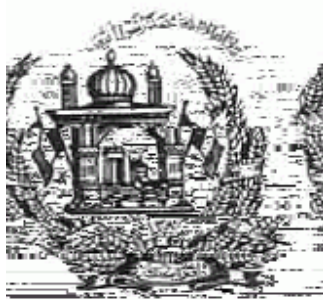


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Islamic Republic of Afghanistan

Ministry of Justice

(Draft)

Regulation on Customs Valuation

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Chapter 1.General Provisions

Basis and Objectives

Article 1

This regulation has been formulated with a consideration of Article 24 of Customs Law. The regulation will help in establishment of a rational, fair and uniform system of determining value of goods and prevention of document and statements fabrication in determining of value at the customs.

Interpretative Notes

Article 2

Certain articles of this regulation are supplemented by one or more Interpretative Notes attached to this regulation. The articles of this regulation are to be understood and applied consistently with their respective Interpretative Notes.

Definitions

Article 3

(6) both of them are directly or indirectly controlled by a third person;
(7) together they directly or indirectly control a third person; or
(8) they are members of the same family. Persons shall be considered members of the same family only if have one of the following relationships:

- husband and wife, parent and child,
- brother and sister (whether by whole or half blood),
- grandparent and grandchild,
- uncle or aunt and nephew or niece,
- parent-in-law and son-in-law or daughter-in-law,
- brother-in-law and sister-in-law.

2. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire shall not be considered related parties, unless their relationship also meets one of the criteria described in the previous paragraph.

Assists

Article 6

An “*assist*” means any of the following goods or services if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported goods for use in connection with the production or the sale for export to Afghanistan of the goods:

- (1) materials, components, parts, and similar items incorporated in the imported

Goods of the Same Class or Kind
Article 10

“Goods of the same class or kind” means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.

Sufficient Information
Article 11

“Sufficient information” means objective and quantifiable data that establishes the accuracy of prices or costs.

Invoice
Article 12

“Invoice”

2. The declarant shall have 10 days to respond in writing to Customs. Customs shall communicate the final decision and the grounds therefor in writing to the declarant. Such decision shall be subject to appeal pursuant to Article 18 of the Customs Law.

**Right to Withdraw Goods under Incomplete or Provisional Declaration Procedures
Article 15**

2. In the cases defined in Article 26 where a transaction value cannot be determined for the goods, the declarant shall provide Customs with such other information as may be requested by Customs for the purposes of determining the customs value under the alternative customs valuation methods defined in this regulation.

Obligation to Provide Information
Article 19

1. The declarant shall provide Customs with a copy of the invoice on the basis of which the value of the imported goods is declared. This copy shall be retained by Customs.

2. The declarant shall be responsible for:

- (1) the accuracy and completeness of the information given in the declaration;

- (1) The value, apportioned as appropriate, of any assist;
- (2) Any commissions and brokerage incurred by the buyer with respect to the imported merchandise, other than buying commissions;
- (3) Any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to Afghanistan;
- (4) The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

Exclusions from Transaction Value

Article 22

The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- (1) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (2) the cost of transport after importation;
- (3) import duties and taxes on the imported goods.

General Rules for Related Party Transactions

Article 23

2. Each value referred to in subparagraphs (1) to (2) of paragraph 1 of this Article that is used for comparison relates to goods exported to Afghanistan at or about the same time as the imported goods.

Adjustments to Test Values
Article 25

In applying the test values, differences with respect to the sales involved will be taken into

Adjustments to Transaction Value of Identical Goods

Article 29

1. Where no sale is found of identical goods at the same commercial level and in substantially the same quantity as the sales of goods under valuation, then sales of identical merchandise at either a different commercial level, or in different quantities, or both, will be used, but adjusted to take account of that difference.

2. Where the costs and charges referred to in Article 20 paragraph (1) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

Two or More Transaction Value of Identical Goods

Adjustments to Transaction Value of Similar Goods

Article 34

1. Where no sale is found of similar goods at the same commercial level and in substantially the same quantity as the sales of goods under valuation, then sales of similar merchandise at either a different commercial level, or in different quantities, or both, will be used, but adjusted to take account of that difference.

2. Where the costs and charges referred to in Article 20 paragraph (1) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

Two or More Transaction Value of Similar Goods

Article 35

If two or more transaction values for similar goods are found for the goods under valuation, Customs shall accept the lower or lowest of those values as the customs value of the goods.

Previously-Accepted Customs Values for Similar Goods

Article 36

For the purposes of Article 33, the transaction value of similar goods means a customs value, adjusted as provided for in Article 34, which has already been accepted under Chapter 3.

Identity of the Producer for Transaction Value of Similar Goods

Article 37

A transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found for similar goods produced by the same person as the goods being valued.

Deductive Value Definitions

Article 38

1. “*Selected goods*” means the goods being valued, identical goods or similar goods.

2. The “*unit price in greatest aggregate quantity*” is that price at which the total volume sold is greater than the total volume sold at any other unit price. This determination is required only where the units have been sold in different quantities.

Basic Rule for Deductive Value
Article 39

The deductive value of the goods under valuation shall be determined by subtracting from the appropriate price basis defined in Article 40 the deductions defined in Article 41.

Price Basis for Deductive Value
Article 40

1. If the selected goods are sold in Afghanistan in the condition as imported at or about the date of importation of the goods under valuation, the price is the unit price at which the selected goods are sold in the greatest aggregate quantity at or about such date.

2. If the selected goods are sold in the condition as imported but not sold at or about the date of importation of the goods under valuation, the price is the unit price at which the selected goods are sold in the greatest aggregate quantity after the date of importation of the goods under valuation but before the close of the 90th day after the date of such importation.

3. If the selected goods were not sold in the condition as imported, the price is the unit price at which the goods under valuation, after further processing, are sold in the greatest aggregate quantity before the 90th day after the date of suchy(m)3.3(pb2(sel).6()-h)-1.4dadatheThi9(de)4.plcth(ic).2(e-5.2

- (2) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to Afghanistan;
- (3) any assist, if its value is not included under points (1) and (2) of this Article;
- (4)

available, Customs officials may accept a reasonable estimate of the cost or value of an imported carrier medium or of the cost or value of the data or instructions contained on the data or medium.

Treatment of Interest Charges

Article 50

1. 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:

- (1) the charges are distinguished from the price actually paid or payable for the goods;
- (2) the financing arrangement was made in writing;
- (3) 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.

2. These rules 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.

3. For purposes of this Regulation, the term 'interest' encompasses only those payments that are carried on the importer's books as interest expenses in conformance with generally accepted accounting principles.

Annex:
Interpretative Notes

Related parties
Article 5

For purposes of this definition, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Transaction Value Method
Article 20

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. It includes all payments that the buyer actually made or will make as a condition of sale of the imported goods.

(1)

manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

- (2) *Concerning the value of the element, if the importer acquires the element from a seller not related to the importer at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to the importer, its value*

transaction, including the way in which the buyer and seller organize their commercial relations 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 the buyer and seller, although related under the provisions of Article 5, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, 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 repr

Cases when Alternative Valuation Method Are Used

Article 26point (3)

1. Some examples of sale conditions “for which a value cannot be determined with respect to the goods being valued” include:

- (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;*
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;*
- (c) 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 condition that the seller will receive a specified quantity of the finished goods.*

2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, Customs should not reject transaction value simply because the buyer has furnished the seller with engineering and plans undertaken in Afghanistan. Likewise, if the buyer undertakes on the buyer’s own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Cases when Alternative Valuation Method Are Used

Article 26point (4)

As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a liter of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when

2. Where the customs value cannot be determined by the transaction value method under Article 20, it is to be determined by proceeding sequentially through the alternative methods to the first method under which the customs value can be determined. Unless the declarant chooses to apply the computed value method before the deductive value method as allowed under Article 16, it is only when the customs value cannot be determined under the provisions of a particular method that the provisions of the next method in the sequence can be used.

3. If the declarant does not exercise his right under Article 16, the normal order of the sequence is to be followed. If the declarant does exercise that right but it then proves impossible to determine the customs value under the computed value method, the customs value is to be determined by the deductive value method, if it can be so determined.

Identity of the Producer

Article 32

1. In applying Articles 28 through 32, Customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (1) a sale at the same commercial level but in different quantities;
- (2) a sale at a different commercial level but in substantially the same quantities; or
- (3) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (1) quantity factors only;
- (2) commercial level factors only; or
- (3) both commercial level and quantity factors.

3. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of sufficient information that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities.

4. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Articles 28 through 32 is not appropriate.

Transaction Value of Similar Goods
Articles 33-37

40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

<i>Total quantity sold</i>	<i>Unit price</i>
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.

**Deductions from Price
Article 41**

1. The "profit and general expenses" referred to in point (1) should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless the importer

class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined.

5. Where the method in point (4) is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

6. It is recognized that the method of valuation provided for in point (4) would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Basic Rule for Computed Value
Article 46

1. As a general rule, customs value is determined on the basis of information readily available in Afghanistan. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information, which has to be obtained from abroad. Furthermore, in most cases the producer of the goods will be outside the

5. Where the producer can demonstrate a low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in Afghanistan and accept a low profit to remain competitive.

6. Where the producer's own figures for profit and general expenses are not consistent with those 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 Afghanistan, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

7. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses for purposes of determining a computed value, sales for export to

would be the cost of producing it.

5. Transport and handling charges incurred in the transport of a consignment of carrier media bearing data and instructions are to be regarded as applying to the carrier media and are to be included in the value for customs purposes.