

DRAFT
CUSTOMS VALUATION REGULATIONS 2011

GENERAL INTRODUCTORY COMMENTARY

1. The primary basis for customs value under these Regulations is "transaction value" as defined in Regulation 3. Regulation 3 is to be read together with Regulation 4 which provides, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Regulation 4 also provides for the inclusion in the transaction value of certain considerations which pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Regulations 5 through 9 provide methods

“Computed value” means the value determined in accordance with Regulation 8;

“Customs value” or **“value”**, in relation to any goods, for purpose of levying and Ad valorem duties, m

- are within a group or range of imported goods produced by a particular industry or industry sector that includes identical goods or similar goods in relation to the goods being valued; and
- for the purpose of:
 - **Regulation 7**, were exported from any country; and
 - **Regulation 8**, were produced in and exported from the country in and from while the goods being valued were produced and exported;

“Identical goods”, means imported goods that –

- are the same in all aspects, including physical characteristics, quality, and reputation, as the goods being valued, except for minor differences in

“Records” include all papers, books, registers, discs, films, tapes, sound tracks, or other devices or things in or on which information is recorded or stored;

“Similar goods” means imported goods that –

- closely resemble the goods being valued in respect of component materials and parts and characteristics and are functionally and commercially interchangeable with the goods being valued having regard to the quality and reputation of the goods and the goods being valued; and
- were produced in the country in which the goods being valued were produced; and
- were produced by or on behalf of the person who produced the goods being valued; but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in Samoa were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;
- goods produced by a different person shall be taken into account only when there are similar goods, as the case may be, produced by the same person as the goods being valued.

“Sufficient information” in respect of the determination of any amount, difference, or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference, or adjustment:

“To Produce” includes to grow, to manufacture, or to mine;

“Transaction value” means the value determined in accordance with Regulations 3 and 4

(2) In these Regulations, unless the context otherwise requires the term **“assist”** means any of the following if supplied directly or indirectly, and free of charge or at a reduced cost, by the buyer of imported goods for use in connection with the production or the sale for export to Samoa of the goods –

- materials, components, parts and similar items in8(p)-•7 T6(u)1(d pr4u)1()-Tpi5/T

- engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in Samoa and are necessary for the production of the imported goods.

(3) No service or work to which sub – regulation (2) (iv) of this regulation applies is to be treated as ~~assist~~ if the service or work is –

- performed by an individual domiciled within Samoa;
- performed by that individual while acting as an employee or agent of the buyer of the imported goods; and
- incidental to other engineering, development, artwork, design work, or

Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of these Regulations if they fall within the criteria of subregulation (5)

(6) For the purposes of these Regulations persons shall be deemed to be members of the same family if:

- they are connected by blood relationship within the fourth degree of relationship; or
- they are married to one another or one is married to a person who is connected within the fourth degree of relationship to the other; or
- one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.

(7) For the purposes of these Regulations, where there are no goods that were produced by or on behalf of the person who produced the goods being valued and that are otherwise identical goods or similar goods, goods were produced by or on behalf of a different person and that are otherwise identical goods or similar goods shall be deemed to be identical goods or similar goods, as the case may be.

(8) For the purposes of these regulations 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 in any case where –

- the charges are distinguished from the price actually paid or payable for the goods; and
- such goods are actually sold at the price declared as the price actually paid or payable; and
- the buyer, if required, can demonstrate that –
 - the financing arrangement was made in writing;
 - 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.

(9) The provisions of these regulations shall apply to goods imported into the Territory of the

- limit the geographical area in which the goods may be resold; or
- do not substantially affect the value of the goods; or
- the sale of the goods or the price actually paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be determined with respect to the goods being valued; or
- Where any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer is to accrue, directly or indirectly, to the seller, the price paid or payable for the goods includes the value of that part of the proceeds or can be adjusted in accordance with Regulation 4 of this Regulations; and
- The buyer and seller of the goods are not related at the time the goods are sold for export or, where the buyer and seller are related at that time, the transaction value is acceptable for customs purposes under the provisions of sub-Regulation (2) of this Regulation -

(2) (a) In determining whether the transaction value is acceptable for the purposes of sub-regulation (1) of this Regulation, the fact that the buyer and the seller are related within the meaning of sub- Regulation (5) of part I shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to

by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(c) The tests set forth in sub-Regulation 2(b) ~~are~~ to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of sub- Regulation 2(b).

(6) Notwithstanding sub-regulation (5), on the written request of the importer to the Comptroller, the order of consideration of the valuation basis provided for in Regulation 7 and 8 shall be reversed.

4 Adjustment of price paid or payable – (1) In determining the transaction value of goods under Regulation 3, the price actually paid or payable for the goods shall be adjusted:

- by adding thereto amounts, to the extent that each such amount is not otherwise included in the price actually paid or payable for the goods and is determined on the basis of sufficient information, equal to
 - commissions and brokerage in respect of the goods incurred by the buyer, other than fees paid or payable by the buyer to his agent for the service of representing him overseas in respect of the purchase of the goods being valued; and
 - the packing costs and charges incurred by the buyer in respect of the goods, including the costs of cartons, cases, and other containers and coverings that are treated for Customs purposes as being part of the imported goods and all expenses of packing incidental to placing the goods in the condition in which they are shipped to Samoa; and
 - the value of any of the following goods and services:
 - materials, component parts, and other goods incorporated in the imported goods:
 - tools, dies, moulds, and other goods utilized in the production of the imported goods:
 - materials consumed in the production of the imported goods:
 - engineering, development work, artwork, design work, plans and sketches undertaken elsewhere that in Samoa and necessary for the production of the imported goods;

determined in the manner as may be prescribed, that are supplied, directly or indirectly, by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable and in accordance with generally accepted accounting principles; and

(iv) royalties and license fees including payments for patents, trademarks, and copyrights in respect of the imported goods that the buyer must pay, directly or indirectly, as a condition of the sale of the goods for export to Samoa to the extent that such royalties and fees are not included in the price actually paid or payable, exclusive of charges for the right to reproduce the imported goods in Samoa; and

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- to a buyer at the same or substantially the same trade level as the buyer of the goods being valued but in quantities different from the quantities in which those goods were sold; or
- to a buyer at a trade level different from that of the buyer of the goods being valued but in the same; or
- to a buyer at a trade level different from that of the buyer of the goods being valued and in quantities different from the quantities in which those goods were sold.

(3) For the purpose of determining the Customs value of the imported goods under the sub-Regulation (1), the transaction value of the identical goods shall be adjusted by adding thereto or deducting there from, as the case may be, amounts to account for:

- commercially significant differences between the costs, charges, and expenses referred to in regulation 4 (1) (a) (vi) in respect of the identical goods and those costs, charges, and expenses in respect of the goods being valued that are attributable to differences in distances and modes of transport:
- where the transaction value is in respect of identical goods sold under the conditions described in any paragraph (a) of sub-regulation (2), differences in the trade levels of the buyers of the identical goods and the goods being valued or the quantities in which the identical goods and the goods being valued were sold or both, as the case may be, -

if each amount can, in the opinion of the Comptroller, be determined on the basis of sufficient information. Where any such amount cannot be so determined, the Customs value of the goods being valued shall not be determined on the basis of the transaction value of those identical goods under this Regulation.

(4) Where, in relation to imported goods being valued, there are 2 or more transaction values of identical goods that meet all the requirements set out in sub-regulation (1) and 93) or where there is no such transaction value but there are 2 or more transaction values of identical goods sold under the conditions described in any paragraphs (a) to (c) of sub-regulation (2) that meet all the requirements set out in Regulation that are applicable by virtue of sub-regulation (2), the Customs value of the goods being value shall be determined on the basis of the lowest such transaction value.

6. Transaction value of similar goods as the Customs value – (1) Subject to sub-regulation (2) and sub-regulation (2) to (4) of Regulation 5, where the Customs value of imported goods cannot, in the opinion of the Comptroller, be determined under Regulation 5, the Customs value of the goods shall be transaction value similar goods in respect of a sale of those

- to a buyer at the same or substantially

ascertaining the unit price in respect of sales of the goods at the first level after their importation to persons who –

- (a). are not related to the persons from whom they buy the goods at the time the goods are sold to them; and
- (b). have not supplied, directly or indirectly, free of charge or at a reduced cost for use in connection with the production and sale for export of the goods, any of the goods or services referred to in Regulation 4 (1) (a) (iii);

At which the greatest number of units of the goods is sold where in the opinion of the Comptroller, a sufficient number of such sales have been made to permit a determination of the price per unit of the goods.

- (6). For the purposes of sub-regulations (2)(4)

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goods, if that amount is determined, in the opinion of the Comptroller, on the basis of sufficient information.

(7). The amount considered to be equal to the amount of commission or the amount for profit and general expenses referred to in sub-regulation (6) (a) shall be calculated on a percentage basis and determined on the basis of the information prepared in a manner consistent with generally accepted accounting principles that is supplied -

- by or behalf of the importer of the goods being valued; or
- where the information supplied by or on behalf to the importer goods being valued are not sufficient information, but an examination of sales in Samoa of the narrowest group or range of goods being valued from which sufficient information can, in the opinion of the Comptroller, be obtained.

(8). Where an amount referred to sub-regulation (6) (e) in respect of any goods being valued cannot, in the opinion of the Comptroller, be determined on the basis of sufficient information, the Customs value of goods cannot be determined on the basis of the deductive value under sub-regulation (4).

8. Computed value as Customs value – (1). Subject to sub-regulations (3) and (5) of Regulation 3, where the Customs value of imported goods cannot, in the opinion of the Comptroller be determined under Regulation 7 of these Regulations, the Customs value of the goods shall be the computed value in respect of those goods.

(2). The computed value of the goods being valued is the aggregate of the amounts equal to:

- the costs, charges, and expenses incurred in respect of, or the value of:
 - (i) materials employed in producing the goods being valued; and
 - (ii) the production or other processing of the goods being valued,determined in the manner prescribed, ~~including~~, without limiting the generality of the foregoing:
- (iii) the costs, charges, and expenses referred to in Regulation 4 (1) (a) (ii);
- (iv) the value of any goods and services referred to in Regulation 4 (1) (a) (iii) determined and apportioned to the goods being valued as referred to in that Regulation, whether or not such goods and services have been supplied free of charge or at reduced cost:

- (v) the costs, charges, and expenses incurred by the producer in respect of engineering, development work, art work, design work, plans, or sketches undertaken in Samoa that were supplied directly or indirectly, by the buyer of the goods being valued for use in connection with the production and the sale for export of those goods to be extent that such elements are charged to the producer of the goods, apportioned to the goods being valued as referred to in Regulation 4 (1) (a) (iii):
 - the amount, determined in accordance with the sub-regulation (4) for profit and general expenses, considered together as a whole, generally reflected in sales for export to Samoa of goods of the same class or kind as the goods being valued, made by the producers from whom they buy the goods at the time the goods are sold to them.

(3). For the purposes of this Regulation, the expression “general expenses” means the direct and indirect costs, charges, and expenses of producing and selling goods for export, other than the costs, charges, and expenses referred to in sub-regulation (2) (a).

(4). The amount of profit and general expenses referred to in sub-regulation (2) (b) shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally acceptable accounting principles of the country of production of the goods being valued and that is supplied –

- by or on behalf of the goods being valued: or
- where the information supplied by or on behalf of the producer of the goods being valued is not sufficient information, by an examination of sales for export to Samoa of the narrowest group or range of goods of the same class or kind from which sufficient information can, in the opinion of the Comptroller, be obtained.

(4) No Member may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Regulation may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

9. Residual basis of valuation – (1) Where the Customs value of imported goods cannot, in opinion of the Comptroller, be determined under the provisions of Regulation 3 through 8, inclusive, it shall be determined through reasonable means consistent with the principles and general provisions of these Regulations and of Article VII of the GATT 1994 and on information available in Samoa on the basis of value derived from the methods of valuation set out in Regulations 3 to 8 interpreted in a flexible manner.

(2) A Customs value shall not be determined under the provisions of this Regulation on the basis of -

- the selling price in Samoa of goods produced in Samoa; or
- a basis which provides for the acceptance for customs purposes of the higher of 2 alternative values; or
- the price of goods on the domestic market of the country of exportation; or
- the cost of production, other than computed values that have been determined for identical or similar goods in accordance with Regulation 8; or
- the price of goods for export to country other than Samoa; or
- minimum Customs values; or
- arbitrary or fictitious values.

(3) If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Regulation and the method used to determine such value.

10. Determination of Customs value by Comptroller – (1) The Customs value of goods pursuant to the Customs Act and these regu

(6). Where the Comptroller amends his determination of the Customs value of any goods pursuant to sub-regulation (2) otherwise than as a result of an objection received from the importer of these goods ~~he~~ shall give notice to the importer of the amended determination.

(7). If any importer is dissatisfied with the Comptroller's decision in respect of his objection under sub-regulation (3) against a determination, he may appeal to the Minister against that determination.

(8). Every such appeal pursuant to sub-regulation (7) shall be made by giving such notice of appeal within 28 days after the date on which the appellant was notified in writing under sub-regulation (5) of the decision or within such further time as the Minister may allow application either before or after the expiration of those 28 days.

(9). In the determination of any appeal, the Minister may confirm or modify the determination appealed against.

(10). Notwithstanding anything in this regulation, where in the course of determining any appeal, it becomes necessary to delay the final determination of such appeal, the appellant shall nevertheless be given delivery of his goods from Customs control subject to the Comptroller receiving such

- (4). Every person who fails to comply with any of the provisions of this regulation commits an offence.
- (5). Every person who commits an offence against this regulation is liable to the

those goods between the seller of the goods and the buyer of the goods, for a period not exceeding 7 years from the date on which such entry was required to be made under the provisions of the Customs Act.

(5) Subject to any conditions that the Comptroller may impose, any importer, or such other person as may be prescribed, who is required pursuant to sub-regulation (4), to keep documents or legible copies thereof as aforesaid, may, in lieu thereof, transfer the information contained therein on to or into any mechanical or electronic device and shall keep that information for a period not less than 10 years from the date on which the entry was required to be made under the provisions of the Customs Act.

(6) The Comptroller or other proper officer may enter the business premises of the importer or such other person as may be prescribed to examine any document or legible copy thereof required to be kept pursuant to sub-regulation (5) of this regulation, and require him to truly answer all questions put to him by the Comptroller or other proper officer relating to such document or legible copy thereof, or information as aforesaid, and in the case of any information transferred on to or into any mechanical or electronic device pursuant to sub-regulation (5) of this regulation, require him to operate the mechanical or electronic device at his own expense so as to allow the Comptroller or other proper officer to readily ascertain the information contained therein.

(7) Every person who fails to comply with these regulations commits an offence and shall be liable to the maximum fine available under the Customs Act.

18. Provisions for the valuation of imported goods for value added goods and services tax purposes – For the purposes of subsection (2) of section 13 of the Value Added Goods and Services Tax Act 1993, the value of goods imported into Samoa shall be the sum of the amount of-

- The value of the goods determined in accordance with part I and part II of these Regulations (whether or not duty is payable); and
- Any duties (other than tax levied or charged under the Value Added Goods & Services Tax Act, 1993) and other charges that are charged, paid or payable on goods upon the importation or removal from a bonded or Customs warehouse for home consumption in Samoa; and
- The amount paid or payable to transport the goods to Samoa and to insure the goods for such transport, if not already included under paragraph (a)

or from which the is obtained, except to the extent that the information may be required to be disclosed in judicial proceedings.

18B. Publication – The Comptroller shall publish in the Savali a notice of judicial decisions and administrative rulings of general application giving effect to Samoa’s obligations under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement).

19. (1) Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of Samoa concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of Samoa.

(2) The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Member.

22. The notes at Annex I to these Regulations form an integral part of these Regulations and are to be read and applied in conjunction with their respective notes.

23. Nothing in these Regulations shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART III

PROVISION FOR THE VALUATION OF EXPORTED GOODS FOR CUSTOMS PURPOSES

24. Value of Exported goods – The value of exported goods shall be taken to be the price which a purchaser would be prepared to give for the goods on board on an aircraft or ship in any airport or port in Samoa prior to the exportation of such goods or, where such value is not easily ascertainable, the Comptroller may estimate such value.

ANNEX I

INTERPRETATIVE NOTES

General Note

Sequential Application of Valuation Methods

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.

Sub regulation 2

1. Sub regulations 2(a) and 2(b) provide different means of establishing the acceptability of a transaction value.
2. Sub regulation 2(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. 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 administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.
3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the 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 the introductory part of these Regulations, 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 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.
4. Sub regulation 2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Regulation 3. Where a test under sub regulation 2(b) is met, it is not necessary to examine the question of influence under sub regulation 2(a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in sub regulation 2(b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In sub regulation 2(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Sub regulation 2(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is

valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) 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:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Regulation 6, the transaction value of similar imported goods means a customs value, adjusted as provided for in sub regulations 1(b) and 2, which has already been accepted under Regulation 3.

5. 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 demonstrated evidence.

1-10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

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

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95

5. Any sale in the importing country, as described in sub regulation 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in sub regulation 1(a) (iii) of Regulation 4, should not be taken into account in establishing the unit price for the purposes of Regulation 7.
6. It should be noted that "profit and general expenses" referred to in sub regulation (6) of Regulation 7 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's figures are inconsistent with those obtained in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.
7. The "general expenses" include the direct and indirect costs of marketing the goods in question.
8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of sub regulation (6) (d) of Regulation 7 shall be deducted under the provisions of sub regulation 6(a)(i) of Regulation 7.
9. In determining either the commissions or the usual profits and general expenses under the provisions of sub regulation 1 of Regulation 7, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Regulation 7, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.
10. For the purposes of sub regulation (3) of Regulation 7, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.
11. Where the method of Regulation 7 is used, deductions made for the value added by further processing shall be based on objective and quantifiable ~~relating~~ ^{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.
12. It is recognized that the method of valuation provided for in Regulation 7 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.

Note to Regulation 8

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. 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 outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in sub regulation 2(a)(i) of Regulation 8 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in sub regulations 1(a)(ii) of Regulation 4. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Regulation 4, of any element specified in sub regulation 1(a)(iii) of Regulation 4 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in sub regulation 1(a)(iii)(d) of Regulation 4 which

7. The "general expenses" referred to in sub regulation 2(b) of Regulation 8 covers the direct and indirect costs of producing and selling the goods for export which are not included under sub regulation 1(a)(iii) of Regulation 8.

8. Whether certain goods are "of the same class and 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 under the provisions of Regulation 8, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Regulation 8, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Regulation 9

1. Customs values determined under the provisions of Regulation 9 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Regulation 9 should be those laid down in Regulations 3 through 8 but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Regulation 9.

3. Some examples of reasonable flexibility are as follows:

- (a) Identical goods- the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Regulations 7 and 8 could be used.
- (b) Similar goods- the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Regulations 7 and 8 could be used.
- (c) Deductive method- the requirement that the goods shall have been sold in the "condition as imported" in sub regulation (6) of Regulation 7 could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

Note to Regulation 4

Sub regulation 1(a)(i)

The term "buying commissions" means fees paid by an importer to the importer's agent for the service of representing the importer abroad in the purchase of the goods being valued.

Sub regulation 1(a)(ii)(b)

1. There are two factors involved in the apportionment of the elements specified in sub regulation 1(a)(iii)(b) of Regulation 4 to the imported goods - the value of the element itself and the way

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Sub regulation 1(a)(iv)

1. The royalties and licence fees referred to in sub regulation 1(a)(iv) of Regulation 4 may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Sub regulation 2

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Regulation 4, the transaction value cannot be determined under the

3. However, nothing in Regulation 10 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal.