

Draft

**Regulation**  
**On Interpretative Notes for Application of the Customs Code Provisions on Customs**  
**Valuation**

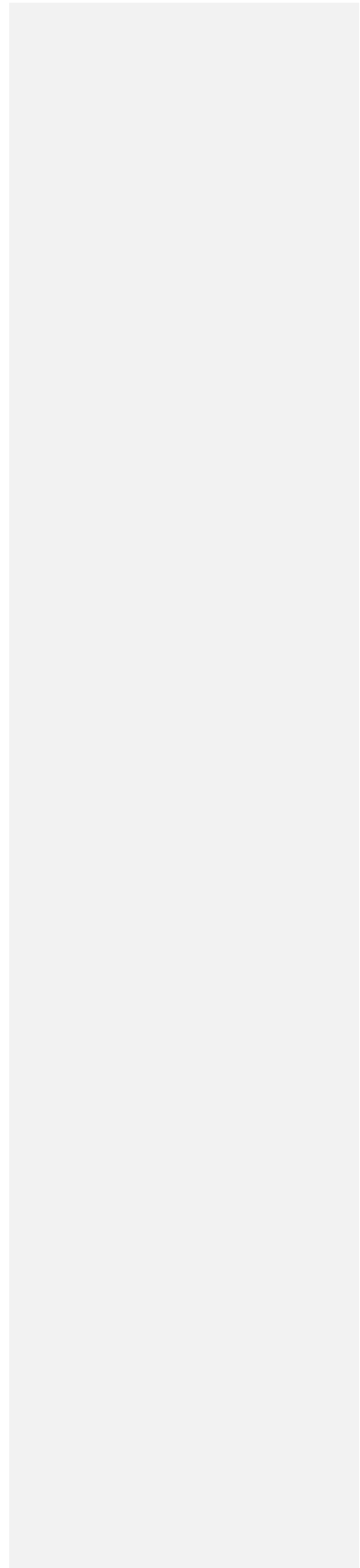
1. In applying Articles 259 to 273 of the Customs Code of Ukraine, Declarant and

ANNEX

Customs Code Article	Interpretative Notes
Article 266	<ol style="list-style-type: none"><li data-bbox="312 504 1166 683">1. Articles 267 to 273 of the Customs Code of Ukraine, inclusive, define how the customs value of imported goods is to be determined. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is transaction value method defined in Article 267 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.</li><li data-bbox="312 692 1166 848">2. Where the customs value cannot be determined by the transaction value method under the provisions of Article 267, it is to be determined by proceeding sequentially through Articles 268 to 273 to the first such Article under which the customs value can be determined. Except as provided in Article 266 (4), it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article</li></ol>

Customs Code Article	Interpretative Notes
	indirectly. An example of an indirect payment would be the settlement by the buyer,

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Customs Code Article	Interpretative Notes
	determining whether the transaction value closely approximates to the "test" values set forth in item 7 part 3 of Article 267.
Articles 268 and 269	<p>1. In applying either the method of valuation based on transaction value of identical goods under Articles 268 or the method of valuation based on transaction value of similar goods, the customs administration shall, wherever possible, use a sale of identical goods (if transaction value of identical goods is the method used) or similar goods (if transaction value of similar goods is the method used) 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 or similar goods that takes place under any one of the following three conditions may be used:</p> <ul style="list-style-type: none"> <li>(a) a sale at the same commercial level but in different quantities;</li> <li>(b) a sale at a different commercial level but in substantially the same quantities; or</li> <li>(c) a sale at a different commercial level and in different quantities.</li> </ul>
	<p>2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:</p> <ul style="list-style-type: none"> <li>(a) quantity factors only;</li> <li>(b) commercial level factors only; or</li> <li>(c) both commercial level and quantity factors.</li> </ul>
	<p>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.</p>
	<p>4. For the purposes of Article 268, the transaction value of identical imported goods means a customs value, adjusted as provided for in part 1 of Article 268, which has already been accepted under Article 267.</p>
	<p>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 that clearly establishes the</p>

Customs Code Article	Interpretative Notes																										
	<p>2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.</p> <table border="1" data-bbox="391 517 1010 792"> <thead> <tr> <th>Sale Quantity</th> <th>Unit Price</th> <th>Number of Sales</th> <th>Total Quantity Sold at each Price</th> </tr> </thead> <tbody> <tr> <td>1-10 units</td> <td>100</td> <td>10 sales of 5 units 5 sales of 3 units</td> <td>65</td> </tr> <tr> <td>11-25 units</td> <td>95</td> <td>5 sales of 11 units</td> <td>55</td> </tr> <tr> <td>over 25 units</td> <td>90</td> <td>1 sale of 30 units 1 sale of 50 units</td> <td>80</td> </tr> </tbody> </table> <p>The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.</p>	Sale Quantity	Unit Price	Number of Sales	Total Quantity Sold at each Price	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										
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	<p>3. As another example of this, two sales occur. 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.</p>																										
	<p>4. A third example would be the following situation where various quantities are sold at various prices.</p> <p>(a) Sales</p> <table border="1" data-bbox="391 1178 683 1424"> <thead> <tr> <th>Sale quantity</th> <th>Unit price</th> </tr> </thead> <tbody> <tr> <td>40 units</td> <td>100</td> </tr> <tr> <td>30 units</td> <td>90</td> </tr> <tr> <td>15 units</td> <td>100</td> </tr> <tr> <td>50 units</td> <td>95</td> </tr> <tr> <td>25 units</td> <td>105</td> </tr> <tr> <td>35 units</td> <td>90</td> </tr> <tr> <td>5 units</td> <td>100</td> </tr> </tbody> </table> <p>(b) Totals</p> <table border="1" data-bbox="391 1480 743 1637"> <thead> <tr> <th>Total quantity sold</th> <th>Unit price</th> </tr> </thead> <tbody> <tr> <td>65</td> <td>90</td> </tr> <tr> <td>50</td> <td>95</td> </tr> <tr> <td>60</td> <td>100</td> </tr> <tr> <td>25</td> <td>105</td> </tr> </tbody> </table> <p>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.</p>	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	Total quantity sold	Unit price	65	90	50	95	60	100	25	105
Sale quantity	Unit price																										
40 units	100																										
30 units	90																										
15 units	100																										
50 units	95																										
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Total quantity sold	Unit price																										
65	90																										
50	95																										
60	100																										
25	105																										
	<p>5. Any sale in Ukraine, as described in paragraph 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 part 2 of Article 267, should not be taken into account in establishing the unit price for the purposes of Article 271.</p>																										

Comment [BJO14]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).

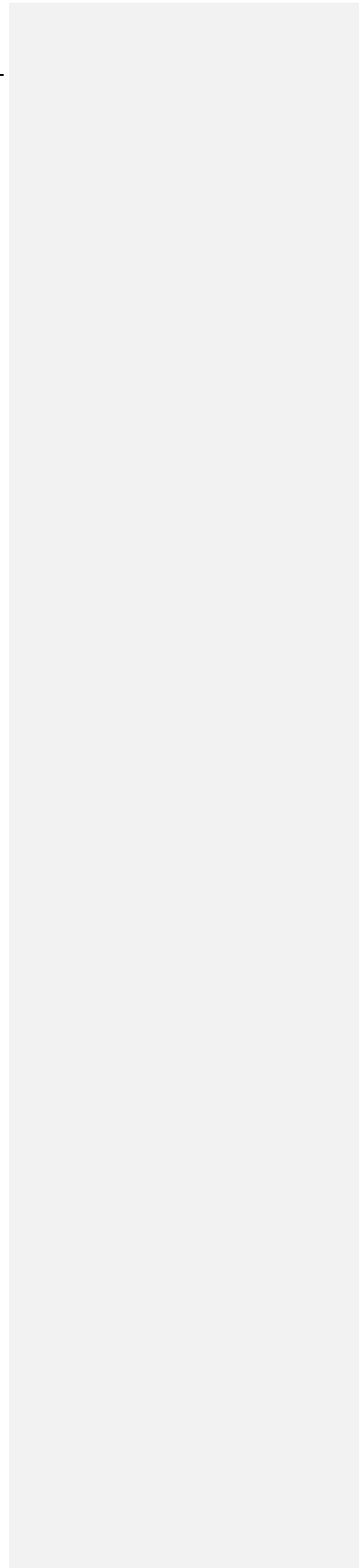


Article 267 assist

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Interpretative Notes



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	subsequent verification which may be necessary.
	2. The "cost or value" referred to in Article 272 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 part 2 of Article 267. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 267, of any element specified in part 2 of Article 267 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 part 2 of Article 267 which are undertaken in Ukraine shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.
	4. The "amount for profit and general expenses" referred to in items 2-3 of part 1 of Article 272 is to be determined on the basis of information supplied by or on behalf



Customs Code Article	Interpretative Notes
	8. 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 under the provisions of Article 272, sales for export to Ukraine 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 Article 272, "goods of the same class or kind" must be from the same country as the goods being valued.
Article 273	1. Customs values determined under the provisions of Article 273 should, to the greatest extent possible, be based on previously determined customs values.
	2. The methods of valuation to be employed under Article 273 should be those laid down in Articles 267 to 272, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 273.
	3. Some examples of reasonable flexibility are as follows:  (a) <b>Identical goods</b> 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 Articles 271 and 272 could be used.  (b) <b>Similar goods</b> 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 Articles 271 and 272 could be used.  (c) <b>Deductive method</b> the requirement that the goods shall have been sold in the "condition as imported" in Article 271 could be flexibly interpreted; the "ninety days" requirement could be administered flexibly.
Article 267 (2(2a))	The term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.
Article 267 (2)	1. There are two factors involved in the apportionment of the elements specified in part 2 of Article 267 to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable 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 him at a given cost, the value of the element is the above-mentioned cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.
	3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the

Comment [BJO27]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 271. The reference is to the text circled in the attached document (double click on icon).



Article 271c

Comment [BJO28]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267h

Comment [BJO29]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



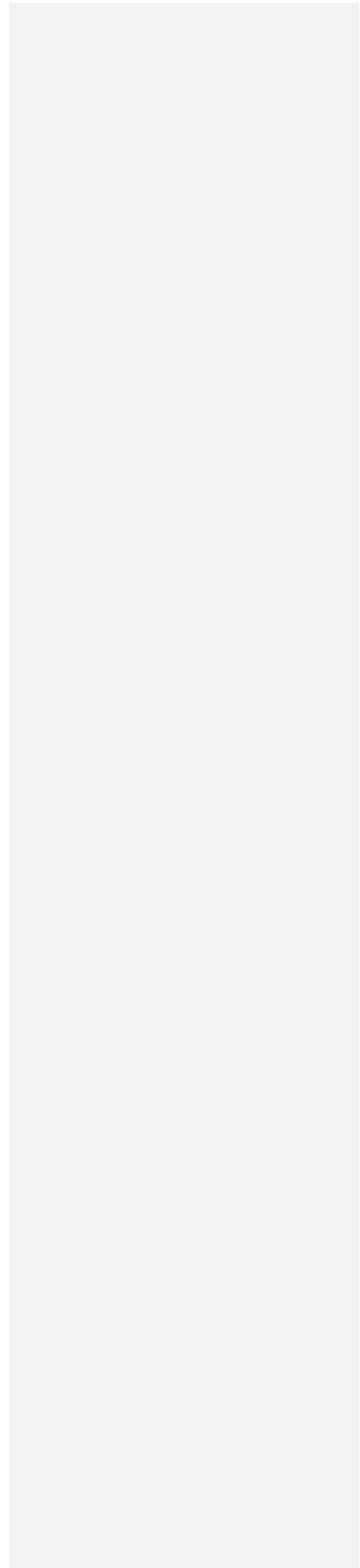
Article 267i.doc

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Article 267i.doc

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Customs Code Article	Interpretative Notes
	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 Ukraine of the imported goods.
Article 267 (2)	Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 267, the transaction value cannot be determined under the provisions of that Article. As an illustration of this, a royalty is paid on the basis of the price in a sale in Ukraine of a litre 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

Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon). This text is to be modified according to the proposed amendments to the Customs Code.



Article 267 related  
party4

Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267 related  
party3

Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 272. The reference is to the text circled in the attached document (double click on icon). Please note also, however, that the text of Article 272 is to be changed, according to the proposed changes to the Customs Code.



Article 272f