials and the fabrication and other processing employed in the production of the imported merchandise; 2. 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 country of importation; 3. The costs of transportation to the port or place of importation, loading and handling charges and insurance if included in national legislation.
29.	Condition or Consideration	Activities to be undertaken by the importer or the supplier necessary for settlement of a contract of sale, or for determination of price.

30.	Confirming Commission	Fee paid by the exporter to protect themselves against the financial risk of non-payment or insolvency on the part of the importer; can be undertaken through normal banking channels, government agencies, insurance companies or specialized commercial companies dealing with such matters.
31.	CMT	Cut, Make and Trim. An invoice term that indicates that the value shown is only for the service of manufacturing the product. The cost of materials is not included.
32.	Consigned Merchandise	Merchandise transferred to an importer, without consideration (payment), to be sold on a division of profits or on a commission basis.
33.	Consignee	The person or firm to whom merchandise is destined.
34.	Consignment	Merchandise sent to a retailer who is expected to pay after the sale occurs.
35.	Consignment Stock/ or Goods	Stock or goods legally owned by one party, but held by another.
36.	CPT (Carriage Paid to)	- Carriage paid to ...” means that the seller pays the freight for the carriage of the goods to the named destination. The risk of loss of or damage to the goods, as well as any additional costs due to events occurring, after the time the goods have been delivered to the carrier, is transferred from the seller to the buyer when the goods have been delivered into the custody of the carrier. “Carrier” means any person who, in a contract of carriage, undertakes to perform or to procure the performance of carriage, by rail, road, sea, air, inland waterway, or by a combination of such modes. If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier. The CPT term requires the seller to clear the goods for export. This term may be used for any mode of transport including multimodal transport.
37.	Currency	Notes and coin that are the current medium of exchange, or legal tender in a country.
38.	Customs	The Government Service which is responsible for the administration of Customs law and the collection of <i>import and export duties and taxes</i> and which also has responsibility for the application of other laws and regulations relating, inter alia, to the <i>importation, transit and exportation</i> of goods.
39.	Customs Union	Entity formed by a <i>Customs territory</i> replacing two or more territories and having in its ultimate state the following characteristics: – A common Customs tariff and a common or harmonized Customs legislation for the application of that tariff; – The absence of any <i>Customs duties</i> and charges having equivalent effect in trade between the countries forming the Customs Union in products originating entirely in those countries or in products of other countries in respect of which import formalities have been

		complied with and <i>Customs duties</i> and charges having equivalent effect have been levied or guaranteed and if they have not benefited from a total or partial drawback of such duties and charges; – the elimination of restrictive regulations of commerce within the Customs Union.
40.	Customs Value	The value of goods for the purposes of levying ad valorem duties of Customs on the imported goods.
41.	DAF (Delivered At Frontier)	“Delivered at Frontier” means that the seller fulfils his obligation to deliver when the goods have been made available, cleared for export, at the named point and place at the frontier, but before the customs border of the adjoining country. The term “frontier” may be used for any frontier including that of the country of export. Therefore, it is of vital importance that the frontier in question be defined precisely by always naming the point and place in the term. The term is primarily intended to be used when goods are to be carried by rail or road, but it may be used for any mode of transport.
42.	DDP (Delivered Duty Paid)	“Delivered duty paid” means that the seller fulfils his obligation to deliver when the goods have been made available to the named place in the country of importation. The seller has to bear the risks and costs, including duties, taxes and other charges of delivering the goods thereto, cleared for importation. Whilst the EXW term represents the minimum obligation for the seller, DDP represents the maximum obligation. This term should not be used if the seller is unable directly or indirectly to obtain the import license. If the parties wish the buyer to clear the goods for importation and pay the duty, the term DDU should be used. If the parties wish to exclude from the seller’s obligations some of the costs payable upon importation of the goods (such as value added tax (VAT)), this should be made clear by adding words to this effect: “Delivery duty paid, VAT unpaid (...named place of destination)”. This term may be used irrespective of the mode of transport.
43.	Declarant	Any natural or legal person who makes a <i>Customs declaration</i> or in whose name such a declaration is made.
44.	Declaration	An oral or written statement of imported goods made to a Customs officer. Sometimes called a Customs Entry of Entry.
45.	Deductive Value	The next level of appraisement to be used if the transaction value of imported merchandise, of identical merchandise, or of similar merchandise cannot be determined. Basically, deductive value is the resale price in the Country, with deductions for certain items. The price used depends on when and in what condition the merchandise concerned is sold in the country of importation.
46.	Delivered Domicile (DD)	The invoice price includes all delivery costs through to the buyer’s premises. It does not necessarily include the cost of customs clearance, duty and VAT.
47.	Demurrage	A fee paid for excess time taken for loading or unloading of a vessel not caused by the vessel operator, but due to the acts of a charterer or shipper.

48.	DES (Delivered Ex Ship)	“Delivered Ex Ship” means that the seller fulfils his obligation to deliver when the goods have been made available to the buyer on board the ship uncleared for import at the named port of destination. The seller has to bear all the costs and risks involved in bringing the goods to the named port of destination. This term can only be used for sea or inland waterway transport.
49.	Document	Any medium designed to carry and actually carrying a record or data entries; it includes magnetic tapes and disks, microfilms and so forth.
50.	DTI	Direct Trader Input.
51.	EAC	East African Community.
52.	EAC CMA	East African Community Customs Management Act, 2004
53.	Exchange Rate	The price at which one currency is exchanged for another currency.
54.	Extraneous	The method of payment, for the imported goods, which has no pertinent bearing to the imported goods under consideration. Barter trade, off-setting does not necessarily relate to the consignment under consideration, or the same supplier, and could introduce an outside source that is impartial to the transaction.
55.	Ex-Works (Ex-Factory)	“Ex works” means that the seller fulfils his obligation to deliver when he has made the goods available at these premises (i.e. works, factory, warehouse, etc.) to the buyer. In particular, he is not responsible for loading the goods on the vehicle provided by the buyer or for clearing the goods for export, unless otherwise agreed. The buyer bears all costs and risks involved in taking the goods from the seller’s premises to the desired destination. This term thus represents the minimum obligation for the seller. This term should not be used when the buyer cannot carry out directly or indirectly the export formalities. In such circumstances, the FCA term should be used.
56.	FAS	Free Alongside. The invoice price includes all delivery costs up to the point where the goods are loaded onto the specified means of transport (e.g. FAS Ship, FAS Truck). It does not include the cost of loading.
57.	Form C.36	Used for declaration of particulars relating to Customs value.
58.	FCA (Free Carrier)	“Free Carrier” means that the seller fulfils his obligation to deliver when he has handed over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place or point. If no precise point is indicated by the buyer, the seller may choose within the place or range stipulated where the carrier shall take the goods into his charge. When, according to commercial practice, the seller’s assistance is required in making the contract with the carrier (such as in rail or air transport) the seller may act at the buyer’s risk and expense. This term may be used for any mode of transport, including multimodal transport. “Carrier” means any person who, in a contract of carriage, undertakes to perform or to procure the performance of carriage by rail, road, sea, air, inland waterway or by a combination of such modes. If the buyer instructs the seller to deliver the cargo to a person, e.g. a freight

		forwarder who is not a “carrier”, the seller is deemed to have fulfilled his obligation to deliver the goods when they are in the custody of the person. “Transport terminal” means a railway terminal, a freight station, a container terminal or yard, a multi-purpose cargo terminal or any similar receiving point. “Container” includes any equipment used to unitize cargo, e.g. all types of containers and/or flats, whether ISO accepted or not, trailers, swap bodies, ro-ro equipment, igloos, and applies to all modes of transport.
59.	FCL Container	Full container Load – Shipping term used to identify a container that is either loaded by a single shipper or which is to be delivered to a single consignee, or both.
60.	FOB (Free On Board)	“Free on Board” means that the seller fulfils his obligation to deliver when the goods have passed over the ship’s rail at the named port of shipment. This means that the buyer has the bear all costs and risks of loss of or damage to the goods form that point. The FOB term requires the seller to clear the goods for export. This term can only be used for sea or inland waterway transport. When the ships rail serves no practical purpose, such as the case in roll-on/roll-off or container traffic, the FCA term is more appropriate to use.
61.	FOL/FOR/FOT:	Free on Lorry, Free on Rail/Road or Free on Truck/Train. The invoice price includes all delivery costs up to and including the loading of the goods onto the specified means of transport, but onward freight and insurance costs are excluded.
62.	Generally Accepted Accounting Principles (GAAP)	Generally Accepted Accounting Principles (a) GAAP refers to a recognized consensus or substantial authoritative support within a country at a particular time as to: (i) Which economic resources and obligations should be recorded as assets and liabilities; (ii) Which changes in assets and liabilities should be recorded; (iii) How the assets and liabilities and the changes in them should be measured; (iv) What information should be disclosed and how it should be disclosed ; and (v) Which financial statement should be prepared. (b) The specific areas of use of GAAP are: (i) Determination of adjustments under transaction value, for example the apportionment of assists; (ii) Determination of profits and general expenses under Deductive value method; and (iii) Under Computed Value method, determine: A) The costs of materials , and fabrication; and B) The costs of profit and general expenses under Computed Value method.
63.	GATT	General Agreement on Tariff and Trade, the basic agreement governing international trade in many areas since 1947.
64.	Gift	An article given freely by one person to another person without compensation or promise of compensation.

65.	Groupage Container	Shipping term for grouping together small loads by freight forwarder into full container loads.
66.	Identical Goods	Goods which are: (a) Produce in the same country; (b) Produce by the same producer; (c) The same in all respect including: (i) Physical characteristic; (ii) Quality; and (iii) Reputation; (d) But which excludes minor differences in appearance; (e) But does not include goods incorporating or reflecting: (i) Engineering; (ii) Development work; (iii) Art work; (iv) Plans; or (v) Sketches, undertaken in the Partner States.
67.	Importer	Includes any person who, at the time of importation: (a) Owns any goods imported; (b) Carries the risk of any goods imported; (c) Represents that or act as if he/she is the importer or owner of any goods imported; (d) Actually brings goods into the Partner State; (e) Is beneficially interested in anyway whatever in any goods imported; and/ or (f) Acts on behalf of any person referred to in any of the bullets above.
68.	INCOTERMS	International Commercial Terms – International Rules for: (a) The interpretation of trade terms; and (b) Aiming at defining the liabilities of the parties as clearly and precisely as possible.
69.	Indirect Payment	Payment for the imported goods by the importer to a person other than the supplier, including the buyer, to satisfy any obligation of the supplier, for example, the settlement by the importer, whether in whole or in part of a debt owed by the supplier.
70.	Letter of Credit (L/C)	A letter issued by a Bank authorizing the bearer to draw a states amount of money from the issuing bank, its branches, or other associated banks or agencies, after he/she complies with the terms of the letter of credit.
71.	MNE	Multinational Enterprises
72.	On consignment Goods	Under this trading practice, the goods are dispatched to the Partner State not as a result of sale, but with intention that they would be sold for the account of the supplier, at the best price obtainable. At the time of importation, no sale has taken place.
73.	One directly or indirectly control the other	Normally applies to situations which go beyond usual importer /supplier distribution arrangements and involve a position to exercise restraint or direction in respect to essential aspects relating to management of activities of the other person.
74.	OECD	Organization for Economic Co-operation and Development

75.	One person controls the other	One person shall be deemed to control another when the former is legally or operationally in position to exercise restraint or direction over the latter.
76.	Ordinary course of trade under fully competitive conditions	Exclude any transaction wherein: (a) The importer and the supplier/manufacturer are not independent of each other; and (b) The price is not the sole consideration and excludes from consideration prices involving special discounts limited to exclusive agents.
77.	Para	Para means paragraph
78.	Partner	One who is associated with one or more persons in the same business and shares with them its profits and risks; a member of the partnership.
79.	Partnership	An association of two or more people who contribute money or property to carry out a joint business and who share profits and losses in certain proportions.
80.	Patent	A legal monopoly securing to an inventor for a term of years the exclusive right to make, use or sell his invention.
81.	Port or Place of export	The place in the exporting country where the goods to be exported to the Partner State is loaded into a container or, in case of break bulk cargo, onto the ship or other vehicle, in which they are to be removed from that country enroute to the Partner State.
82.	PRE-CIF	All or some freight and insurance costs have been excluded from the invoice price.
83.	Price Actually paid or Payable	The total payment made or to be made for the imported goods by the buyer to, or for the benefit of the seller, including all payments made or to be made as condition of sale of the imported goods by the buyer to the seller or by the buyer to the third party to satisfy an obligation of the seller.
84.	Prior Order Goods	Goods which are imported to fulfill orders previously obtained by the importer. In such cases, the order is placed (or the contract dated) before the goods are entered into circulation.
85.	Proceeds	Income produced from the subsequent resale, disposal, or use of the imported merchandise that accrues directly, or indirectly, to the seller.
86.	Profit Sharing	The importer pays the seller a further sum resulting from, or to take account of profit realized on the imported goods.
87.	Pro-Forma Invoice	A provisional invoice sent in advance of the goods. It is not usually the document against which the final payment for the goods is entered into circulation.
88.	Related Party (Relationships)	The person shall only be deemed to be related in the of Para 2(1) (d) of Part I of the Fourth Schedule to the EAC-CMA, 2004, if: (a) They are officers or directors of one another's business; (b) They are legally recognized partner in business; (c) The one is employed by other;

		(d) Any person is directly or indirectly owns, controls or holds five percent or more of equity share capital or both of them; (e) One of them directly or indirectly controls the other; (f) Both of them are controlled by a third party; (g) Together they directly or indirectly control a third person; or (h) They are members of the same family.
89.	Restriction	Conditions which restrict the importer's freedom to use or resell the goods as he/she wishes.
90.	Related Party Transactions	The following persons shall be treated as persons who are related: (a) they are officers or directors of one another's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) any person directly or indirectly own, controls or holds 5 percent or more of the outstanding voting stock or shares of 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.
91.	Royalties and License Fees	Payment to a person for, inter alia, the use of that person's patent or design rights, processes, recipes, trademarks, copyrights or for "know-how".
92.	SAD	Single Administrative Document. A written statement of imported goods made to a Customs officer. Sometimes called a Customs Entry of Entry.
93.	Sale	The transfer of property from one party to another for consideration.
94.	Sales Transaction	Consideration means payment from one party to another for imported goods.
95.	Same class or kind	Goods produced by a particular industry or industry sector in the country from which the imported goods were exported, and falling within the same group or range of goods as imported goods.
96.	Same Family	Under the Valuation Agreement the price paid may be considered as 'influenced' and be subjected to further verification and/or investigation if the buyer and seller are members of the same family. Members of the same family are: (i) Husband and wife (ii) Parent and child (iii) Brothers (whether by whole or half-blood) (iv) Sisters (whether by whole or half-blood) (v) Brother and sister (whether by whole or half-blood) (vi) Grandparent and grandchild (vii) Uncle and nephew (viii) Uncle and niece (ix) Aunt and nephew (x) Aunt and niece (xi) Brothers-in-law (xii) Sisters-in-law (xiii) Brother-in-law and sister-in-law, or (xiv) Parent-in-law and child-in-law.

97.	Samples	Articles which are representative of a particular category of goods already produced or are examples of goods the production of which is contemplated; the term does not include identical articles brought in by the same individual, or sent to a single consignee, in such quantity that, taken as a whole, they no longer constitute samples under ordinary commercial usage.
98.	Samples of No Commercial Value	Articles which are regarded by the Customs to be of negligible value and which are to be used only for soliciting orders for goods of the kind they represent.
99.	SBC	Systems Based Control.
100	Selling Agent	A middleman who acts for the account of a supplier, he/she seeks customers and collect orders, and in some cases he/she may arrange for storage and delivery of the goods. Selling commission is a dutiable charge and must be included in the Customs Value.
101	Selling Commission	Any commission paid to a seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or seller.
102	SES	Standard Exchange System.
103	Similar goods	Goods which are: (a) Produce in the same country as the goods being valued; (b) Created by the same or different producer; and (c) Which although not alike in all respect, have due regard to: (i) Their quality and reputation; (ii) The existence of trademark; and (d) Closely resemble the goods being valued in terms of: (i) Component materials; and (ii) Characteristics which enable them to: A) Perform the same functions; and B) Are commercially interchangeable with the goods being valued; (e) But does not include goods incorporating or reflecting: (i) Engineering; (ii) Development work; (iii) Art work; (iv) Plans; or (v) Sketches, undertaken in the Partner States.
104	Split Shipment	Consignments which form one transaction between an importer and a supplier but are imported in partial or successive shipments either through the same Customs office or through different Customs offices.
105	Subsequent proceeds	Additional payments made by an importer to a supplier, either directly or indirectly resulting from the resale, disposal or use of the imported goods.
106	Sufficient Documents/ Documentation	The nature of the documentation to be produced must enable Customs to establish: (a) The actual amount paid for the goods or services; (b) The roles and the functions of the parties involved (importer, middle mean and the supplier); (c) The actual services performed or paid for; and (d) Must follow chronological order from start to finish with regard to the transaction under review.

107	Super deductive Value	An amount equal to the value of the further processing must be deducted from the unit price in order to determine the deductive value.
108	TT	Telegraphic Transfer
109	Through Freight	An inclusive charge for the transport of goods between one point and another, generally used for rates covering all charges for delivery to the importer's premises.
110	Transaction Value	The price actually paid or payable for goods sold to the Partner State adjusted in terms of Para 9 of the Fourth Schedule of Part I of the EAC – CMA 2004.
111	Undertaken	In the context of this document, is to be understood as meaning “carried out”.
112	Valuation Committee	Three or more delegated officers convening regularly to consider and determine the value for Customs duty purposes and to discuss the valuation cases received and decide on the way forward based on the information provided by the importer/Customs station.
113	Valuation Fraud	Valuation Fraud which can be seen as any offence committed in order to: (a) Attempt to evade payment of duties on movements of commercial goods; (b) Attempt to receive any repayment or other disbursements to which there is no proper entitlement; and/or (c) Attempt to obtain illicit commercial advantage damaging to other legitimate business competition.
114	WTO	World Trade Organization.
115	WCO	World Customs Organization

**EXAMPLES OF DETERMINATION OF UNIT PRICE UNDER DEDUCTIVE VALUE METHOD
(METHOD 4)**

1. Goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1-10 units	100	10 sales of 5 units	65
		5 sales of 3 units	
11-25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units	80
		1 sale of 50 units	

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

2. Two sales situation: 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.
3. Situation where various quantities are sold at various prices.

(a) Sales:

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

Total quantity sold	Unit price
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.

CUSTOMS VALUATION RULING LETTER

REGISTERED MAIL

Name of official
Title
Company and Address

(File reference)
(date)

Dear

This refers to Customs' review concerning the method of valuation to be used to determine the Customs value of (commodity) imported by your company from (exporter). The shipments reviewed were invoiced on (date) at (place) and were referenced by your invoice/order(s) ().

Customs' review is now concluded. Based on the information which you have provided, I can now advise that Customs is satisfied that you have demonstrated that the relationship between your company and its suppliers did not influence the price and, as such, the commodities under review can be appraised for value under the transaction value method.

With respect to future shipments of goods from your related supplier to this country, you are requested to determine Customs value under the transaction value method, provided your commercial practices remain the same. Should your commercial practices undergo a significant change in the future, you are requested to notify Customs so that consideration may be given to revising this ruling.

It is suggested that a notation be placed in the body of the Customs entry to the effect that the method of valuation used is in accordance with this ruling, quoting the file reference and date of this letter.

We thank you for your co-operation in the course of this review. Should you require additional information, do not hesitate to communicate with the undersigned.

Yours truly,

(Name),
(Officer Title),
(Unit),
(Telephone No.)

LETTER OF REVIEWING CUSTOMS VALUE

Example 1

REGISTERED MAIL

(Official's name)

(Title)

(Company and Address)

.....

.....

(File Reference)

(Date)

Dear

Customs is reviewing the value of duty of (commodity) imported by your company from (name of exporter) under (point of entry) (entry number) (date).

Should this review disclose that the above-mentioned goods were valued incorrectly for Customs purposes, you may be required at a later date to adjust the above entry, as well as any other entries of identical or similar goods.

(Paragraph stating the purpose of the review and providing a description of the appropriate provision in valuation legislation.)

1. A copy of the commercial invoice covering the above-noted shipment.
2. A brief explanation of the relationship between your firm and the seller.
3. Any information which demonstrates the absence of influence on the price of the goods imported from the related supplier.
4. Any information on what is needed to establish a test value.

Your cooperation is appreciated and a reply by (date) to this letter will expedite the Department's review.

Should you require that all information provided to Customs be held in strict confidence, please indicate this by applying the mark "Confidential" on all documents forwarded.

Yours truly,

(Name),

(Officer title),

(Unit)

(Telephone number)

LETTER WHEN RELATIONSHIP INFLUENCED THE PRICE

Example 2

**NOTICE
CUSTOMS ACT “X”**

(Sub-section “X-1”)

To: (Name and address of)

Dear Sir,
(Madam)

Your import documentation indicates that Messrs. (buyer’s name and address), buyers/the buyer of (brief description of the goods imported), which are the subject of entry lodgment number(s) (list numbers) and Messrs. (seller’s name and address), sellers/the seller of those goods, were at the time of sale of those goods, related persons in terms of sub-section “X-1” of Customs Act “X” and therefore it is considered that the relationship may have influenced the price of those goods.

PLEASE NOTE IN PARTICULAR THAT

1. The data in your declaration indicate that the relationship between the seller and the buyer mentioned above has possibly affected the price of the goods described above in that (specify form or nature of possible influence on price)
2. This opinion is further based on (specify the actual source of documentary evidence; e.g. the seller’s invoice or international price lists, etc.).
3. Consequently, it is possible under SS X-1 of the Act that the transaction value of the goods cannot be used as the Customs value of the goods concerned.

You are requested to supply within (specify number of days) days of the date of this notice such further information as you consider might serve you concerning any of the situation set out in SS X-1 of the Act. (A copy of the regulations mentioned is attached to this notice.)

Yours faithfully,

Address for reply to this Notice:

Signature
Officer’s title
Date

DECLARATION OF PARTICULARS RELATING TO CUSTOMS VALUE

1. Buyer	For Official Use	
2. Seller		
3. Number and date of invoice		
4. Number and date of contract	5. Terms of delivery (CIF, FOB, C&F, C&I)	
6. Number and date of previous Customs decision covering boxes 7 to 8		
(k) (a) Is the buyer and seller related (as per Para 3 & 4 of the Fourth Schedule to the EAC CMA, 2004)? If "NO" go to box 8		*YES/NO
(b) Did the relationship influence the price of the imported goods?		*YES/NO
(c) Does the transaction value of the imported goods approximate to the customs value? If "YES?" give details:		*YES/NO
(a) Are there any restrictions as to the disposition or use of the goods by buyer, other than Regulations which -are imposed or required by law or by the public authorities in the Community -limit the geographical areas in which the goods may be re-sold, or -do not substantially affect the value of the goods?		*YES/NO
(b) Is the sale or price of goods subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued? Specify the nature of the restrictions, conditions of considerations as appropriate (on a separate sheet) If the value of conditions or considerations can be determined, indicate the amount in box 11(b)		*YES/NO
9 (a) Have any ROYALTIES and LICENCE FEES on the imported goods been paid either directly or indirectly by the buyer as a condition of the sale?		*YES/NO
(b) Is the sale subject to an arrangement under which part of the proceeds of any subsequent RESALE DISPOSAL or USE accrues directly or indirectly to the seller?		*YES/NO
If "YES" to either of these questions, specify conditions (on a separate sheet) and if possible indicate the amount in boxes 15 and 16.		

10. Ithe undersigned, declare that all particulars given in this document are true and complete.

Place: Date:.....

Signature:.....

A: Basis of calculation	11. (a) Net prices on the INVOICES (Prices actually paid or payable for settlement)	
	(b) Indirect payments – see Box 8 (b)	
	12. TOTAL A (in currency of invoice)	
B: Adjustments of the Price paid or Payable (Fourth Schedule to the Act)	13. Cost incurred by the buyer: (a) Commissions (Enter “X” as applicable: Selling [] and /or buying []	
	(b) Brokerage	
	(c) Costs for containers and packing	
	14. Goods and services supplied by the buyer free of charge or at reduced costs for use in connection with the production and sale for export of the imported goods: (N.B: the values shown represent an apportionment where appropriate)	
	a. Materials, Components, Parts and similar items incorporated in the imported goods.	
	b. Tools, Dies, Moulds and similar items used in the production of the imported goods.	
	(c) Materials consumed in the production of the imported goods.	
	(d) Engineering, development, art work, design work, plans and sketches undertaken elsewhere other than in the country of the import and necessary for the production of imported goods	
	15. Royalties and licenses fees – see Box 9(a)	
	16. Proceeds of any subsequent resale, disposal or use accruing to the seller – see box 9(b)	

	17. Costs of delivery to the Community (a) Transport/Freight
	(b) Loading and handling charges
	(c) Insurance
C: Post Landing Expenses (may be included in "A")	18. TOTAL of "B" (<i>in currency of invoice</i>)
	19. Cost of transport after arrival in the Community
	20. Charges of Construction, Maintenance and other related expenses after importation – except installation costs
	21. Other charges (specify)
	22. Customs Duty and Taxes in the Community
	23. TOTAL of "C" (<i>in currency of invoice</i>)
CUSTOMS VALUE (A+B) or (A+B-C) If "C" is included in "A"	24. 23. Total Customs value (<i>in currency of invoice</i>)

TERMS OF SALE

1 EX-WORKS (EX-W, NAMED PLACE OF DESTINATION)

- a) The INCOTERM “Ex-works”, represents the minimum participation of the supplier and the maximum participation of the importer in the movement of the goods from the point of “works”.
- i) The supplier’s responsibility is to make the goods available, packed and ready for collection, at his/her premises, for example, a factory, site or warehouse.
 - ii) The importer must bear all risks and changes in taking the goods to the required destination.
 - iii) Importers and suppliers should only consider EXW when the importer can actually arrange the Customs clearing prior to export and for the immediate collection of the goods on availability.
 - iv) The supplier must note that the export of the goods is not guaranteed under EXW as the importer may decide to keep the goods in the country of origin.
- b) Although EX-W is a popular term it remains complex, the value declared to Customs, based on an EX-W invoice, is rarely proven with documentary evidence and accepted by Customs, the term FCA often offers a more manageable alternative to importers and suppliers.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply goods and commercial invoices as agreed in the contract of sale; b) Notify the importer in adequate time, as to when the goods will be ready for collection; and c) Assist the importer, at the importers request, risk and expense, in obtaining export license or other official authorization necessary for the exportation of the goods.	a) Take delivery of the goods as soon as they are made available for collection; b) Provide the supplier with appropriate evidence of having taken delivery; c) Arrange suitable transport and load goods into transport vehicle, for example, truck, ship, train, airplane; and d) Clear the goods through Customs both for export from the country of export and for import into Partner States.
Cost	a) Any required checking of the goods, for example, quality, quantity; and b) Any packing of the goods which may be required as per the sales agreement.	a) The price of the goods; b) All costs involved in bringing the goods to their destination including any Customs formalities, duties, taxes, and documentation costs both for export and import.
Risks	a) All risks involving damage or loss until the goods are placed at the disposal of the importer at the supplier’s or exporter’s premises.	a) All risks of damage or loss from the time the goods have been placed at the disposal of the importer at the supplier’s or exporter’s premises.

2 FREE ON BOARD (FOB, NAMED PORT OF SHIPMENT)

- a) The “Free On Board” term is the most used term in trade, yet the fact that it is so frequently used has resulted in the countless definitions found all over the world for FOB. As an INCOTERM, there is no application for FOB in road, rail or air transport.
 - i) Under the FOB term, the supplier is responsible for delivering the goods on board the ship at the named port of shipment.
 - ii) The responsibility for and the risk of damage to or loss of, the goods pass from the supplier to the importer when the goods pass the ship’s rail at the port of dispatch.
 - iii) For the FOB term to apply to a transaction the supplier must be in the physical position of being able to load the goods over the rail under their own direct control, that is, the loading is undertaken by the supplier’s own labour, or by an agent that is under the contractual control of the supplier.
 - iv) This process will have to be monitored by both the supplier and importer or their representatives.
- b) The use of an “on-board” Bill of Lading or mate’s receipt could be appropriate in recording the passage of risks under the FOB term, making FOB one of the few terms that still unavoidably dependant on such documentation.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Deliver the goods on board the ship nominated by the importer on or within the agreed date or period and advise the importer accordingly; c) Assist the importer, at the importers request, with any documents issued in the country of export, which the importer may need to import the goods; d) Clear goods through Customs for export; and e) Provides the importer at the supplier’s expense with the expected proof of delivery.	a) Contract of carriage; b) Advise the supplier of the name of the ship, arrival date and loading dates; c) Take delivery of the goods; and d) Clear the goods through Customs for import into Partner States.
Cost	a) Any required checking of the goods, for example, quality, quantity; b) Special packing or labeling and so forth; c) Any loading charges not included in the inland freight; and d) Customs formalities and any export-related taxes, fees and changes.	a) The price of the goods; b) Freight and all other costs payable from time goods have been delivered on board the ship; c) Demurrage or any extra costs incurred through the ship’s late or early arrival at port of dispatch; d) Costs incurred by the supplier in obtaining documents on the importer’s behalf; and e) Customs formalities, duties, and taxes, in Partner States.

Risks	a) All risks until the goods have passed the ship's rail at the agreed port of dispatch.	a) All risks from the time the goods have passed the ship's rail at port of dispatch.
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3 FREE CARRIER (FCA, NAMED PLACE)

- a) The "Free Carrier" term defines the conditions under which many suppliers and importers actually transfer risks. FCA must be qualified by both naming the place where the risks and responsibilities pass from the supplier to the importer and by identifying the carrier the importer has appointed.
- i) The supplier is responsible for delivering the goods into the custody of the transport carrier at the named place.
 - ii) The responsibility for and the risk of damage to or loss of, the goods are transferred from the supplier to the importer at this point.
 - iii) This term is designed to meet the requirements of all modes of transport.
 - iv) It is based on the same principals as FOB except that the supplier fulfils his / her obligations when he / she deliver the goods into the custody of the carrier at the named place or point.
 - v) Under the FCA term, the supplier hands over risk or control of the goods at a point prior to the vessel, frequently prior to the port.
 - vi) The FOB term obligates the supplier to pay for the origin handling and loading and / or stowage charges raised by the port, however, with FCA term, these charges are for the importer's account.
 - vii) If this is not acceptable, the terms may be modified by the parties involved, by specifying the changes in the sales contract, to represent the passage of FCA risk but with FOB costs.
- b) FCA may involve the carrier collection from the supplier or the supplier delivering the goods to the carrier, depending on the conditions of the sales contract risk but with FOB costs.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Deliver the goods to the carrier at named point on or within the agreed date or period; c) Advise the importer of the delivery of the goods in a timely fashion; d) Assist the importer, at the importers request, risk and expense, with any documents issued in the country of export, which the importer may need to import the goods; e) Clear goods through Customs for export; and f) Provides the importer at the supplier's expense with the expected proof of delivery.	a) Contract of carriage; b) Advise the supplier of the name of the ship, and time for delivery of goods; c) Take delivery of the goods; and d) Clear the goods through Customs for import into Partner States.

Cost	a) Any required checking of the goods, for example, quality, quantity; b) Special packing or labeling and so forth; c) Transport costs to carrier where applicable; and d) Customs formalities and any export-related taxes, fees and changes.	a) The price of the goods; b) Costs incurred by the supplier in obtaining documents on the importer's behalf; c) Customs formalities, duties, and taxes, in Partner States; and d) All other costs payable from the time the goods are delivered into custody of the carrier at named point.
Risks	a) All risks of damage or loss until the goods are delivered into the custody of the carrier at the named point or until the agreed date or period of delivery.	a) All risks or damage or loss from the time the goods have been delivered into the custody of the carrier at the named point or from the agreed date or period for delivery.

4 **FREE ALONGSIDE SHIP (FAS, NAMED PORT OF SHIPMENT)**

- a) The “Free Alongside Ship” term is used for transactions where sea freight is the main carriage. The entire journey need not be by sea, but the moment of export must be.
- i) Under the FAS term, the supplier is responsible for delivering the goods, Customs cleared alongside the ship on the quay at the port of shipment.
 - ii) The importer must bear all costs and risks from that point onwards.
- b) The use of the FAS term in the carter and bulk markets is attractive as an alternative to the traditional chartering terms that are often subject to unique definitions from country to country.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Deliver the goods alongside ship nominated by the importer on or within the agreed date or period and advise the importer accordingly; c) Assist the importer, at the importers request, risk and expense, with any documents issued in the country of export, which the importer may need to import the goods; d) Clear goods through Customs for export; e) Give the importer notice that the goods have been delivered alongside ship; and f) Provides the importer at the supplier's expense with the expected proof of delivery.	a) Contract of carriage; b) Advise the supplier of the name of the ship, arrival date or period and berth; c) Take delivery of the goods; and d) Clear the goods through Customs for import into Partner States.

Cost	a) Any required checking of the goods, for example, quality, quantity; and b) Special packing or labeling and so forth; c) Transport costs to the relevant quay in port of shipment; and d) Customs formalities and any export-related taxes, fees and changes.	a) The price of the goods; b) Warehousing or demurrage at port of dispatch; c) Freight; d) All other costs payable from time goods have been delivered alongside ship; e) Costs incurred by the supplier in obtaining documents on the importer's behalf; and f) Customs formalities, duties, and taxes in Partner States.
Risks	a) All risks until the goods are delivered alongside ship at port of dispatch.	a) All risks from the time the goods have been delivered alongside ship at port of dispatch.

5 COST AND FREIGHT (CFR, NAMED PORT OF DESTINATION)

- a) The “Cost and Freight” term is used for transactions where sea freight is the main carriage.
- i) With the CFR term the supplier is responsible for all costs in delivering the goods on board the ship and the cost of freight in bringing them to the named port of destination.
- ii) The risk of loss or damage, or any additional charges payable to the carrier after shipment, is transferred from the supplier to the importer when the goods pass the ship's rail at the port of dispatch.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Contract of carriage; c) Deliver the goods on board the ship; d) Advise the importer that the goods have been placed on board the ship; e) Assist the importer, at the importers request, risk and expense, with any documents issued in the country of export, which the importer may need to import the goods; f) Clear goods through Customs for export; and g) Provides the importer at the supplier's expense with the expected proof of delivery.	a) Take delivery of the goods; and b) Clear the goods through Customs for import into Partner States.
Cost	a) Any required checking of the goods, for example, quality, quantity; b) Special packing or labeling and so forth; c) All transport costs to the port of destination; and d) Demurrage and / or warehousing at port of dispatch; e) Freight and any loading charges not included in the freight;	a) The price of the goods; b) Costs incurred by the supplier in obtaining documents on the importer's behalf Warehousing or demurrage at port of dispatch; c) Unloading and demurrage at port of destination of cargo is not carried under full liner terms; d) Customs formalities, duties, and taxes in Partner States; and

	f) Unloading and demurrage costs at port of destination if cargo is carried under full liner terms; and g) Customs formalities and any export-related taxes, fees and changes.	e) All other costs from time the goods have arrived at port of destination.
Risks	a) All risks until the goods have passed the ship's rail at port of dispatch.	a) All risks from the time the goods have passed the ships at port of dispatch.

6 COST, INSURANCE AND FREIGHT (CIF, NAMED PORT OF DESTINATION)

- a) The “Cost, Insurance and Freight” term can only be used for transactions where sea freight is the main carriage and represents the basic conditions of CFR with the addition of insurance.
- i) With the CIF term, the supplier is responsible for:
- A) All costs in delivering the goods on board the ship;
 - B) The cost of freight in bringing them to the named port of destination; and
 - C) The procurement of marine insurance at his / her cost to cover the goods against the import's risk of loss or damage during transit.
- ii) The risk of loss or damage, or any additional charges payable to the carrier after shipment, is transferred from the supplier to the importer when the goods pass the ship's rail at the port of dispatch.
- b) CIF, as defined in INCOTERMS, only obligates the supplier to procure insurance to the value of CIF + 10%. It is essential for the importer to inform the supplier of the risks to be covered, the duration of the policy and the value for which the importer needs to be insured.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Contract of carriage; c) Procure marine insurance in accordance with the importer's requirements; d) Deliver the goods on board the ship; e) Advise the importer that the goods have been placed on board the ship; f) Furnish the importer with insurance policy and / or certificate; g) Assist the importer, at the importers request, risk and expense, with any documents issued in the country of export, which the importer may need to import the goods; h) Clear goods through Customs for export; and i) Provides the importer at the supplier's expense with the expected proof of delivery.	a) Take delivery of the goods; and b) Clear the goods through Customs for import into Partner States.

Cost	a) Any required checking of the goods, for example, quality, quantity; b) Special packing or labeling and so forth; c) Pay insurance premium; d) All transport costs to the port of destination; and e) Demurrage and / or warehousing at port of dispatch; f) Freight and any loading charges not included in the freight; g) Unloading and demurrage costs at port of destination if cargo is carried under full liner terms; and h) Customs formalities and any export-related taxes, fees and charges.	a) The price of the goods; b) Cost incurred by the supplier in obtaining documents on the importer's behalf; c) Additional insurance cover, for example, war, strikes, etc., if required; d) Unloading and demurrage at port of destination if cargo is not carried under full liner terms; e) Customs formalities, duties, and taxes in Partner States; and f) All other costs from time the goods have arrived at port of destination.
Risks	(a) All risks until the goods have passed the ship's rail at port of dispatch.	(a) All risks from the time the goods have passed the ships at port of dispatch.

7 CARRIAGE PAID TO (CPT, NAMED PLACE OF DESTINATION)

- a) The "Carriage Paid To" term is the multimodal equivalent of CFR. The named place where the supplier's costs end can be a point other than a seaport, as well as being a seaport, in the Partner State.
- i) With the CPT term, the supplier is responsible for all costs in delivering the goods to the carrier and the cost of freight in bringing them to the named place / point of destination.
 - ii) The risk of loss or damage, or any additional charges payable to the carrier after delivery, is transferred from the supplier to the importer when the goods have been delivered into the custody of the first carrier in the country of dispatch.
 - iii) CPT is particularly suited for multimodal transport.
- b) CPT may be used for airfreight, road freight and rail freight as well as for sea freight when the ship's rail serves no purpose, for example, if the destination is an inland point. CPT requires the use of multimodal documents and documents such as Bills of Lading or Airway bills may prove inappropriate in recording the passage of risks under this term.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Contract of carriage; c) Clear goods through Customs for export to Partner States; d) Deliver the goods to first carrier; e) Advise the importer that the goods have been delivered to carrier; f) Assist the importer, at the importers request, risk and expense, with any documents issued in the country of	a) Take delivery of the goods; and b) Clear the goods through Customs for import into Partner States.

	export, which the importer may need to import the goods; and g) Provides the importer at the supplier's expense with the expected proof of delivery.	
Cost	a) Any required checking of the goods, for example, quality, quantity; b) Special packing or labeling and so forth; c) All transport costs to carrier; d) Demurrage and / or warehousing at port of dispatch; e) Freight to named point of destination f) Cost of formalities in order to load goods, for example shipping fees, harbor fees; and g) Customs formalities and any export-related taxes, fees and changes.	a) The price of the goods; b) Costs of pre-shipment inspection except where this is a requirement of the authorities of the exporting country; c) Cost incurred in transit, except freight costs to named place; d) Cost incurred by the supplier in obtaining documents on the importer's behalf; e) Unloading costs is no included in freight; f) Customs formalities, duties, and taxes in Partner States; and g) All other costs from time the goods have arrived at named destination.
Risks	a) All risks until the goods are delivered into custody of the first carrier in country of dispatch.	a) All risks from the time the goods have been delivered into the custody of the first carrier in the country of dispatch.

8 CARRIAGE AND INSURANCE PAID TO (CIP, NAMED PLACE OF DESTINATION)

- a) The "Carriage and Insurance Paid To" term is the multimodal equivalent of CPT with the inclusion of insurance. The named place where the supplier's costs end can be a point other than a seaport, in the Partner State.
 - i) With the CIP term the supplier is responsible for all costs in delivering the goods to the carrier and the cost of freight in bringing them to the named place / point of destination as well as the responsibility for procuring marine insurance at his / her cost to cover the goods against the importer's risk of loss or damage during transit.
 - ii) The risk of loss or damage, or any additional charges payable to the carrier after delivery, is transferred from the supplier to the importer when the goods have been delivered into the custody of the first carrier in the country of dispatch. CIP is particularly suited for multimodal transport.
- b) CIP may be used for airfreight, road freight and rail freight as well as for sea freight when the ship's rail serves no purpose, for example, if the destination is an inland point. CIP requires the use of multimodal documents and documents such as Bills of Lading or Airway bills may prove inappropriate in recording the passage of risks under this term.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Contract of carriage; c) Procure marine insurance according to importer's requirements; d) Clear goods through Customs for export to Partner States; e) Deliver the goods to first carrier; f) Advise the importer that the goods have been delivered to carrier; g) Assist the importer, at the importers request, risk and expense, with any documents issued in the country of export, which the importer may need to import the goods; h) Provide the importer with the insurance policy and / or certificate; and i) Provides the importer at the supplier's expense with the expected proof of delivery.	a) Take delivery of the goods; and b) Clear the goods through Customs for import into Partner States.
Cost	a) Any required checking of the goods, for example, quality, quantity; b) Special packing or labeling and so forth; c) All transport costs to carrier; d) Pay insurance premium; e) Demurrage and / or warehousing at port of dispatch; f) Freight to named point of destination; g) Cost of formalities in order to load goods, for example shipping fees, harbor fees; and h) Customs formalities and any export-related taxes, fees and changes.	a) The price of the goods; b) Cost incurred in transit, except freight costs to named place; c) Additional insurance cover, for example war, strikes, etc., if required; d) Cost incurred by the supplier in obtaining documents on the importer's behalf; e) Unloading costs if not included in the freight; f) Customs formalities, duties, and taxes in Partner States; and g) All other costs from time the goods have arrived at named destination.
Risks	a) All risks until the goods are delivered into custody of the first carrier in country of dispatch.	a) All risks from the time the goods have been delivered into the custody of the first carrier in the country of dispatch.

9 DELIVERED AT FRONTIER (DAF, NAMED PLACE)

- a) The "Delivered at Frontier" term is the multimodal expression which should be further qualified by naming the frontier (border post) up to which the supplier is prepared to take responsibility for transport costs and the corresponding risk of transit.

- b) Although this term is multimodal, the main application of DAF is for land-based operations and other "D" terms such as DDU or DDP should be considered if the transaction is not land-based, this is, it is not exclusively road or rail or a road / rail combination.
- i) The supplier is responsible for delivering the goods, cleared for export but not unloaded from means of transport, to the importer at the named place of delivery at the frontier.
 - ii) The supplier is not responsible for clearing the goods through Customs for import into Partner State.
 - iii) The frontier is deemed to be on the supplier's side of the applicable border unless the term is modified in the sales contract, to express that the point of transfer is the frontier on the importer's side of the border.
- A) Since the frontier falls on the supplier's side of the border, DAF can vary from other 'D' terms in that the supplier may not be responsible for all or even a part of the main carriage.
- B) If the transit involved the movement of cargo through several frontiers, the supplier may pass risk and responsibility at the first of these, obligating the importer to arrange the main carriage thereafter. Normally, this term is not suitable for cross-border trade.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Contract of carriage; c) Clear goods through Customs for export to Partner States; d) Deliver goods, not unloaded, at named place or point at frontier / border post; e) Notify the importer that the goods have been dispatched; f) Assist the importer, at the importers request, risk and expense, with any documents issued in the country of export, which the importer may need to import the goods; and g) Provides the importer at the supplier's expense with the expected proof of delivery.	a) Take delivery of the goods at named place at frontier / border post and handle all subsequent movement of the goods; and b) Clear the goods through Customs for import into Partner States.
Cost	a) Any required checking of the goods, for example, quality, quantity; b) Special packing or labeling and so forth; c) Freight or other transport costs to named place or point at frontier border post; and d) Customs formalities and any export-related taxes, fees and changes.	a) The price of the goods; b) Cost of unloading; c) Any additional expenses resulting from delay in taking delivery of the goods; d) Freight or other transport costs to named destination; e) Customs formalities, duties, and taxes in Partner States; and f) Cost incurred by the supplier in obtaining documents on the importer's behalf.

Risks	a) All risks until the goods are placed at the disposal of the importer at named place or point at the frontier (country of dispatch).	a) All risks from the time the goods have been placed at the importer's disposal at the named place or point at the frontier (country of dispatch).
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10 DELIVERED EX SHIP (DES, NAMED PORT OF DESTINATION)

- a) The “Delivered Ex Ship” term is the mono-modal expression, however, the point for division of costs and / or risk between the importer and supplier is not triggered by the ship's rail, but the point of handover.
- i) DES will often financially correlate to CFR, but, for the importer DES represents CFR without the disadvantage of placing the risks on the importer, over which they have no control.
 - ii) From the supplier's perspective, DES reserves the risk advantages of CFR, placing all risks with the seller until the goods arrives at the named port.
 - iii) The supplier is responsible for making the goods available to the importer on board the ship un-cleared for import at the unloading point in the port of destination, as well as bearing the costs and risks in bringing the goods to that point.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Contract of carriage; c) Deliver goods on board ship to unloading point in the port of destination and advise the importer of ship's arrival date; d) Provide the importer at supplier's expense with customary transport document to allow him / her take delivery of goods from ship; e) Assist importer, at the importers request, risk and expense, with any documents issued in the country of export, which the importer may need to import the goods; and f) Clear goods through Customs for export to Partner States.	a) Take delivery of the goods as soon as they are placed at the importer's disposal on board the ship at the unloading point in the port of destination; and b) Arrange for unloading of the goods and for Customs clearance in Partner States.
Cost	a) Any required checking of the goods, for example, quality, quantity; b) Special packing or labeling and so forth; c) All transport costs to port of dispatch; d) Demurrage and / or warehousing at port of dispatch; e) Freight and any loading charges not included in the freight; f) Demurrage if ship is kept waiting to unload at named point in port of	a) The price of the goods; b) Cost incurred by the supplier in obtaining documents on the importer's behalf; c) Demurrage if the importer fails to unload goods from the ship within stipulated time period; d) Customs formalities, duties, and taxes in Partner States; and e) All other costs from time goods have arrived at port of destination.

	destination; and g) Customs formalities and any export-related taxes, fees and changes.	
Risks	a) All risks until the goods are placed at the disposal of the importer on board the ship at the unloading point in the port of destination.	a) All risks from the time the goods have been placed at the importer's disposal on board the ship at the unloading point in the port of destination.

11 **DELIVERED EX QUAY (DEQ, NAMED PORT OF DESTINATION)**

- a) The “Delivered Ex Quay” term is the mono-modal expression and it can only be used for transactions where sea freight is the main carriage. DEQ extends the supplier’s responsibility beyond the arrival of the vessel to the point where the goods are discharged.
- i) The supplier is responsible for making the goods available to the importer on the named quay in the port of destination not cleared for import and for bearing all costs and risks in bringing the goods to that point.
- ii) This term is the same as DES, with the only different being that the supplier is also responsible for the unloading of the goods, including related costs.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Contract of carriage; c) Deliver goods on the named quay to unloading point in the port of destination and advise the importer of ship’s arrival date; d) Provide importer at supplier’s expense with customary transport document to allow him / her take delivery of goods from ship; e) Assist importer, at the importers request, risk and expense, with any documents issued in the country of export, which the importer may need to import the goods; and f) Clear goods through Customs for export to Partner States.	a) Take delivery of the goods as soon as they are placed at the importer’s disposal from the named quay at the unloading point in the port of destination; and b) Arrange for Customs clearance in Partner States.
Cost	a) Any required checking of the goods, for example, quality, quantity; b) Special packing or labeling and so forth; c) All transport costs to port of dispatch; d) Demurrage and / or warehousing at port of dispatch; e) Freight and any loading charges not included in the freight; f) Unloading costs and demurrage	a) The price of the goods; b) Cost incurred by the supplier in obtaining documents on the importer’s behalf; c) Port handling charges and demurrage charges after goods have been placed at the importer’s disposal on the named quay; and d) Customs formalities, duties, and taxes in Partner States.

	charges incurred prior to the unloading of the goods on the named quay; and g) Customs formalities and any export-related taxes, fees and changes.	
Risks	a) All risks until the goods are placed at the disposal of the importer on named quay at the unloading point in the port of destination.	a) All risks from the time the goods have been placed at the disposal of the importer on the named quay in the named port of destination.

12 DELIVERED DUTY UNPAID (DDU, NAMED PLACE OF DESTINATION)

- a) The “Delivered Duty Unpaid” term is the multimodal term that must be further qualified by naming the place up to which the supplier is prepared to take responsibility for transport costs and the corresponding risks of transit. This is excluding the payments of domestic duties and the ancillary clearance charges associated with the import process at destination.
- i) DDU will often financially correlate to CPT, however, for the importer DDU represents CPT without the disadvantage of placing the risks on the importer, over which they have no control.
 - ii) From the supplier’s perspective, DDU reserves the risk advantages of CPT, placing all risks with the supplier until the goods arrives at the named port.
 - iii) The supplier is responsible for delivering the goods to the named place or point of destination.
 - iv) The supplier is not required to unload the goods from the transport vehicle and to pay duties, taxes, or any other charges payable upon importation.
- b) DDU correlates closely to the generic expression of ‘free domicile’, ‘free house’ and ‘franco domicile’, which are frequently used in the transport industry.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Contract of carriage and delivery goods, not unloaded, at the named place of destination; c) Assist importer, at importer’s request, risk and expenses, with any documents issued in the country of export, which the importer may need to import goods; d) Advise importer when the goods have been placed into the custody of the carrier; e) Provide the importer at the supplier’s expense with customary proof of delivery; and f) Clear goods through Customs for export to Partner States.	a) Take delivery of the goods at the named place or point of destination and handle all subsequent movement of the goods; and b) Clear the goods through Customs for import to Partner States.

Cost	a) Any required checking of the goods, for example, quality, quantity; b) Special packing or labeling and so forth; c) Freight and all other transport costs to named place or point of destination; and d) Customs formalities and any export-related taxes, fees and changes.	a) The price of the goods; b) Customs formalities, duties, and taxes in Partner States; c) Cost incurred by the supplier in obtaining documents on the importer's behalf; d) Cost of unloading from transport vehicle; and e) Any additional expenses resulting from the delay in clearing the goods through Customs from import or in taking delivery of the goods.
Risks	a) All risks until the goods are placed at the disposal of the importer at the named place or point in the port of destination.	a) All risks from the time the goods have been placed at the disposal of the importer at the named place or point of destination; and b) All extra risks incurred as a result of the importer's delay in clearing the goods for import into South Africa.

13 DELIVERED DUTY PAID (DDP, NAMED PLACE OF DESTINATION)

- a) The "Delivered Duty Paid" term is the multimodal term that must be further qualified by naming the place to which the supplier is taking responsibility for transport costs and the corresponding risks of transit. The DDP risks and costs include payment of domestic duties in the importer's country and any additional charges associated with the import clearing process at destination.
 - i) Although the supplier will pay the import duties, the importer shall be named on the import declaration or bill of entry and will have the obligation to Customs for the accuracy of the declared value.
 - ii) Should the value be incorrect the importer will have the obligation to bring any under entry in duty to account.
 - iii) The supplier is responsible for delivering the goods, not unloaded from the transport vehicle, to the named place or point of destination and to clear the goods through Customs for import.
 - iv) This term represents the highest obligation for the supplier but is not recommended when the supplier is unable to obtain an import license.

	SUPPLIER	IMPORTER
Responsibilities	a) Supply imported goods and commercial invoices as agreed in the contract of sale; b) Contract of carriage and delivery goods duty paid, not unloaded, at the named place of destination; c) Advise importer when the goods have been placed into the custody of the carrier;	a) Take delivery of the goods at the named place or point of destination and handle all subsequent movement of the goods; and b) Assist supplier, at the supplier's request, risk and expense, with any documents issued in partner States, which the importer may need to import the goods.

	d) Provide the importer at the supplier's expense with customary proof of delivery; and e) Clear goods through Customs for export to Partner States.	
Cost	a) Any required checking of the goods, for example, quality, quantity; b) Special packing or labeling and so forth; c) Freight and all other transport costs to named place or point of destination; and d) Customs formalities and any export-related taxes, fees and charges.	a) The price of the goods; b) Cost of unloading from transport vehicle; and c) Any additional expenses resulting from the delay in taking delivery of the goods.
Risks	a) All risks until the goods are placed at the disposal of the importer at the named place or point in the port of destination.	a) All risks from the time the goods have been placed at the disposal of the importer at the named place or point of destination.

**TREATMENT OF INTEREST CHARGES
IN THE CUSTOMS VALUE OF IMPORTED GOODS**

During its Ninth Meeting held on 26 April 1984, the Committee on Customs Valuation adopted the following decision :

The Parties to the Agreement on Implementation of Article VII of the GATT agree as follows :

Charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the Customs value provided that :

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement was made in writing;
- (c) 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.

This Decision shall apply regardless of whether the finance is provided by the seller, a bank or another natural or legal person. It shall also apply, if appropriate, where goods are valued under a method other than the transaction value.

Each Party shall notify the Committee of the date from which it will apply the Decision.

* This Decision was adopted by the WTO Valuation Committee at its first meeting on 12 May 1995.

*This Decision was adopted by the WCO Valuation Committee at its 1st meeting on 12 May 1995.

**VALUATION OF CARRIER MEDIA BEARING SOFTWARE
FOR DATA PROCESSING EQUIPMENT**

During its Tenth Meeting held on 24 September 1984, the Committee on Customs Valuation adopted the following decision :

1. It is reaffirmed that transaction value is the primary basis of valuation under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Agreement) and that its application with regard to data or instructions (software) recorded on carrier media for data processing equipment is fully consistent with the Agreement.

2. Given the unique situation with regard to data or instructions (software) recorded on carrier media for data processing equipment, and that some Parties have sought a different approach, it would also be consistent with the Agreement for those Parties which wish to do so to adopt the following practice:

In determining the Customs value of imported carrier media bearing data or instructions, only the cost or value of the carrier medium itself shall be taken into account. The Customs value shall not, therefore, include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium.

For the purpose of the Decision, the expression "carrier medium" shall not be taken to include integrated circuits, semiconductors and similar devices or articles incorporating such circuits or devices; the expression "data or instructions" shall not be taken to include sound, cinematic or video recordings.

3. Those Parties adopting the practice referred to in paragraph 2 of this Decision shall notify the Committee of the date of its application.

4. Those Parties adopting the practice in paragraph 2 of this Decision will do so on a most-favoured-nation (m.f.n.) basis, without prejudice to the continued use by any Party of the transaction value practice.

**Statement Made by the Chairman at the Meeting of the Committee on Customs
Valuation
of 24 September 1984 Prior to the Adoption of the Decision on the Valuation
of Carrier Media Bearing Software for Data Processing Equipment**

"In the case of imported carrier media bearing data or instructions for use in data processing equipment (software), it is essentially the carrier media itself, e.g. the tape or the magnetic disc, which is liable to duty under the Customs tariff. However, the importer is, in fact, interested in using the instructions or data; the carrier medium is incidental. Indeed, if the technical facilities are available to the Parties to the transaction, the software can be transmitted by wire or satellite, in which case the question of Customs duties does not arise. In addition, the carrier medium is usually a temporary means of storing the instructions or data; in order to use it, the buyer has to transfer or reproduce the data or instructions into the memory or data-base of his own system.

Under the international Customs valuation practices which were superseded by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Agreement), the value of the software was not, as a general rule, included when valuing the carrier medium. Following their adoption of the Agreement, those countries which followed the previous international practice have either changed their rules for valuing carrier media bearing computer software or have maintained their previous practice.

The proposed decision of the Committee on Customs Valuation on the valuation of carrier media bearing software for data processing equipment indicates that transaction value is the primary basis of valuation under the Agreement and that its application with regard to software recorded on carrier media for data processing equipment is fully consistent with the Agreement. It also would provide that given the "unique situation" regarding software just described and the fact that some Parties sought a different approach, it would also be consistent with the Agreement for those Parties which wish to do so to only take account of the cost or value of the carrier medium itself in determining the Customs value of imported carrier media bearing data or instructions.

In taking this decision on the valuation of carrier media bearing software for data processing equipment, it is understood that should any difficulties arise in the implementation and application of the decision, it would be useful for those difficulties to be considered by the Parties to the Agreement."