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Committee on Customs Valuation

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NOTIFICATION UNDER ARTICLE 22.2 OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

ECUADOR

The following communication, dated 27 September 2012, is being circulated at the request of the delegation of Ecuador.

Pursuant to Article 22 of the Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement) and in compliance with the Decision on Notification and Circulation adopted by the Committee on Customs Valuation on 12 May 1995 (G/VAL/5), Ecuador hereby notifies to the Committee on Customs Valuation the following legislation and documents:

	Legislation	Annex	Page
1.	Decision No. 571 of the Andean Community Commission, published in Ecuador in Official Journal No. 317 of 20 April 2004	1	3
2.	Community Regulations implementing Decision No. 571 on Customs Valuation of Imported Goods, annexed to Resolution No. 846, published in Lima in Official Gazette of the Cartagena Agreement No. 1103 of 9 August 2004 and the Supplement to Official Journal No. 17 of 13 May 2005	2	33
3.	Resolution No. 1239 updating Resolution No. 1112 - Adoption of the Andean Customs Value Declaration, published in Official Gazette of the Cartagena Agreement No. 1720 of 1 June 2009	3	160
4.	Andean Community General Secretariat Resolution No. 1456 on Special Cases of Customs Valuation, published in Official Gazette of the Cartagena Agreement No. 2024 of 2 March 2012	4	186
5.	Andean Community General Secretariat Resolution No. 1486 on the incorporation into Resolution No. 846 of the implementing instruments of the WCO Technical Valuation Committee, published in Official Gazette of the Cartagena Agreement No. 2073 of 20 July 2012	5	192
6.	Organic Code of Production, Trade and Investment, published in Official Journal No. 351 of 29 December 2010	6	209
7.	Regulations on the Title "Customs Facilitation for Trade" of Book V of the Organic Code of Production, Trade and Investment, issued pursuant to Decree No. 758 and published in Official Journal Supplement No. 452 of 19 May 2011	7	284
8.	Resolution No. SENAE-DGN-2012-0231-RE of 29 June 2012, "Regulations concerning the reasonable doubt procedure"	8	286
9.	Resolution No. 04-2010-R1 of 15 March 2010, "Procedure for control of the customs valuation of imported goods"	9	288
10.	Resolution No. SENAE-DGN-2012-0353-RE of 21 October 2012, "Guidelines concerning persons that may sign the Andean Customs Value Declaration (DAV) form"	10	291

Ecuadorian customs bulletins: Bulletins providing foreign trade operators with information, clarification, replies or instructions on specific topics that are of general interest or the subject of widespread consultation. Replies are based on current legislation. Available online in Spanish at http://www.aduana.gob.ec/contenido/boletines.asp

ANNEX 1

ANDEAN COMMUNITY

EIGHTY-SEVENTH PERIOD OF REGULAR
SESSIONS OF THE COMMISSION
11 and 12 December 2003
Lima - Peru

DECISION NO. 571

Customs valuation
of imported goods

THE COMMISSION OF THE ANDEAN COMMUNITY,

CONSIDERING: Article 58 of the Cartagena Agreement; Decisions Nos. 378 on Customs Valuation, 379 on the Andean Customs Value Declaration and 521 on amendment of Decision No. 378; and

WHEREAS: The Andean regulations on customs valuation were adopted by Decisions Nos. 378 and 379, taking into account the "Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994" of the World Trade Organization (WTO Customs Valuation Agreement), and the Andean Customs Value Declaration (DAV) form was created;

The member countries of the Andean Community are also Members of the World Trade Organization and are therefore bound to apply the WTO Customs Valuation Agreement;

The member countries of the Andean Community are also members of the World Customs Organization (WCO);

It is necessary to implement harmonized legislation setting out the provisions on determining the customs value of goods imported into the customs territory of the Andean Community;

For proper implementation of the WTO Customs Valuation Agreement, sufficient information enabling the elements of commercial transactions in imported goods to be known is needed in order to determine the customs value;

In order to ensure proper and uniform implementation of this Decision, provision has to be made for the adoption of its implementing regulations;

At its XIth Meeting, the Andean Presidential Council instructed the Commission of the Andean Community, in coordination with the Council on Customs Matters, to approve rules to enable flexible and streamlined customs procedures to be determined consistent with the level of progress in the expanded subregional market;

With a view to complying with this mandate from the Andean Presidential Council, and with the objective of establishing the Andean Common Market by 2005 at the latest, it is necessary to replace Andean Decisions Nos. 378, 379 and 521 of the Commission;

The General Secretariat has submitted its Proposal 92/Rev. 2 on the customs valuation of imported goods;

HEREBY DECIDES:

Chapter I Scope

Article 1.- Legal basis

For the purposes of customs valuation, the member countries of the Andean Community shall be governed by the provisions in the "Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994", hereinafter the "WTO Customs Valuation Agreement" attached to this Decision, by this Decision and by its Community implementing regulations to be adopted for this purpose in a Resolution by the General Secretariat.

Chapter II Determination of the customs value

Article 2.- Customs value

The customs value of imported goods shall be determined according to the methods laid down in Articles 1 to 7 of the WTO Customs Valuation Agreement and its respective Interpretative Notes, taking into account the general guidelines in the Agreement itself, in this Decision and its implementing regulations.

Article 3.- Methods for determining customs value

Pursuant to the provisions in the WTO Customs Valuation Agreement, the following are the methods to be used to determine the customs value or the taxable base for the payment of import duties and taxes:

1. First method: Transaction value of imported goods
2. Second method: Transaction value of identical goods
3. Third method: Transaction value of similar goods
4. Fourth method: Deductive value
5. Fifth method: Computed value
6. Sixth method: "Fall-back"

Article 4.- Order of application of the methods

In accordance with the General Note in Annex I to the WTO Customs Valuation Agreement, the methods indicated in the preceding Article shall be applied in the order indicated therein.

The transaction value of imported goods shall be the first basis used to determine their customs value and shall always be followed provided that the relevant requirements are met.

The order of application of the methods indicated in numbers 4 and 5 of the preceding Article may be reversed, if requested by the importer and with the consent of the Customs Administration.

Article 5.- Application of Article 5.2 of the WTO Customs Valuation Agreement

If the imported goods or identical or similar imported goods are not sold in the country of importation in the condition as imported, the method indicated in number 4 of Article 3 of this Decision shall be followed in accordance with Article 5.2 of the WTO Customs Valuation Agreement, whether or not requested by the importer, taking into account the Interpretative Note to Article 5 of the aforementioned Agreement.

Chapter III Delivery costs

Article 6.- Elements to be included in the customs value

All the elements indicated in Article 8.2 of the WTO Customs Valuation Agreement concerning the cost of transport of the imported goods and the related cost of transporting the

said goods to the port or place of importation, loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation, and the cost of insurance, shall form part of the customs value.

The cost of unloading and handling at the place of importation into Andean Community Customs Territory shall not form part of the customs value provided that it is distinguished from the overall transport costs.

If any of the aforesaid elements results free of charge for the buyer or importer, is provided using their own means or services, is not eligible or has not been duly substantiated by documents, the cost of delivery to the place of importation shall be included in the customs value, calculated according to the procedures, rates or payments customarily applicable to the same type of costs. If no information on such rates or payments is available, the transaction value shall not be used and the goods shall be valued using the subsequent methods indicated in Article 3 of this Decision.

Article 7.- Place of importation

For the purpose of applying the adjustments for delivery costs mentioned in the preceding Article, irrespective of the customs regime applicable to the goods, the place of importation is the place of entry into Andean Community Customs Territory, namely, the place at which the goods are for the first time subject to customs formalities, meaning the receipt and inspection of the transport documents at the time of arrival.

Chapter IV Declaration of the customs value

Article 8.- Andean Customs Value Declaration and its content

The Andean Customs Value Declaration is a supporting document for the customs declaration of imported goods. It shall contain information relating to the elements of fact and circumstances concerning the commercial transaction in imported goods that have determined the customs value declared.

Article 9.- Imposition of the Andean Customs Value Declaration

The Customs Administrations of Andean Community member countries shall require the importer to produce the "Andean Customs Value Declaration (DAV)" in order to determine the customs value of the imported goods. The utilization and the format of the DAV shall be governed by a Resolution by the General Secretariat.

Article 10.- Simplified declaration

The Customs Administrations of Andean Community member countries may authorize use of a simplified form for the declaration of value if the circumstances of the import transaction so warrant or if so provided for the customs declaration of the imported goods. The criteria and the procedure shall be set out in the Resolution of the General Secretariat of the Andean Community, which adopts the "Andean Customs Value Declaration", and in the provisions adopted for the customs declaration of imported goods.

Article 11.- Completion, signature and submission

The Andean Customs Value Declaration shall be completed and signed by the importer or buyer of the goods; and if the domestic legislation of the member country so provides, by their legal representative or the person authorized to do so on their behalf.

The Andean Customs Value Declaration shall be submitted to the customs authority, together with the customs declaration of the imported goods, by the importer or by the person authorized to act on his/her behalf, as provided in domestic customs legislation.

Article 12.- Electronic declaration

The Andean Customs Value Declaration may be submitted to the competent customs authority using an electronic data transmission system, in accordance with the provisions in domestic legislation. In such cases, all the information indicated in Article 8 of this Decision shall be forwarded.

Electronic transmission of the Andean Customs Value Declaration shall take place simultaneously with the customs declaration of the imported goods, by the importer or by the person authorized to act on his/her behalf, as provided in domestic customs legislation.

The digital signature on the electronic declaration shall also be certified, as provided in domestic customs legislation.

Article 13.- Responsibilities

Pursuant to Article 11 of this Decision, any person completing and signing the Andean Customs Value Declaration shall be responsible for:

(a) The truth, accuracy and completeness of the particulars given in the declaration of value;
(b) the authenticity of the documents submitted in support of these particulars; and
(c) the supply and submission of any additional information or document necessary to establish the customs value of the goods.

Violation of the provisions in this Article shall be considered an administrative offence without prejudice to the relevant Community and domestic provisions on customs control and fraud.

Chapter V

Customs Controls

Article 14.- Powers of the Customs Administrations of Andean Community member countries

Pursuant to Article 17 of the WTO Customs Valuation Agreement, in conjunction with the provisions in paragraph 6 of Annex III thereto, Customs Administrations of Andean Community member countries have the right to carry out the necessary controls and enquiries in order to ensure that the customs value declared as the taxable base is correct and has been determined in accordance with the criteria and requirements in the WTO Customs Valuation Agreement.

Article 15.- Control of the customs value

Taking into account the preceding Article, Customs Administrations shall bear general responsibility for valuation, which incudes, in addition to prior controls and those in the course of clearance, post-importation checks, controls, studies and enquiries in order to ensure the correct valuation of the goods imported.

Article 16.- Obligation to provide information

Any person directly or indirectly concerned by import transactions for the goods in question or subsequent transactions concerning the same goods, as well as any person who has carried out any act at the Customs in relation to the customs declaration of the goods and the declaration of value, who is requested by the customs authority to provide information or proof for the purposes of customs valuation, shall provide these in a timely manner in the form and according to the terms laid down in domestic legislation.

Article 17.- Doubts concerning the truth or accuracy of the value declared

When a declaration has been submitted and the Customs Administration has reason to doubt the truth or accuracy of the value declared or the data or documents submitted in support of the declaration, the Customs Administration shall request the importers to provide written explanations, additional documents or proof to show that the value declared represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions in Article 8 of the WTO Customs Valuation Agreement.

The customs value of the imported goods shall not be determined by applying the transaction value method if the importer fails to respond to these requests or if the proof provided is inadequate or insufficient to prove the truth or accuracy of the value in the aforementioned way.

Article 18.- Burden of proof

In determining the customs value, as well as in checks and enquiries by the Customs Administrations of Andean Community member countries concerning valuation, the burden of proof shall, in principle, lie with the importer or buyer of the goods.

If the importer and buyer are not the same person, the burden of proof shall lie with both the importer and the buyer of the imported goods; if the importer or buyer is a legal person, with its legal representative and the person authorized to act on its behalf.

Article 19.- Violations and penalties

Customs violations with regard to customs valuation and the penalties applicable shall be defined and applied in accordance with the provisions in the domestic customs legislation of the Andean Community member country in which the offence is committed.

Article 20.- Administrative structures

The national valuation services of the Customs of Andean Community member countries shall be given appropriate administrative structures with the powers and functions to enable them to fulfil their investigation responsibilities.

Chapter VI

General Provisions

Article 21.- Currency

The customs value of imported goods shall be determined in the currency established by the member country. Where necessary, foreign currency shall be converted at the exchange rate prevailing on the date of acceptance of the customs declaration of the imported goods duly published by the competent authorities.

When the exchange of information among member countries and between them and the General Secretariat of the Andean Community has to be in United States dollars, conversion shall be governed by the provisions in this Article.

Article 22.- Implementing instruments

When interpreting and implementing the value rules in the WTO Customs Valuation Agreement, as set out in this Decision and its implementing regulations, the Decisions of the Committee on Customs Valuation of the World Trade Organization, together with the Advisory Opinions, Commentaries, Explanatory Notes, Case Studies and Studies by the Technical Committee on Customs Valuation of the World Customs Organization, shall be taken into account.

Article 23.- Dumping and subsidies

The provisions in the WTO Customs Valuation Agreement's rules, and those contained in this Decision and its implementing regulations, shall not apply to combating dumping or remedying subsidization. The prevention or correction of distortions caused by their existence shall be resolved in accordance with the relevant Andean Community regulations and the WTO Agreements.

Article 24.- Preshipment inspection companies

Preshipment inspection companies shall comply with the provisions in the World Trade Organization's Agreement on Preshipment Inspection. Accordingly, when Andean Community member countries utilize the services of such companies for goods to be valued, it shall be understood that their activities shall be limited to verifying the original price of the goods imported and not to determining their customs value.

In accordance with the foregoing, the certifications issued by such companies shall not be binding for determination of the customs value and the price verified may be considered a risk indicator.

Article 25.- Data banks

Andean Community member countries shall create data banks for the purpose of customs valuation to facilitate the proper application of the provisions of the WTO Customs Valuation Agreement.

Utilization of data banks shall not lead to automatic rejection of the transaction value of the goods imported. It shall enable the values declared to be verified and risk indicators to be created in order to generate and substantiate the doubts referred to in Article 17 of this Decision for the control and development of programmes on studies and investigations on value.

Likewise, the information in data banks may be used for application of the valuation methods indicated in Articles 2, 3 and 7 of the Agreement, provided that the requirements for each method are met.

Article 26.- Mutual assistance and cooperation

Member countries' customs authorities shall provide mutual assistance and cooperation in accordance with the relevant Community regulations.

The assistance and cooperation envisaged shall lead to broader exchange of information, including that contained in the data banks created pursuant to the preceding Article, on a regular and updated basis, as well as the exchange of any type of data or documents required in order to conduct studies or investigations on value.

In accordance with the Ministerial Declaration and with paragraph 8.3 of the Ministerial Decision on implementation-related issues and concerns, both adopted during the IVth Ministerial Conference of the WTO, held in Doha in November 2001, when the customs administration of an importing member country has reasonable grounds to doubt the truth or accuracy of the declared value, it may seek assistance from the customs administration of an exporting member country on the value of the goods concerned In such cases, the exporting member country shall offer cooperation and assistance consistent with this Decision and with its domestic laws and procedures, including furnishing information on the export value of the goods concerned, bearing in mind the provisions in Article 10 of the WTO Customs Valuation Agreement.

Article 27.- Risk management and combating fraud

Customs administrations shall inform each other of cases detected concerning suppliers, importers or any person directly or indirectly related to international trade transactions or subsequent transactions concerning goods that have been the subject of proven fraudulent practices. For this purpose, the provisions adopted in decisions on combating fraud and on customs controls shall apply.

Chapter VII

Final Provisions

First.- An Ad hoc group of government experts on customs valuation is hereby created within the Andean Committee on Customs Matters. It shall be composed of one regular member and one or more alternates from each member country and shall study technical issues raised by member countries, propose solutions to questions, problems or disputes arising with regard to the application of the valuation rules, recommend procedures for any special customs valuation cases and propose the updating of this Decision and of the Resolutions adopting its implementing regulations and the Andean Customs Value Declaration.

Second.- This Decision, together with the Resolutions adopting the Community regulations and the Andean Customs Value Declaration, shall be updated in the light of changes and priorities required for application of the rules contained in these provisions.

Third.- Decisions Nos. 378 and 521 are hereby repealed. Decision No. 379 will be repealed as soon as the General Secretariat's Resolution on the Andean Customs Value Declaration comes into effect.

Fourth.- This Decision shall come into force for member countries on the first day of January in the year 2004.

Chapter VIII

Transitional Provisions

First.- Within a period not exceeding six calendar months from the date of entry into force of this Decision and subject to the opinion of the Committee on Customs Matters, the General Secretariat of the Andean Community shall adopt the Community's implementing regulations for this Decision and the Andean Customs Value Declaration by means of Resolutions.

Second.- Member countries which have already implemented national formats for the Declaration of Value and informatics applications for the said formats, both in the customs system and for foreign trade operators, may defer full application of the provisions of Chapter IV of this Decision until 31 December 2005.

Third.- Inasmuch as the Andean Community is constituted as a Community customs territory, references in this Decision and in the Resolutions adopting the Community's implementing regulations on customs valuation of goods and the Andean Customs Value Declaration to the "Andean Community Customs Territory" shall be considered to mean the "Customs Territory of the importing member country".

Done in the city of Lima, Peru, on the twelfth day of December in the year two thousand and three.

ANNEX

AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

GENERAL INTRODUCTORY COMMENTARY

1. The primary basis for customs value under this Agreement is "transaction value" as defined in Article 1. Article 1 is to be read together with Article 8 which provides, *inter alia*, 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. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Articles 2 through 7 provide methods of determining the customs value whenever it cannot be determined under the provisions of Article 1.

2. Where the customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the customs administration and importer with a view to arriving at a basis of value under the provisions of Article 2 or 3. It may occur, for example, that the importer has information about the customs value of identical or similar imported goods which is not immediately available to the customs administration in the port of importation. On the other hand, the customs administration may have information about the customs value of identical or similar imported goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes.

3. Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under paragraph 1 of Article 5 the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if the importer so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.

4. Article 7 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Articles.

Members,

Having regard to the Multilateral Trade Negotiations;

Desiring to further the objectives of GATT 1994 and to secure additional benefits for the international trade of developing countries;

Recognizing the importance of the provisions of Article VII of GATT 1994 and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Recognizing the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;

Recognizing that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

Recognizing that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

Recognizing that valuation procedures should not be used to combat dumping;

Hereby *agree* as follows:

PART I

RULES ON CUSTOMS VALUATION

Article 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, provided:

(a) that there are no restrictions as to 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 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;

(b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
(c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8; and
(d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2.

2.(a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 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 respond. If the importer so requests, the communication of the grounds shall be in writing.

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

  (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
  (ii) the customs value of identical or similar goods as determined under the provisions of Article 5;
  (iii) the customs value of identical or similar goods as determined under the provisions of Article 6;

  In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred 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 paragraph 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 paragraph 2(b).

Article 2

1.(a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in paragraph 2 of Article 8 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.

3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3

1.(a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in paragraph 2 of Article 8 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.

3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3, the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

1.(a) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or

about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

(i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;
(ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;
(iii) where appropriate, the costs and charges referred to in paragraph 2 of Article 8; and
(iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1(a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(a).

Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
(b) 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;
(c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Member under paragraph 2 of Article 8.

2. 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 Article 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.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 through 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of GATT 1994 and on the basis of data available in the country of importation.

2. No customs value shall be determined under the provisions of this Article on the basis of:

(a) the selling price in the country of importation of goods produced in such country;
(b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
(c) the price of goods on the domestic market of the country of exportation;

(d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;
(e) the price of the goods for export to a country other than the country of importation;
(f) minimum customs values; or
(g) 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 Article and the method used to determine such value.

Article 8

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

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
  (i) commissions and brokerage, except buying commissions;
  (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
  (iii) the cost of packing whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
  (i) materials, components, parts and similar items incorporated in the imported goods;
  (ii) tools, dies, moulds and similar items used in the production of the imported goods;
  (iii) materials consumed in the production of the imported goods;
  (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

2. In framing its legislation, each Member shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

(a) the cost of transport of the imported goods to the port or place of importation;
(b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
(c) the cost of insurance.

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

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 the country of importation 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 the country of importation.

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.

Article 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 11

1. The legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.

Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of GATT 1994 by the country of importation concerned.

Article 13

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.

Article 14

The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.

Article 15

1. In this Agreement:

(a) "customs value of imported goods" means the value of goods for the purposes of levying *ad valorem* duties of customs on imported goods;
(b) "country of importation" means country or customs territory of importation; and
(c) "produced" includes grown, manufactured and mined.

2. In this Agreement:

(a) "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;

(b) "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;
(c) the terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 1(b)(iv) of Article 8 because such elements were undertaken in the country of importation;
(d) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;
(e) goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

3. In this Agreement "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.

4. For the purposes of this Agreement, persons shall be deemed to be related only if:

(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 owns, controls or holds 5% 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.

5. 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 this Agreement if they fall within the criteria of paragraph 4.

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of the importer's goods was determined.

Article 17

Nothing in this Agreement 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 II

ADMINISTRATION, CONSULTATIONS AND DISPUTE SETTLEMENT[1]

Article 18

Institutions

1. There is hereby established a Committee on Customs Valuation (referred to in this Agreement as "the Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall normally meet once a year, or as is

[1] In the GATT, the word "*diferencias*" in Spanish has the same meaning attributed to "*controversias*" in other organizations (this note only concerns the Spanish text).

otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Members the opportunity to consult on matters relating to the administration of the customs valuation system by any Member as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Members. The WTO Secretariat shall act as the secretariat to the Committee.

2. There shall be established a Technical Committee on Customs Valuation (referred to in this Agreement as "the Technical Committee") under the auspices of the Customs Co-operation Council (referred to in this Agreement as "the CCC"), which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Article 19

Consultations and Dispute Settlement

1. Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.

2. If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Member or of other Members, it may, with a view to reaching a mutually satisfactory solution of this matter, request consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultations.

3. The Technical Committee shall provide, upon request, advice and assistance to Members engaged in consultations.

4. At the request of a party to the dispute, or on its own initiative, a panel established to examine a dispute relating to the provisions of this Agreement may request the Technical Committee to carry out an examination of any questions requiring technical consideration. The panel shall determine the terms of reference of the Technical Committee for the particular dispute and set a time period for receipt of the report of the Technical Committee. The panel shall take into consideration the report of the Technical Committee. In the event that the Technical Committee is unable to reach consensus on a matter referred to it pursuant to this paragraph, the panel should afford the parties to the dispute an opportunity to present their views on the matter to the panel.

5. Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of this information, authorized by the person, body or authority providing the information, shall be provided.

PART III

SPECIAL AND DIFFERENTIAL TREATMENT

Article 20

1. Developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement for such Members. Developing country Members who choose to delay application of this Agreement shall notify the Director-General of the WTO accordingly.

2. In addition to paragraph 1, developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of paragraph 2(b)(iii) of Article 1 and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement.

Developing country Members that choose to delay application of the provisions specified in this paragraph shall notify the Director-General of the WTO accordingly.

3. Developed country Members shall furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis developed country Members shall draw up programmes of technical assistance which may include, *inter alia,* training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.

PART IV

FINAL PROVISIONS

Article 21

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 22

National Legislation

1. Each Member shall ensure, not later than the date of application of the provisions of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

2. Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Article 23

Review

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews.

Article 24

Secretariat

This Agreement shall be serviced by the WTO Secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the CCC Secretariat.

ANNEX I

INTERPRETATIVE NOTES

General Note

Sequential Application of Valuation Methods

1. Articles 1 through 7 define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Article 1, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 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 in the sequence can be used.

3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Articles 1 through 6 it is to be determined under the provisions of Article 7.

Use of Generally Accepted Accounting Principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Agreement, the customs administration of each Member shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in paragraph 1(b)(ii) of Article 8 undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 1

Price actually paid or payable

1. 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. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

2. Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

3. 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:

(a) charges for construction, erection, assembly, maintenance[2] or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

[2] By means of an Act published by the Director-General of the WTO in document WT/Let/147, the word "*entretenimiento*" in Spanish was officially corrected and the correction "*mantenimiento*" was included in the authenticated text of the Agreement.

(b) the cost of transport after importation;
(c) duties and taxes of the country of importation.

4. The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1(a)(iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1(b)

1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this 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, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. 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.

Paragraph 2

1. Paragraphs 2(a) and 2(b) provide different means of establishing the acceptability of a transaction value.

2. Paragraph 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 Article 15, 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. Paragraph 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 Article 1. Where a test under paragraph 2(b) is met, it is not necessary to examine the question of influence under paragraph 2(a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2(b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Paragraph 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 commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in paragraph 2(b) of Article 1.

Note to Article 2

1. In applying Article 2, the customs administration 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:

(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 purposes of Article 2, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2, which has already been accepted under Article 1.

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 reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. 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 Article 2 is not appropriate.

Note to Article 3

1. In applying Article 3, the customs administration shall, wherever possible, use a sale of similar 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 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 Article 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2, which has already been accepted under Article 1.

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 reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar 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 Article 3 is not appropriate.

Note to Article 5

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, 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 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 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.

4. A third example would be the following 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.

5. Any sale in the importing country, 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 paragraph 1(b) of Article 8, should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that "profit and general expenses" referred to in paragraph 1 of Article 5 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 paragraph 1(a)(iv) of Article 5 shall be deducted under the provisions of paragraph 1(a)(i) of Article 5.

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 1 of Article 5, 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 Article 5, "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 paragraph 1(b) of Article 5, 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 in paragraph 2 of Article 5 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.

12. It is recognized that the method of valuation provided for in paragraph 2 of Article 5 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 Article 6

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 paragraph 1(a) of Article 6 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 paragraphs 1(a)(ii) and (iii) of Article 8. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in paragraph 1(b) of Article 8 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 paragraph 1(b)(iv) of Article 8 which are undertaken in the country of importation 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 paragraph 1(b) of Article 6 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent 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 the country of importation.

5. It should be noted in this context that 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 the producer's general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. 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 the country of importation and accept a low profit to maintain competitivity. 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 the country of importation, 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.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall 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.

7. The "general expenses" referred to in paragraph 1(b) of Article 6 cover the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1(a) of Article 6.

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 6, 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 Article 6, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Article 7

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 7 should be those laid down in Articles 1 through 6 but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7.

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 Articles 5 and 6 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 Articles 5 and 6 could be used.
(c) *Deductive method* - the requirement that the goods shall have been sold in the "condition as imported" in paragraph 1(a) of Article 5 could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

Note to Article 8

Paragraph 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.

Paragraph 1(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in paragraph 1(b)(ii) of Article 8 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 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 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 entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with the producer to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Paragraph 1(b)(iv)

1. Additions for the elements specified in paragraph 1(b)(iv) of Article 8 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

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.

Paragraph 1(c)

1. The royalties and licence fees referred to in paragraph 1(c) of Article 8 may include, among other things, payments in respect to patents, trademarks 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.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country 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 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 the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Article 9

For the purposes of Article 9, "time of importation" may include the time of entry for customs purposes.

Note to Article 11

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because the importer chose to exercise the right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

3. However, nothing in Article 11 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal.

Note to Article 15

Paragraph 4

For the purposes of Article 15, the term "persons" includes a legal person, where appropriate.

Paragraph 4(e)

For the purposes of this Agreement, 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.

ANNEX II

TECHNICAL COMMITTEE ON CUSTOMS VALUATION

1. In accordance with Article 18 of this Agreement, the Technical Committee shall be established under the auspices of the CCC with a view to ensuring, at the technical level, uniformity in interpretation and application of this Agreement.

2. The responsibilities of the Technical Committee shall include the following:

(a) To examine specific technical problems arising in the day-to-day administration of the customs valuation system of Members and to give advisory opinions on appropriate solutions based upon the facts presented;
(b) to study, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;
(c) to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;
(d) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Member or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;
(e) to facilitate, as requested, technical assistance to Members with a view to furthering the international acceptance of this Agreement;
(f) to carry out an examination of a matter referred to it by a panel under Article 19 of this Agreement; and
(g) to exercise such other responsibilities as the Committee may assign to it.

General

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Members, the Committee or a panel, in a reasonably short period of time. As provided in paragraph 4 of Article 19, a panel shall set a specific time period for receipt of a report of the Technical Committee and the Technical Committee shall provide its report within that period.

4. The Technical Committee shall be assisted as appropriate in its activities by the CCC Secretariat.

Representation

5. Each Member shall have the right to be represented on the Technical Committee. Each Member may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Member so represented on the Technical Committee is referred to in this Annex as a "member of the Technical Committee". Representatives of members of the Technical Committee may be assisted by advisers. The WTO Secretariat may also attend such meetings with observer status.

6. Members of the CCC which are not Members of the WTO may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

7. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the CCC (referred to in this Annex as "the Secretary-General") may invite representatives of governments which are neither Members of the WTO nor members of the CCC and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

8. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Technical Committee Meetings

9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the meeting may be varied either at the request of any member of the Technical Committee concurred in by a simple majority of the members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman. Notwithstanding the provisions in sentence 1 of this paragraph, the Technical Committee shall meet as necessary to consider matters referred to it by a panel under the provisions of Article 19 of this Agreement.

10. The meetings of the Technical Committee shall be held at the headquarters of the CCC unless otherwise decided.

11. The Secretary-General shall inform all members of the Technical Committee and those included under paragraphs 6 and 7 at least 30 days in advance, except in urgent cases, of the opening date of each session of the Technical Committee.

Agenda

12. A provisional agenda for each session shall be drawn up by the Secretary-General and circulated to the members of the Technical Committee and to those included under paragraphs 6 and 7 at least 30 days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Technical Committee during its preceding session, all items included by the Chairman on the Chairman's own initiative, and all items whose inclusion has been requested by the Secretary-General, by the Committee or by any member of the Technical Committee.

13. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Technical Committee.

Officers and Conduct of Business

14. The Technical Committee shall elect from among the delegates of its members a Chairman and one or more Vice-Chairmen. The Chairman and Vice-Chairmen shall each hold office for a period of one year. The retiring Chairman and Vice-Chairmen are eligible for re-election. The mandate of a Chairman or Vice-Chairman who no longer represents a member of the Technical Committee shall terminate automatically.

15. If the Chairman is absent from any meeting or part thereof, a Vice-Chairman shall preside. In that event, the latter shall have the same powers and duties as the Chairman.

16. The Chairman of the meeting shall participate in the proceedings of the Technical Committee as such and not as the representative of a member of the Technical Committee.

17. In addition to exercising the other powers conferred upon the Chairman by these rules, the Chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The Chairman may also call a speaker to order if the speaker's remarks are not relevant.

18. During discussion of any matter a delegation may raise a point of order. In this event, the Chairman shall immediately state a ruling. If this ruling is challenged, the Chairman shall submit it to the meeting for decision and it shall stand unless overruled.

19. The Secretary-General, or officers of the CCC Secretariat designated by the Secretary-General, shall perform the secretarial work of meetings of the Technical Committee.

Quorum and Voting

20. Representatives of a simple majority of the members of the Technical Committee shall constitute a quorum.

21. Each member of the Technical Committee shall have one vote. A decision of the Technical Committee shall be taken by a majority comprising at least two thirds of the members present. Regardless of the outcome of the vote on a particular matter, the Technical Committee shall be free to make a full report to the Committee and to the CCC on that matter indicating the different views expressed in the relevant discussions. Notwithstanding the above provisions of this paragraph, on matters referred to it by a panel, the Technical Committee shall take decisions by consensus. Where no agreement is reached in the Technical Committee on the question referred to it by a panel, the Technical Committee shall provide a report detailing the facts of the matter and indicating the views of the members.

Languages and Records

22. The official languages of the Technical Committee shall be English, French and Spanish. Speeches or statements made in any of these three languages shall be immediately translated into the other official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in that event the delegation concerned shall provide the translation into English, French or Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.

23. The Technical Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or a designee of the Chairman shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the CCC.

ANNEX III

1. The five-year delay in the application of the provisions of the Agreement by developing country Members provided for in paragraph 1 of Article 20 may, in practice, be insufficient for certain developing country Members. In such cases a developing country Member may request before the end of the period referred to in paragraph 1 of Article 20 an extension of such period, it being understood that the Members will give sympathetic consideration to such a request in cases where the developing country Member in question can show good cause.

2. Developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Members.

3. Developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make a reservation to Article 4 in the following terms:

> "The Government of … reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6.".

If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

4. Developing countries may wish to make a reservation with respect to paragraph 2 of Article 5 of the Agreement in the following terms:

> "The Government of … reserves the right to provide that paragraph 2 of Article 5 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests.".

If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

5. Certain developing countries may have problems in the implementation of Article 1 of the Agreement insofar as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. If such problems arise in practice in developing country Members applying the Agreement, a study of this question shall be made, at the request of such Members, with a view to finding appropriate solutions.

6. Article 17 recognizes that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. The Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. Members, subject to their national laws and procedures, have the right to expect the full cooperation of importers in these enquiries.

7. The price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

ANNEX 2

RESOLUTION No. 846

Community Regulations implementing Decision No. 571 - Customs Valuation of Imported Goods

THE GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY,

CONSIDERING: The Treaty Establishing the Court of Justice of the Andean Community, Articles 3 and 58 of the Cartagena Agreement, Decision No. 571 of the Committee on Customs Valuation of Imported Goods and the Regulations on Administrative Procedures by the General Secretariat, contained in Decision No. 425 of the Andean Council of Foreign Ministers; and

WHEREAS: Pursuant to the First Transitional Provision of Decision No. 571, the General Secretariat shall adopt the Community regulations implementing the Decision's provisions, together with the Andean Customs Value Declaration;

The Commission of the Andean Community approved Decision No. 571 of 12 December 2003 by which the Agreement on Customs Valuation of the World Trade Organization (WTO) was adopted as the subregional regulations on the customs valuation of goods;

The existence of uniform regulations on the procedures for implementing Decision No. 571 must be ensured;

It is necessary to have a single Community procedure that treats all goods imported into Community Customs Territory without discrimination;

HEREBY DECIDES:

Single Article.-The Community regulations on implementation of the customs valuation of goods imported into Community Customs Territory are hereby adopted and are attached as an Annex to this Resolution, setting out the details and procedures for implementing Decision No. 571.

To be communicated to member countries and to enter into force upon publication in the Official Gazette of the Cartagena Agreement.

Done in the city of Lima, Peru, on the sixth day of August in the year two thousand and four.

ANTONIO ARANIBAR QUIROGA
Director-General in charge in the General Secretariat

ANNEX

COMMUNITY REGULATIONS IMPLEMENTING DECISION No. 571 - CUSTOMS VALUATION OF IMPORTED GOODS

TITLE I

GENERAL PROVISIONS

Article 1. Customs valuation of imported goods

1. The customs value of imported goods is the taxable base for payment of *ad valorem* customs duties and shall be determined in accordance with the methods and procedures in the WTO Customs Valuation Agreement, in conjunction with the provisions in Decision No. 571 and in these Regulations.

2. The customs value may be taken into account for the purpose of determining the taxable base for other import duties and taxes defined in the Community regulations, in accordance with the provisions in these regulations and in relevant domestic legislation.

Article 2. Definitions

For the purposes of applying the provisions contained in the WTO Customs Valuation Agreement, in Decision No. 571 and in these regulations, the following definitions are adopted to complement those already contained in the said Agreement.

(a) WTO Customs Valuation Agreement: the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 of the World Trade Organization;
(b) objective and quantifiable data: data that can be proved by physical elements such as written documents or magnetic media, and can be the subject of mathematical calculations and/or verification;
(c) goods: any good that can be transported, classified in the NANDINA nomenclature and be subject to customs control;
(d) goods of the same class or kind: the term "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, but is not limited to, identical or similar goods;
(e) about the same time: the period as close as possible to the time or date of importation, exportation or sale, during which commercial practices and market conditions affecting the price remain the same;
(f) commercial level: the rank or position occupied by the buyer in the scale of marketing and whose commercial conditions are of genuine benefit to the buyer as an industrial user, wholesaler, retailer, dealer, end user or otherwise;
(g) reference prices: international prices identical or analogous to the goods being valued, taken from specialized international sources such as books, reviews, catalogues, price lists, estimates, prior import prices for the goods to be inspected by the Customs and those taken from the customs data banks, including prices for goods obtained by studying values;
(h) benefits: goods and services supplied, directly or indirectly, by the buyer to the producer, free of charge or at reduced cost, to be used for production and sale of the goods for export to Community Customs Territory;
(i) Community customs territory: the territory that includes the national customs territories of the five countries belonging to the Andean Community, within which the rules on customs valuation have effect and are fully applied;
(j) test values: the customs values indicated in Article 1.2(b) of the WTO Customs Valuation Agreement, accepted in advance by the customs authority and used for the purposes of comparison, without ever replacing the value declared;
(k) sale: commercial transaction by which the ownership of a good is transferred in exchange for payment of a price, which may be in different forms, a sum of money, a letters of credit, a negotiable instrument or any other compatible security and, in general, any form of consideration implying the existence of the price paid;
(l) tie-in sales: sales in which a condition or consideration concerning the price, the sale of the goods or both has been agreed;

(m) successive sales: series of sales of the good prior to its import.

TITLE II. DETERMINATION OF THE CUSTOMS VALUE General Provision

Article 3. Methods for determining the customs value

The methods for determining the customs value or taxable base for the payment of customs duty or the customs value to be taken into account as the taxable base for other import duties, taxes or charges are those indicated in Article 3 of Decision No. 571.

Chapter I First Method: Transaction value of the imported goods

Article 4. General aspects of the transaction value

1. For the valuation of imported goods using the first or principal method called the transaction value, the provisions of Articles 1 and 8 of the WTO Customs Valuation Agreement and the relevant Interpretative Notes shall be taken into account, together with the general guidelines in Decision No. 571 and the provisions in these regulations.

2. The transaction value is defined as the price actually paid or payable for the goods when sold for export to the Community Customs Territory, adjusted in accordance with the additions provided in Article 18 and the deductions indicated in Article 31 of these regulations, provided that the requirements set out in the following Article are met.

3. The customs value using the transaction value method shall be calculated on Part II of the Andean Customs Value Declaration form in accordance with the provisions in Article 8 of Decision No. 571 and the Resolution adopting the format for the aforesaid Declaration.

Section I Aspects essential for application

Article 5. Requirements for applying the transaction value method

In order to permit the transaction value method to be applied and accepted by the Customs Administration, the requirements set out in this Article shall be met, as indicated below:

(a) The goods to be valued have been the subject of an actual international transaction involving a sale for export to Community Customs Territory;
(b) an actual price has been agreed implying the existence of a payment, irrespective of the date on which the transaction occurred and any subsequent change in prices;
(c) in the foregoing terms, the price actually paid or payable, directly or indirectly, to the seller of the imported good can be substantiated in the form indicated in Article 8 of these regulations;
(d) all the conditions required pursuant to subparagraphs (a), (b), (c) and (d) of paragraph 1 of Article 1 of the WTO Customs Valuation Agreement have been met;
(e) if appropriate, the price actually paid or payable for the imported goods may be adjusted in accordance with objective and quantifiable data, as provided in Article 18 of these regulations; and
(f) the imported goods correspond to the terms of the contract, taking into account the indications in Article 16 of these regulations.

Article 6. Sale

1. The transaction value method may only be applied if importation is obligatorily the result of a sale, as defined in Article 2(k) of these regulations. If there is no such sale, the subsequent methods indicated in subparagraphs 2 to 6 of Article 3 of Decision No. 571 shall be used, in sequence and in the order laid down in Article 4 of the aforesaid Decision.

2. Non-exhaustive instances of cases in which there is no sale include the following:

(a) Free gifts, such as presents, donations, samples, promotional items;
(b) goods imported on consignment;

(c) goods imported by intermediaries that have not bought them but sell them after they have been imported;
(d) goods imported where the importer and supplier are the same person;
(e) goods imported by subsidiaries that are not legal persons;
(f) goods imported in execution of a hire or leasing contract;
(g) goods supplied on loan that remain the property of the consignor;
(h) goods (residues) imported for destruction in the country of importation; and
(i) straightforward bartering, when the transaction is not expressed in monetary terms and there are no objective and quantifiable data for determining the elements constituting a sale.

3. In the case of barter or offsetting transactions, considered to be an exchange of goods or services of more or less the same value without any exchange of money or those which are partly expressed in monetary terms, it shall be determined whether or not a sale has occurred.

Offsetting transactions or barter operations expressed in monetary terms may be deemed sales provided that a price has actually been paid or is payable determined on the basis of a form of payment related to the imported goods.

In such cases, account shall be taken of whether this type of transaction entails a condition whose value may be determined in accordance with Article 1(b) of the WTO Customs Valuation Agreement.

Article 7. Sale for export

1. The sale shall be for export to Community Customs Territory where the goods are to be imported, and this shall be proven to the satisfaction of the customs authorities.

2. If the goods have been sold for the sole purpose of introducing them into the Customs Territory, this shall be taken into account as a sufficient indication that they have been sold for export to this Territory.

3. The actual international transfer of ownership of goods introduced into Community Customs Territory shall also be considered an indication that the sale has been for export to the aforesaid Territory.

4. The fact that the goods have been sold at prices that are not domestic prices in the country of export for the sole purpose of introducing them into Community Customs Territory shall be regarded as an additional indication that they have been sold for export to the aforesaid Territory.

5. In the case of successive sales before importation, the indication appearing in the preceding paragraphs shall only be used with regard to the last sale which led to the introduction of the goods into Community Customs Territory or a sale taking place in the aforesaid Territory before acceptance of the customs declaration for the goods submitted for the purpose of their importation.

Article 8. Price actually paid or payable

1. Pursuant to Article 4.2 above, the fundamental basis on which the method involving the transaction value of the imported goods rests is the price actually paid or payable for the goods as incidental to their sale.

2. The price actually paid or payable is the price of the imported goods and represents the total payment for these goods actually made or to be made by the buyer to the seller, directly and/or indirectly for the benefit of the said seller.

3. Direct payments shall be reflected in commercial invoices or contracts relating to the goods imported.

4. Indirect payments are those made to a third party for the benefit of the seller or to meet a commitment by the seller as a condition imposed for the transaction and are decisive in

determining the total price agreed for the goods. The common trait is that such payments are separate from the direct payment made for the goods imported.

Such payments shall be declared to the customs authorities and duly substantiated in writing by the importer.

5. Where advance payments are made or when there are prior payments or payments covered by two or more commercial invoices or contracts incidental to the buying or selling of the good to be valued, all such payments shall form part of the price actually paid or payable and shall be declared.

6. All payments made by the buyer for the sale of the imported goods shall be verified in order to establish whether any indirect payments to be used to determine the price actually paid or payable by the buyer to the seller for the goods have not been declared and accordingly to determine the correct customs value.

7. Any acts by the buyer on his/her own behalf and not imposed by the seller, other than those for which an adjustment is provided according to Article 18 of these regulations, shall not be considered indirect payment to the seller, even if they are for the seller's benefit, and therefore the costs incurred in carrying out such acts shall not form part of the customs value.

Such acts by the buyer may concern the marketing of the imported goods, including that under an agreement with the seller, buying commissions, tests or analyses, or the cost of obtaining a letter of credit.

8. Likewise, payments by the buyer to the seller unrelated to the imported goods, for example, dividends paid to the seller in his/her capacity as a shareholder, do not form part of the customs value of such goods.

9. Payment of the price of the imported goods need not necessarily take the form of money and may be made in other forms, for example, a letter of credit, a negotiable instrument or any other relevant security, as well as any form of consideration implying the existence of the price and the payment. Bills of exchange, transfer of shares or bonds or, in certain cases, of any negotiable document are also valid.

10. When transfer prices have been agreed between related parties, the importer shall prove to the satisfaction of the Customs Administration that such prices do not consist simply of accounting entries, that they correspond to the price actually paid or payable as indicated in this Article and that they comply with the other requirements in Article 5 of these regulations. If this is not the case, they shall be rejected for the purpose of utilizing the transaction value method.

Article 9. Price discounts or rebates

1. Discounts or rebates given by the seller of the imported good shall be taken into account when determining the customs value inasmuch as the actual and total payments by the buyer to the seller constitute the basis for the transaction value method. The price actually paid or payable obtained after applying such discounts or rebates shall be accepted provided that:

i. The discount is related to the goods to be valued;
ii. the discount is specified prior to shipment of the goods as part of the business transaction between the seller and the buyer;
iii. it is not a retroactive discount given for goods imported before the importation to which the rebate or discount applies, corresponding to transactions other than that relating to the goods to be valued.

The buyer is actually benefiting from the discount, in other words, the assumptions that gave rise to the discount apply.

iv. the discount is clearly distinguished from the price of the goods in the commercial invoice and/or sales contract and the form and amount of the rebate is specified;

v. all the goods that are the subject of the transaction have been sold for export to Community Customs Territory and bought by the same person.

If any of the aforementioned requirements is not met, the discounts given by the seller shall be dismissed by the customs authority for the purposes of determining the customs value of the imported goods. In such cases, the said discounts shall be considered to be part of the price paid or payable for the purpose of calculating the customs value.

2. Discounts for cash payment are acceptable, even if at the time of valuation total payment has not yet been made. As it is the price paid or payable, the amount to be paid by the importer for the goods shall be accepted as the basis for valuation.

3. For discounts for volume, the total volume agreed for shipment within a specified period shall be taken into account and this applies to partial deliveries.

4. Retroactive discounts shall not be accepted inasmuch as the amount of the discount represents a sum already paid to the seller and, consequently, is part of the price actually paid, in other words, it is part of the total payment for the imported goods made or to be made to the seller and consequently constitutes part of the customs value.

5. The transaction value may not be rejected simply because the declared value of the goods is lower than current market prices for identical or similar goods. A price lower than current market prices shall be accepted provided that the value declared corresponds to the price actually paid or payable, as indicated in the preceding Article.

6. The price resulting from "dumping", subsidization or export premiums may be accepted for the purposes of valuation if it is the price actually paid or payable by the buyer to the seller and the other requirements provided in Article 5 of these regulations are met. In order to combat such practices, the relevant rules in existence shall be followed, in accordance with Article 23 of Decision No. 571.

Article 10. Restrictions

1. Restrictions imposed on the buyer by the seller for the disposal or use of the goods after they have been imported and which significantly affect their price shall result in rejection of the transaction value. Such restrictions occur, for example, when the goods imported are to be used for a specific purpose, as prototypes, for charitable or educational purposes, or are imported for promotional purposes, and are sold at a reduced or symbolic price.

2. The transaction value shall not be rejected when the restrictions correspond to any of the provisions in Article 1.1(a) of the WTO Customs Valuation Agreement, namely:

i. restrictions imposed by national or community requirements or regulations under the law or by the authorities of Community Customs Territory;
ii. restrictions relating to the resale of the imported goods in certain territorial or geographical areas;
iii. restrictions that do not substantially affect the value of the imported goods and do not prevent acceptance of the transaction value.

Article 11. Conditions

1. For the purposes of customs valuation, conditions means those contractual requirements imposed by the seller concerning the price or sale of the imported goods. If the conditions cannot be quantified, in other words, it cannot be determined to what extent they are reflected in the price agreed, the transaction value shall be rejected; for this purpose, the examples cited in the Interpretative Note to Article 1, paragraph 1(b), of the WTO Customs Valuation Agreement shall be taken in account.

The value of the condition, where it is known and is related to the goods imported, forms part of the price actually paid or payable and does not lead to rejection of the transaction value.

2. According to the definition of related sales in Article 2.1 of these regulations, where the condition refers to the price, it shall be deemed that this does not constitute the sole consideration inasmuch as it depends on conditions relating to other transactions between the seller and buyer whose value cannot be determined in relation to the goods to be valued, therefore, the transaction value shall be rejected.

Where the condition refers to the sale, it is a question of offsetting transactions, in other words, sales to a particular country depend on sales from that country and the payment mechanism consists of an exchange of goods or even services. In such cases, it shall be ascertained whether the requirements for the transaction value method apply and the value of the condition shall be added, provided that it can be quantified.

3. Conditions or considerations relating to the production or marketing of imported goods shall not lead to rejection of the transaction value. Likewise, the value of marketing conditions shall not be included in the customs value, even if they have been agreed between the seller and the buyer.

Article 12. Accruals

1. Pursuant to Article 1.1(c) of the WTO Customs Valuation Agreement, for the purposes of applying the first method indicated in Article 3 of Decision No. 571, no part of the proceeds of resale or any subsequent disposal or use of the goods by the buyer shall accrue directly or indirectly to the seller, unless an appropriate corresponding adjustment can be made in accordance with Article 8 of the aforesaid Agreement.

The proceeds referred to in the preceding paragraph mean the profit or earnings resulting from the sale, disposal or use of a good after it has been imported.

2. The most typical cases consist of transactions with sharing of profits, in which the two parties to the sale agree to share a specified percentage of the profits earned from the sale of the goods in the Community Customs Territory into which they are imported.

Accrual to the seller of profits, earnings or benefits obtained from resale of the goods after they have been imported should not be confused with payment of dividends inasmuch as these are based on a company's overall profits.

Where there is accrual, an adjustment shall be made in accordance with the provisions in Article 18.1(d) of these regulations. If the adjustment cannot be made, the transaction value method may be applied.

Article 13. Relationship

1. The existence of a relationship between the buyer and seller, in accordance with the definition given in Article 15.4 of the WTO Customs Valuation Agreement, does not in itself constitute sufficient reason to consider the transaction value to be unacceptable. If the relationship has had no effect on the price agreed between the related parties, the transaction value method shall not be rejected.

2. For the purposes of the relationship indicated in Article 15.4(b) of the said Agreement concerning a business association, this shall only be considered to be a partnership if the national legal requirements for the creation of a partnership are satisfied. In this connection, Advisory Opinion 21.1 of the Committee on Customs Valuation defines a partner as "one who is associated with one or more persons in the same business and shares with them its profits and risks; a member of a partnership".

3. According to the Interpretative Note to Article 15.4(e) of the WTO Customs Valuation Agreement, 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, in other words, has decisive authority over the latter's decisions or management in any way.

4. To complement Article 15.4(h) of the WTO Customs Valuation Agreement regarding family relationships, the following shall be deemed to be members of the same family:

(a) Husband or wife;
(b) children;
(c) parents;
(d) brothers and sisters;
(e) grandchildren;
(f) grandparents;
(g) uncles or aunts, or nephews or nieces;
(h) fathers- or mothers-in-law or sons- or daughters-in-law.
(i) brothers- or sisters-in-law.

5. In the case of sole agents, sole distributors or sole concessionaires, in order to determine whether or not there is a relationship, each transaction shall be examined in accordance with the criteria laid down in Article 15.4 of the WTO Customs Valuation Agreement.

6. In the case of subsidiaries, if they are not recognized as independent legal persons, the existence of a relationship requiring the existence of at least two parties cannot be presumed; in such cases, it shall be considered that no sale has taken place.

Article 14. Influence of the relationship

1. Where the relationship between the buyer and the seller of the imported goods has influenced the price agreed between the parties, the declarant shall notify this in the Andean Customs Value Declaration; in such cases, the transaction value method may not be applied and the imported goods shall be valued utilizing in sequence the other methods indicated in Articles 3 and 4 of Decision No. 571.

2. Where no specific declaration has been made in this respect and the Customs Administration has justified grounds for considering that the relationship has influenced the price, it shall inform the importer in writing of the reasons for which the transaction value is deemed unacceptable, giving a reasonable period for reply, providing evidence to prove that the relationship has not influenced the price, if this is the case. In such cases, the provisions in Articles 16, 17 and 18 of Decision No. 571 shall be taken into account.

3. Proof that the relationship has not influenced the price shall consist of evidence to enable the application of one of the following two procedures:

(a) Examination of the circumstances of the sale, covering special terms for the transaction which governed the price and which apply equally to independent buyers in the absence of any relationship, for example, market prices obtained from other unrelated sellers, sales contracts, the seller's price lists, the amounts bought.

In considering the circumstances surrounding the transaction, the Customs Administration shall examine the following aspects:

i. The way in which the buyer and seller organize their commercial relations; and
ii. the way in which the price in question was arrived at.

Where it can be shown that the buyer and seller, although related, buy from and sell to each other as if they were unrelated, this would demonstrate that the price had not been influenced by the relationship.

There are three situations which the Customs Administration may consider to be proof:

i. the price had been adjusted in a manner consistent with the normal pricing practices of the industry in question;
ii. the price had been adjusted in a way consistent with the method by which the seller settles selling prices to buyers who are not related to him; or

iii. the price is adequate to recover all costs plus a profit indicative of the firm's overall profit over a representative period of time for the sale of goods of the same kind or class.

In any event and without being requested by the Customs Administration, the importer may request that a study of the circumstances of the sale be conducted with regard to its relations with its foreign suppliers, providing the necessary information for this purpose.

(b) Use of a test value as indicated in the following Article, in other words, a demonstration that the declared value of the goods complies with one of the customs values indicated as a test in Article 1.2(b) of the WTO Customs Valuation Agreement and is, therefore, acceptable for the purposes of the provisions in Article 1 of the said Agreement.

4. After the allotted time has expired and the importer has not responded or if the explanations provided were not sufficient to consider the transaction value to be acceptable, in application of Article 17 of Decision No. 571, the customs authority shall determine the customs value of the imported goods using the other methods, in accordance with the provisions in Chapter II of this Title.

5. In considering whether the relationship has influenced the price, demonstrated facts shall be taken into account, in particular, the guidelines in paragraph 2 of the Interpretative Note to Article 1 of the WTO Customs Valuation Agreement.

Article 15. Test values

1. With regard to the definition in Article 2(j) of these regulations, a value shall only be considered a test value if it has been accepted by the customs authority for identical or similar goods imported by other importers unrelated to the seller and provided that:

(a) The customs value of the identical or similar good used for the purposes of comparison has been determined by applying the transaction value method and is in effect at or about the same time as that of export of the good to be valued to Community Customs Territory;
(b) the customs value of the identical or similar good used for the purposes of comparison has been determined by applying the deductive method and is in effect at or about the same time as that of sale of the good to be valued to Community Customs Territory;
(c) the customs value of the identical or similar good used for the purposes of comparison has been determined by applying the computed value method and is in effect at or about the same time as that of import of the good to be valued.

For this purpose, the definition of "about the same time" in Article 2(e) of these Regulations shall be taken into account.

The value determined for the imported goods in accordance with Articles 2, 3 and 7 of the WTO Customs Valuation Agreement shall not be considered a test value.

2. Test values may only be used where importers are related to the seller, solely for the purposes of comparison in order to ensure acceptance of the transaction value, without prejudice to the other requirements laid down in Article 5 of these regulations for its application and provided that the value declared closely approximates to one of the values indicated in subparagraphs (a), (b) or (c) above.

3. The test values in Article 1 of the WTO Customs Valuation Agreement may never replace the declared value.

4. Where one of the test value applies, it is not necessary to examine the influence of the relationship on the price.

If the Customs Administration already has sufficient information to consider that one of the test values applies or if it finds that there is a previously accepted customs value in its records that may be used as a test value, but is unknown to the importer, this test value may be used to determine the acceptability of the price in question, without any such request from the importer.

In such cases, it is not necessary to require the importer to demonstrate that the test value applies.

5. Adjustments for differences in the commercial level, in quantity or in aspects covered in Article 18 of these regulations shall be taken into account when applying test values.

Article 16. Goods that do not comply with the terms of the contract

1. If imported goods are found not to comply with the terms of the contract or agreement at the time of valuation, for example, the goods have perished or been damaged, there are mistakes or items missing in deliveries, or the goods do not correspond to the samples supplied or the terms agreed, they may not be valued according to the principal method of the transaction value.

2. If the buyer accepted the goods in the condition as received, at the price originally agreed, the transaction value method may be used if the requirements laid down in Article 5 of these regulations are met. If this is not the case, the valuation shall be based on the provisions in the other methods, in particular, that resulting from application of the so-called "fall-back" method, as provided in Section V of Chapter II and Chapter III of this Title.

3. In this regard, the Community or domestic provisions adopted shall be taken into account, together with the directions given in Explanatory Note 3.1 of the Technical Committee on Customs Valuation.

Article 17. Time and quantity aspect

1. When determining the customs value using the transaction value method, the time at which the sale was agreed shall not be taken into account. The price invoiced shall be accepted as the basis for calculating the customs value unless there are other reasons for rejecting it, irrespective of the time at which the transaction took place according to the invoice or bill of sale and provided that the said transaction complies with commercial usage for the goods imported.

For the foregoing reason, market fluctuations that occur after the date of signature of the contract shall not be taken into account.

2. The total agreed quantity of the goods to be valued shall be considered for the purposes of applying the transaction value method, therefore, this is the quantity to be taken into account for determination of the unit price of the goods to be valued, even in the case of partial or staggered deliveries or incomplete loads.

Section II Elements to be included and excluded when determining the transaction value

Part I Adjustments

Article 18. Additions to the price actually paid or payable

1. In determining the customs value using the transaction value method, all the factors indicated below shall be added to the price actually paid or payable for the imported goods, in accordance with Article 8 of the WTO Customs Valuation Agreement:

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

   i. commissions and brokerage, except buying commissions;
   ii. the cost of containers which are treated as being one for customs purposes with the goods in question;
   iii. the cost of packing whether for labour or materials.

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

i. materials, components, parts and similar items incorporated in the imported goods;
ii. tools, dies, moulds and similar items used in the production of the imported goods;
iii. materials consumed in the production of the imported goods;
iv. engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Community Customs Territory and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.
(e) the cost of transport of the imported goods to the port or place of importation;
(f) loading, stevedoring, unloading, handling and other charges associated with the transport of the imported goods to the port or place of importation, except for unloading and handling charges at the place of importation, provided that they are distinguished from the overall transport costs; and
(g) the cost of insurance.

2. No additions may be made to the price actually paid or payable in determining the customs value except as provided in paragraph 1 above.

3. Additions to the price actually paid or payable as a result of factors provided in paragraph 1 above may only be made on the basis of objective and quantifiable data, as duly shown in the relevant supporting documents.

Article 19. Brokers or agents

1. A broker or agent means the person acting on behalf of a principal or client and facilitating conclusion of the sales contract, representing either the seller or the buyer.

Accordingly, a broker acting on behalf of the seller shall be called the "sales broker" and that acting on behalf of the buyer shall be called "the buying broker".

For the purposes of identifying them correctly, the broker's activities shall determine the nature of his/her role.

2. If a broker issues another invoice for the goods, the price actually paid or payable to be used in determining the customs value shall still be that agreed between the buyer and the seller, as shown in the commercial invoice issued by the seller of the goods, without prejudice to consideration of other appropriate supporting documents when the transaction involves indirect payments or other elements constituting the price.

Article 20. Commission

1. For the purposes of these regulations, commission means the remuneration paid by the buyer or seller of the imported goods to an intermediary termed the agent or broker for the services rendered to facilitate conclusion of the sales contract for the said goods.

The remuneration received is usually in the form of a percentage of the price of the goods.

2. Sales commission and buying commission mean, respectively, the payment received by the sales agent or the buying agent, as appropriate.

The terms "sales agent and commission" and "buying agent and commission" shall reflect the status of the person on whose behalf the services are provided and not the fact that a commission is paid.

Article 21. Sales commission

1. Sales commission shall be added to the price actually paid or payable, provided that the following requirements are met:

i. It is not included in the said price;
ii. it is payable by the buyer.

2. Where the sales commission is paid by the seller and charged to the buyer by including it in the price billed for the goods sold, for the purposes of valuation, no adjustment to the price paid or payable shall be made as the commission has already been included therein.

3. The term "incurred by the buyer" in Article 18.1(a) of these regulations means that the buyer has to pay the commission to the intermediary in addition to paying the price of the goods to the seller. In such cases, the amount of the commission shall be added to the price actually paid or payable for the purposes of valuing the imported goods, irrespective of the fact that the payment has been made in the Community Customs Territory where the goods are imported, even in the national currency.

4. It shall be considered that sales commission is paid, irrespective of the form in which the seller, buyer and agent are involved in the transaction, in the following circumstances:

(a) The buyer imports the goods, the seller invoices the buyer for the goods, including the amount of the commission, and the agent receives his/her payment from the seller;
(b) the buyer imports the goods, the seller invoices the buyer for the goods without including the amount of the commission, and the agent receives his/her payment from the buyer;
(c) the seller's agent imports the goods, the seller invoices the agent for the goods, including the amount of the commission, the agent in turn re-invoices the goods to the buyer once they have been imported and the agent receives his/her payment from the seller;
(d) the seller's agent imports the goods, the seller invoices the agent for the goods without including the amount of the commission, the agent in turn re-invoices the goods to the buyer once they have been imported, including his/her commission, and the agent receives his/her payment from the buyer.

In these four cases, the agent acts on behalf of the seller and the amount of the sales commission forms part of the customs value, irrespective of whether it is paid by the seller or buyer of the goods. As the sales commission is not included in the price actual paid or payable in cases (b) and (d), its amount shall be added in order to calculate the customs value of the goods.

Whatever action is taken by the sales agent in the cases mentioned above, the commercial invoice originally issued by the seller shall be submitted to the customs authority in support of the price paid for the sale of the goods, inasmuch as the payment made to the seller is the fundamental basis for the transaction value.

Article 22. Buying commission

1. The buying commission is the fee paid by an importer to his/her agent for the service of representing him abroad in the purchase of the goods being valued.

For the purposes of determining the buying commission, the "importer" means the "buyer" of the goods.

2. The buying commission is paid to the buying agent by the buyer for an act which the buyer undertakes voluntarily and not because this is a requirement on the part of the seller; accordingly, as the agent is acting on behalf of the buyer, the commission shall not be added to the price actually paid or payable for the goods imported, as provided in Articles 18.1(a)(i) and 31.2(a) of these regulations.

3. The importer shall submit to the customs authority the written commission contract and/or other supporting documents which clearly show the buying agent's role in facilitating the agreement on the sale. In the absence of such proof or where it is insufficient to substantiate the

situation, the fee paid shall not be considered a buying commission and shall form part of the customs value.

4. Where the buyer submits to the Customs a commercial invoice issued by the buying agent which includes the amount of his/her fee in addition to the price of the goods, in order to determine the customs value, the customs authority shall require, in addition to the documents indicated in the preceding paragraph, submission of the invoice originally issued by the seller in support of the price paid for the sale of the goods, inasmuch as the payment made to the seller is the fundamental basis for the transaction value.

Where the so-called agent has ownership rights over the goods and/or acts on his/her own behalf, he may not be considered a buying agent.

5. When Customs is conducting its controls, special care shall be taken as regards the charges made by the buying agent in his/her invoice. If the invoice includes services paid by the agent on behalf of the buyer and which form part of the customs value, for example, transport, handling and delivery costs abroad up to the place of shipment, the total amount paid may not be considered a buying commission and only the amount corresponding to the intermediation service as such may be considered not to form part of the customs value.

Article 23. Brokers and brokerage

1. A broker is an intermediary in a transaction who is not specifically linked to either the buyer or seller and whose essential role is to bring together the parties at a commercial level and to facilitate the conclusion of transactions or operations ensuing therefrom.

2. Brokerage means the fee paid to the broker, which includes the remuneration paid by the buyer and/or seller of the goods imported for the services provided. It may be in the form of a fixed amount or a percentage of the agreed transaction.

3. Where the seller pays the brokerage and includes it in the invoice, there shall not be any adjustment to the price actually paid or payable. Where the buyer pays the brokerage, and provided that the amount is not included in the commercial invoice issued by the seller of the imported goods, it shall be added to the price actually paid or payable for the purposes of determining the customs value.

Article 24. Containers or packaging

1. Containers or packaging generally mean the internal receptacles used for unit sale (jars, bottles, pots, boxes, *inter alia*) and the external elements needed for domestic transport in the country of export and for international transport (polystyrene, cartons, *inter alia*) used to carry and/or protect the goods, together with the necessary means for wrapping, folding and fixing them.

2. In addition to the cost of the containers and packaging, the customs value includes all costs incurred in supplying the elements mentioned in paragraph 1 above and deemed to be part of the imported goods. The costs incurred by placing the goods in boxes, receptacles, etc. and the cost of putting the goods in containers or packaging shall also be included.

3. Where the containers do not form a whole with the goods but can be used several times for imports, the part of the cost of using the containers for each import separately shall be added to the value of the goods.

4. The cost of containers and packaging shall not be included in the value of the goods if they do not form a whole with the goods inasmuch as such containers and packaging are subject to separate customs treatment.

5. The cost incurred for the use of containers, pallets, jerry cans, drums and other items of international transport which can be used or reused as a means of transport entails an adjustment of Article 18.1(e) of these regulations, pursuant to the provisions of Article 28.4 thereof.

Article 25. Benefits

1. According to the definition in Article 2(h) of these regulations, benefits are divided into two categories of goods and services listed in Article 18.1(b) of these regulations.

2. The value of a benefit provided by the buyer may be determined on the basis of:

(a) The value of the sale or rental paid by the buyer if the benefit is purchased or rented from an unrelated person;
(b) the cost of providing the benefit, if it was provided by the buyer or by a related person.

3. In the cases of the benefits indicated in Article 18.1(b)(ii) of these regulations, in order to include them in the customs value, adjustments shall be made to take into account their prior use. Likewise, the value of repairs or modifications undertaken after the buyer has purchased or provided the benefits shall also be taken into account.

In such cases, in addition to the transport and related costs for transfer to the country of production indicated in the paragraph below, the cost of return to the country of import, where applicable, shall also be included.

4. The cost incurred for transfer to the place where the goods are to be produced shall also be added to the cost or value of the benefit where it has been paid by the buyer, in accordance with the following:

(a) Transport and related costs incurred for supply of the benefit;
(b) transport insurance paid;
(c) duties, taxes or levies paid on import into the country where the goods are to be produced.

5. Where necessary, after the value of the benefit has been determined, it shall be apportioned among the goods imported as follows, at the request of the importer:

(a) The value may be apportioned to the first shipment if the importers wishes to pay duty on the entire value at one time;
(b) the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment where contracts or firm commitments exist for such production;
(c) the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for such production;
(d) the value may be apportioned among the number of years of the benefit or the number of units that can be produced.

Whichever method is followed, the generally accepted accounting principles indicated in Article 58 of these regulations shall be taken into account and the information shall be substantiated by documentary evidence.

6. The value of the goods and services indicated in subparagraphs (i), (ii), (iii) and (iv) of Article 18.1(b) of these regulations shall only be added to price paid or payable if:

(a) They have been supplied by the buyer for production and sale for export of the imported goods free-of-charge or at reduced cost;
(b) the have been supplied directly or indirectly;
(c) their value has not been included in the price actually paid or payable.

7. The benefits indicated in Article 18.1(b)(iv) of these regulations shall not be added to the price paid or payable if they have been supplied in Community Customs Territory.

Article 26. Royalties and licence fees

1. "Royalties and licence fees" generally mean payments for the intellectual property rights needed to:

(a) Produce or sell a product or good that uses or incorporates patents, trademarks, industrial designs, models, technical know-how, manufacturing or manufacturing processes or any other industrial property right covered by Decision No. 486 or any decision superseding or amending it.
(b) use, manufacture or resell a product or good that makes use of copyright or related rights covered by Decision No. 351 or any decision superseding or amending it;
(c) produce or sell a product or good that uses new plant breeders' rights covered by Decision No. 345 or any decisions superseding or amending it;
(d) produce or sell a product or good that uses rights of access to genetic resources covered by Decision No. 391 or any decisions superseding or amending it.

2. The royalty or licence fee shall only be added to the price actually paid or payable if this payment:

(a) Is related to the goods being valued;
(b) constitutes a condition of sale of those goods;
(c) is based on objective and quantifiable data;
(d) is not included in the price actually paid or payable.

If the buyer pays royalties or licence fees to a third party, the requirement that it be related to the goods being valued and that it constitute a condition of sale of these goods shall not be considered as met unless the seller, or a person related to him, requires the buyer to make that payment.

For this purpose, it shall be considered that the condition of sale does not necessarily have to be specified in the contract but can be demonstrated by means of factual elements relating to the commercial transaction.

Where the method of calculation of the amount of a royalty or licence fee derives from the price of the imported goods, it may be assumed, in the absence of evidence to the contrary, that payment of that royalty or licence fee is related to the goods being valued.

3. If royalties or licence fees relate not only to the imported goods but also to other components, for example, goods or services added to the goods after their importation, the price actually paid or payable for the imported goods may only be adjusted by making an appropriate apportionment on the basis of objective and quantifiable data, in accordance with paragraph 3 of the Interpretative Note to Article 8 of the WTO Customs Valuation Agreement and with the provisions in Article 60 of these regulations.

4. Adjustments for royalties and licence fees shall apply regardless of the country of residence of the beneficiary of the payment, whether within or outside Community Customs Territory.

5. If the exact amount of the royalties or licence fees is not known at the time of importation because it is determined as a percentage of the resale price of the imported goods, the adjustment may be made by indicating it in the Andean Customs Value Declaration, estimating a provisional amount therein but notifying that this is the case. The procedure set out in the Resolution adopting the Andean Customs Value Declaration shall then be followed.

6. 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 if such payments are not a condition of the sale for export to the Community Customs Territory where they are to be imported. Charges for the right to reproduce the imported goods in the country of importation shall not under any circumstances be added.

Article 27. Proceeds of the resale, assignment or use of the goods

If the exact amount of the proceeds is not known at the time of importation because it is determined as a percentage of the resale price of the imported goods, the adjustment may be made by indicating it in the Andean Customs Value Declaration, estimating a provisional amount therein but notifying that this is the case. The procedure set out in the Resolution adopting the Andean Customs Value Declaration shall then be followed.

Article 28. Cost of delivery to the place of importation

1. Pursuant to the provisions in Chapter III of Decision No. 571, the cost of delivery indicated in Article 18.1(e), (f) and (g) of these regulations means all the costs, including carriage, manipulation, adaptation for export, handling and delivery of the goods to the port or place of shipment, transport from the first place of shipment to the place of importation into Community Customs Territory, loading, unloading and handling in a foreign port and insurance paid on carriage of the goods.

2. The procedure for adjusting for such costs shall depend on the terms for delivery of the goods agreed between the seller and the buyer. The costs may or may not be included in the price invoiced by the seller, even if the goods are subsequently delivered to a place other than the place of importation identified.

3. For the purposes of the last paragraph of Article 6 of Decision No. 571, the rates or premiums usually applicable may be obtained from information contained in records concerning other imports with due justification, from tables drawn up by Customs Administrations showing data or rates that are regularly updated, or from information provided by companies that provide such services.

In order to determine the customs value of vehicles entering the country by their own means where it is not possible to obtain data on the freight charges usually applicable, the transport costs may be calculated according to the cost of the fuel consumed and the cost of other operations over the route taken from the place of delivery abroad up to the place of importation into Community Customs Territory.

4. If the payment cannot be substantiated by objective and quantifiable data and it is not possible to apply the provisions in the preceding paragraph, the transaction value shall be dismissed and the goods shall be valued using the secondary methods, taking into account the provisions in Articles 3 and 4 of Decision No. 571 and those in Chapter II of this Title.

Article 29. Transport costs

1. Transport costs include all transport-related costs from the place of delivery of the goods abroad up to the place of importation into Community Customs Territory.

They include, *inter alia,* carriage and handling abroad, international transport as agreed by the parties in the transport contract, loading and unloading in foreign ports, the cost of dispatching transport documents, the cost of paying shipping at destination, fuel consumption, the cost of consolidation and deconsolidation, stevedoring services at the foreign port, endorsement and communications costs, penalties for delays in the foreign port.

These costs form part of the customs value and shall be adjusted in order to determine the transaction value, without prejudice to the person paying them on behalf of the buyer, the method of payment, or whether such payments are made within or outside Community Customs Territory and before or after importation.

2. If the transport costs are included in the commercial invoice and the amount agreed between the seller and buyer is not the same as that actually paid by the seller to a third party, the costs actually paid definitively for transport and related costs to the place of importation in accordance with the transport document shall be taken into account.

If the commercial invoice shows transport costs higher than those appearing in the transport document, the difference shall form part of the transport cost for the purpose of calculating the customs value of the goods, unless the importer shows that the difference was repaid or will not be paid.

3. If the goods have taken several routes before arriving in Community Customs Territory, when determining the adjustment all such costs for all the journeys shall be taken into account.

4. The cost or rental of containers, cylinders, tanks or similar items to be used for the transport of the goods are also transport costs that form part of the customs value and the proper apportionment shall be made, where applicable, and shall be substantiated by objective and quantifiable data.

5. Likewise, the cost of temporary storage of the goods in the port of export and of international transit during their transport are costs incurred for transport of the goods and shall therefore be adjusted in conformity with the provisions in Article 18.1(e) of these Regulations.

Article 30. Cost of insurance

1. The amount to be taken into account for insurance is that of the insurance premium actually paid. Any statement of theoretical or estimated amounts or not substantiated by documents shall under no circumstances be accepted.

2. Insurance means the cost of the service required to cover the risk of damage or loss during transport, loading, unloading or handling of the goods up to the place of importation.

3. The document proving the cost of insurance is the policy issued by the insurance company or the individual insurance certificate.

Part II Elements that do not form part of customs value

Article 31. Elements to be deducted or which may not be added to the price paid or payable

1. The customs value shall not include the elements listed below:

(a) Construction, erection, installation, assembly, maintenance or technical assistance undertaken after importation of goods such as industrial plant, machinery or equipment;
(b) import duties and taxes or other charges payable in Community Customs Territory for import or sale of the goods in question;
(c) transport, carriage and insurance costs after the goods have arrived at the place of importation into Community Customs Territory, as well as the cost of temporary storage of the goods for reasons of carriage after arrival at the place of importation;
(d) unloading and handling charges at the place of importation into Community Customs Territory, and the charges paid for ships' berthing in ports in the Territory;
(e) charges for interest included in the commercial invoice, paid under a financing arrangement entered into by the buyer and relating to the purchase of the imported goods, providing that the circumstances indicated in Decision No. 3.1 of the WTO Committee on Customs Valuation apply. If any of these circumstances does not apply, it shall be considered that the amount attributed to interest forms part of the transaction value.

These elements may be deducted from the price paid or payable by the buyer to the seller provided that they are included therein and are distinguished, in other words, have been invoiced by the seller and are specified separately in the commercial documents.

2. The customs value shall not include the following elements either and they shall not be added to the price actually paid or payable for the imported goods:

(a) Buying commission;
(b) the right to reproduce the imported good in Community Customs Territory;

(c) payments by the buyer for the right to distribute or resell the imported goods if such payments do not constitute a condition of sale of the goods for their export to Community Customs Territory;
(d) activities by the buyer in Community Customs Territory in order to market the imported goods, advertising, guarantees, attendance at fairs, etc. even if they may be deemed to benefit the seller;
(e) payment of dividends to the seller as a shareholder or other payments unrelated to the imported goods;
(f) domestic taxes payable on the goods in question in the country of origin or export, provided that it can be demonstrated to the satisfaction of the customs authorities that the said goods have been or will be exempt from such taxes to the benefit of the buyer;
(g) in general, the cost of any activities undertaken by the buyer on his/her own behalf and in respect of which no adjustment has to be made in accordance with the provision in Article 18 of these regulations and provided that this can be demonstrated to the satisfaction of the Customs Authorities.

Chapter II Secondary Methods

Article 32. Application of secondary methods

1. If the requirements specified in Article 5 of these regulations for application of the transaction value method for imported goods are not met, the secondary valuation methods set out in paragraphs 2 to 6 of Article 3 of Decision No. 571 shall be used in the sequential order indicated in Article 4 thereof.

2. In determining the customs value using the secondary methods, in addition to the Andean Customs Value Declaration for the goods being valued and the corresponding supporting documents, any other information that may be provided by the importer or obtained from other sources shall be taken into account in the form and under the conditions laid down in domestic legislation.

Section I Second Method: Transaction Value of Identical Goods

Article 33. General aspects of application

1. If the transaction value method indicated in Chapter I of these regulations cannot be applied, the customs value shall be determined using the transaction value of identical goods method, taking into account the provisions of Article 2 of the WTO Customs Valuation Agreement, the Interpretative Note thereto, and the definitions and requirements in Article 15 of the said Agreement.

2. The customs authority shall first identify which other imported goods may be deemed identical and, subsequently, ascertain that they correspond to customs values determined using the transaction value method, as provided in Chapter I above. These values shall have been previously accepted by the Customs, in accordance with paragraph 4 of the Interpretative Note to Article 2 of the aforementioned Agreement and pursuant to the provisions in Article 59 of these regulations.

3. In applying this method, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantities as the goods being valued shall be used to determine the customs value. Where no such sale is found, the necessary adjustments shall be made to take account of differences attributable to commercial level or quantity.

Article 34. Adjustments

1. If no transaction values are available for identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued, the necessary adjustments shall be made to take account of differences in commercial level and/or quantity between the imported goods and the identical goods in question. Likewise, adjustments shall be made to take account of any differences in costs and charges for transport and insurance arising from

differences in modes of transport and distance if the identical goods have been exported from a country other than the country of export of the goods being valued.

2. A condition for adjustment because of different commercial levels or different quantities shall be that such adjustment, whether it leads to an increase or decrease in the value, be made on the basis of objective and quantifiable data that clearly establish the reasonableness and accuracy of the adjustment.

3. The data contained in current and reliable price lists showing the prices corresponding to different commercial levels and quantities, *inter alia,* shall be considered objective and quantifiable data. Such lists shall be confirmed by other imports made at the same prices.

Article 35. Time element

In determining the customs value applying the transaction value for identical goods method, the time to be taken into account is that of export to Community Customs Territory. Accordingly, only goods that have been exported at the same time or at about the same time as the goods being valued shall be taken into account, having regard to the definition of "about the same time" in Article 2(e) of these regulations.

Article 36. Absence of prior transaction values for identical goods

If no previously accepted transaction value for identical goods in accordance with the provision in Chapter I of this Title is available or all the requirements for the second method are not met, the transaction value of similar goods shall be used, as set out in Section II below.

Section II Third Method: Transaction Value of Similar Goods

Article 37. General aspects of application

1. If the transaction value of identical goods method cannot be applied, the customs value shall be determined using the transaction value of similar goods method, taking into account the provisions of Article 3 of the WTO Customs Valuation Agreement, the Interpretative Note thereto, and the definitions and requirements in Article 15 of the said Agreement.

2. The customs authority shall first identify which other imported goods may be deemed similar and, subsequently, ascertain that they correspond to customs values determined using the transaction value method, as provided in Chapter I above. These values shall have been previously accepted by the Customs, in accordance with paragraph 4 of the Interpretative Note to Article 3 of the aforementioned Agreement and pursuant to the provisions in Article 59 of these regulations.

3. In applying this method, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantities as the goods being valued shall be used to determine the customs value. Where no such sale is found, the necessary adjustments shall be made to take account of differences attributable to commercial level or quantity.

Article 38. Adjustments

1. If no transaction values are available for similar goods in a sale at the same commercial level and in substantially the same quantities as the goods being valued, the necessary adjustments shall be made taking into account differences attributable to commercial level and/or quantity between the imported good and the similar good in question. Likewise, adjustments shall be made to take into account any differences in relation to costs and charges for transport and insurance arising from differences in modes of transport and distance if the similar goods have been exported from a country other than the country of export of the goods being valued.

2. Any adjustment arising from differences in commercial level or quantity, whether resulting in an increase or reduction in value, shall comply with the condition that it be made on the basis of objective and quantifiable data which clearly establish the reasonableness and accuracy of the adjustment.

3. The data contained in current and reliable price lists showing the prices corresponding to different commercial levels and quantities, *inter alia,* shall be considered objective and quantifiable data. Such lists shall be confirmed by other imports made at the same prices.

Article 39. Time element

In determining the customs value applying the transaction value for similar goods method, the time to be taken into account is that of export to Community Customs Territory. Accordingly, only goods that have been exported at the same time or at about the same time as the goods being valued shall be taken into account, having regard to the definition of "about the same time" in Article 2(e) of these regulations.

Article 40. Absence of prior transaction values for similar goods

If no previously accepted transaction value for similar goods in accordance with the provision in Chapter I of this Title is available or all the requirements for the second method are not met, the deductive method shall be used, as set out in Section III below.

Section III Fourth Method: Deductive Value

Article 41. General aspects of application

1. In valuing goods using this method, the basis shall be the selling price of the imported goods in Community Customs Territory, or of identical or similar goods, with the deductions indicated in Article 5.1(a) of the WTO Customs Valuation Agreement, taking into account the other provisions in the aforesaid Article and the Interpretative Note thereto.

2. Two situations shall be distinguished when applying the deductive method:

(a) The goods are sold in the condition as imported.

The customs value shall be based on the unit price corresponding to the greatest volume of sales of the imported goods or, if they are not imported for sale or at the time of valuation have not been sold, it shall be the unit price for the sale of other imported goods that are identical or similar to the goods being valued to buyers in Community Customs Territory who are not related to the importer, at the first commercial level at which such sales are made after importation. For this purpose, the first sale of the goods after importation in sufficient quantity to determine the corresponding unit price shall be taken into account.

(b) The goods are sold after having undergone subsequent working or processing.

Pursuant to Article 5 of Decision No. 571, if the imported goods or other identical or similar imported goods are not sold in Community Customs Territory in the condition as imported, whether or not requested by the importer, the customs value shall be based on the unit price corresponding to the greatest aggregate quantity of the imported goods sold at the first commercial level after importation at which such sales are made, after having undergone subsequent additional working or processing, to buyers in Community Customs Territory who are not related to the importer. In any event, the first sale of a sufficient quantity of the goods after importation that enables the corresponding unit price to be determined shall be taken into account.

For this purpose, the value added by processing shall be taken into account, together with the deductions mentioned in Article 5.1(a) of the WTO Customs Valuation Agreement.

In deducting value added for processing, the cost of the work or operations needed to undertake such processing shall be taken into account, having regard to the relevant supporting documents.

3. The data to be used to apply this method shall be determined on the basis of information supplied by the importer. If the importer is unable to substantiate the information provided, the data to be applied may be based on relevant information other than that supplied by the importer.

The selling price communicated by the importer shall be substantiated by the respective invoices for domestic sale, as provided in domestic legislation. The deductions made shall be based on objective and quantifiable data duly supported by documents.

When using this method, values that are arbitrary or fictitious may under no circumstances be used.

Article 42. Time element

1. In determining the customs value applying the deductive method, the time to be taken into account is the date of importation of the goods being valued or about the same time, as defined in Article 2(e) of these regulations.

2. Only the selling price of goods that have been sold in Community Customs Territory at the time they are imported or on the closest date after their importation, but not exceeding 90 days, shall be taken into account.

Section IV Fifth Method: Computed Value

Article 43. General aspects of application

1. In valuing goods using this method, the provisions of Article 6 of the WTO Customs Valuation Agreement and the Interpretative Note thereto shall be taken into account.

2. This method is based on the cost of producing the imported goods. It consists of determining the customs value on the basis of the constituent elements of the price, taking into account the data available in Community Customs Territory, supplied by the producer of the good in question, without prejudice to examination of the cost of producing the goods being valued and other information that may be obtained from outside the country of importation, with the consent of the producer and applying the due procedure provided in the WTO Customs Valuation Agreement.

The cost or value of the goods shall include the cost of the elements specified in Article 18.1(ii) and (iii) of these regulations, as well as the value of any element specified in paragraph 1(b) of the Article, apportioned as appropriate under the provisions of the relevant note to Article 8 of the WTO Customs Agreement, 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 the aforementioned paragraph 1(b)(iv) which have been undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer.

3. The total amount of the elements used to calculate the computed value shall take into account the cost or value of all the delivery costs mentioned in Article 18(e), (f) and (g) of these regulations, pursuant to the relevant provision in Article 6 of Decision No. 571.

4. The use of this method shall generally be limited to those cases where the buyer and seller are related and the producer is prepared to supply to the Customs Administration the necessary costings and to provide facilities for any subsequent verification that may be necessary.

Section V Sixth method: "Fall-back"

Article 44. Procedure

1. In valuing goods using this method, the provisions of Article 7 of the WTO Customs Valuation Agreement and the Interpretative Note thereto shall be taken into account.

2. The customs value determined using the rules applicable under this method shall, to the greatest extent possible, be based on the valuation methods specified above.

3. If the customs value of the imported good cannot be determined by using the methods indicated in Article 3.1 to 3.5 of Decision No. 571, as indicated in Chapters I and II in this Title, the "fall-back" method shall be applied as follows:

(a) Reasonable flexibility

For this purpose, the first five methods in the WTO Customs Valuation Agreement shall be applied in the order established therein, as provided in Article 4 of Decision No. 571, but employing reasonable flexibility when considering the requirements contained in each of them, until encountering the first method that enables the customs value to be determined.

In order to apply the rules provided for application of this method with reasonable flexibility, in the cases applicable, periods of time longer than one hundred and eighty (180) days but not more than three hundred and sixty five (365) days may be used to determine "at about the same time".

Any elements which constitute a basis for using the transaction value method and non-compliance with which led to its rejection at the time, for example, the relationship had no influence on the price agreed, the existence of a sale such as that defined in Article 2(k) of these regulations, the existence of an actual price tied to such a sale and use of information or data with documentary support, *inter alia*, may not be considered flexibly.

Taking into account goods that were not identical or similar to those imported and which, at that time, prevented application of the second or third methods of valuation may not be interpreted flexibly either.

In applying the deductive method, sales between related parties may not be taken into account flexibly.

In general, with a view to flexibility, none of the prohibitions determined in Article 45 of these regulations may be utilized or the basic principles of the WTO Customs Valuation Agreement and Article VII of the GATT be disregarded, and estimated or theoretical values may not be taken into account.

(b) Reasonable criteria

If it is not possible to value the goods using the five first methods in the WTO Customs Valuation Agreement, even when applied flexibly, the use of reasonable criteria and procedures consistent with the principles and provisions of the aforementioned Agreement and with Article VII of the GATT 1994 may be used on the basis of data available in Community Customs Territory.

These reasonable criteria and procedures include special cases of valuation, which may be determined by domestic legislation in member countries in the absence of Community rules, without prejudice to use of reference prices in accordance with Article 53.5 of these regulations.

Article 45. Prohibitions

1. Notwithstanding the flexibility allowed for application of the "fall-back" method or the possibility of utilizing reasonable criteria, this may not be interpreted as meaning that arbitrary procedures contrary to the principles and provisions of the WTO Customs Valuation Agreement and Article VII of the GATT may be followed.

2. The customs value determined using the "fall-back" method shall not be based on:

(a) The selling price in Community Customs Territory of goods produced therein;
(b) a system which provides for the acceptance for customs valuation purposes of the higher of two alternative values;
(c) the price of goods on the domestic market in the country of exportation;
(d) a cost of production other than the computed value which has been determined for identical or similar goods in accordance with the provisions of Article 6 of the WTO Customs Valuation Agreement;
(e) the price of goods sold for export to a country outside Community Customs Territory;
(f) minimum customs values;
(g) arbitrary or fictitious values.

Chapter III Special cases of valuation

Article 46. General considerations

1. If it is not possible to apply the main method of the transaction value or the secondary methods indicated in Chapters I and II of this Title, even taking into account the flexibility allowed by the "fall-back" method, owing to the particular nature of the goods to be valued or to the circumstances surrounding the essential import transaction, or because there has been a change in the customs regime or destination, the customs value shall be determined in accordance with the provisions adopted governing special cases of valuation, without prejudice to the use of reference prices according to Article 53.5 of these regulations.

In such cases, the provisions of Articles 44 and 45 of these regulations shall be followed, using reasonable criteria consistent with the general principles and provisions in the WTO Customs Valuation Agreement and Article VII of the GATT.

2. The procedure to be followed in each special case is that indicated in Sections I, II and III of this Chapter, taking into account the appropriate adjustments indicated in Section II of Chapter I of this Title.

The General Secretariat, by means of a Resolution, shall determine the special cases subsequently arising as a result of the practices of Customs Administrations or, in their absence, the domestic legislation of each member country shall apply.

3. In any event, the controls provided in Title III of these Regulations shall be exercised.

Article 47. Indicative list of special cases of valuation

For the purposes of the preceding Article, special cases of valuation shall include the following:

1. Depending on the condition or nature of the imported goods:

(a) Used goods;
(b) spoiled, damaged or deteriorated goods;
(c) goods transported in bulk that have suffered changes (losses) in quantity or weight during their transport;

2. Owing to the circumstances surrounding the essential import transactions:

(a) International mail or delivery services;
(b) imported goods of no commercial value;
(c) imported goods with no commercial purpose, including luggage, household effects, etc.;
(d) goods imported under a hire or financial leasing arrangement with or without a purchase option.

3. Owing to application of a specific customs regime or destination:

(a) Goods from free zones:
  i. goods produced or processed in free zones;
  ii. goods of foreign origin stored in free zones;

(b) goods reimported after outward processing:
  i. produced or manufactured;
  ii. repaired, processed, reconditioned or rebuilt.

(c) goods entering temporarily for inward processing with suspension of payment of customs duties and subsequently put up for consumption
  i. if they are declared under the temporary admission for inward processing regime;
  ii. if they are declared under the import for consumption regime.

TITLE III CUSTOMS CONTROLS

Article 48. General

1. Further to the provisions in Chapter V of Decision No. 571, the Customs Administrations of Andean Community member countries shall apply the harmonized control systems provided for the Community Customs Territory.

2. Customs control of valuation at the time of clearance shall include verification of the customs declaration for the imported goods and the information contained in the Andean Customs Value Declaration and its supporting documents. If necessary, the Customs Administration may request further proof and justification.

During post-clearance control, commercial information from interested parties recorded in their books and systems shall also be controlled, and subsequent submission of proof and justification shall be requested, taking into account the provisions in Article 13(c), 16, 17 and 18 of Decision No. 571.

3. Controls shall be selective on the basis of risk factors and according to programmes previously drawn up by the Customs Administrations.

Article 49. Risk factors

The customs authority's controls and checks may bring to light discrepancies with regard to the following aspects, *inter alia*:

(a) Ostensibly low prices;
(b) indirect payments;
(c) relationship between the buyer and seller;
(d) advantages, notably those concerning intangible goods or services;
(e) payment of royalties for the use of the intellectual property rights specified in Article 26 of these regulations;
(f) inaccurate declaration of costs incurred by the sale and delivery of the goods;
(g) invoices that are likely to be false or inaccurate;
(h) double invoicing;
(i) the customs declaration and the value are inconsistent and do not correspond to the relevant supporting documents;
(j) inaccurate completion of the Andean Customs Value Declaration;
(k) incomplete or imprecise description of the goods;
(l) values declared for goods imported into Community Customs Territory that are markedly lower than those for other identical or similar goods imported from the same country of origin;
(m) values declared for goods from a free zone or special customs zone equal to or less than the value at which the same goods or identical or similar goods entered the said zone from the same country of origin;
(n) values declared for goods imported into Community Customs Territory that are markedly lower than those for other identical or similar goods imported into another country from the same country of origin;
(o) goods from a free zone or special customs zone;
(p) inhabitual levels of discounts;
(q) type of goods;
(r) country of origin or source.

If there is reasonable doubt based on the aforementioned risk factors or any other factors that may arise, the customs authority shall notify this in writing, indicating the corresponding evidence. If there are grounds for such doubts, an investigation into the value shall be initiated, giving the importer an opportunity to provide the evidence required, taking into account the provisions in Articles 16, 17 and 18 of Decision No. 571.

Article 50. Additional verifications and controls

1. If necessary, the Customs Administration shall undertake additional verification and controls in the offices, facilities or plants of the importers or any person directly or indirectly concerned by the import transactions for the goods in question or by subsequent transactions involving the same goods, or of any other person in possession of documents or data relating to the customs declaration for the imported goods and the Andean Customs Value Declaration, in order to ensure application of the measures to guarantee determination of the relevant customs value.

Such controls may also include physical inspection of the goods.

2. The parties concerned shall cooperate fully with the Customs Administrations in their investigations and shall accordingly facilitate their conduct and shall also appear in person when so requested.

Article 51. Doubts concerning the truth or accuracy of the value declared and the supporting documents

Pursuant to Article 13 and Chapter V of Decision No. 571, the Customs Administrations of Andean Community member countries shall follow the procedure set forth below for verifying and checking the declared value:

1. For the purposes of the provision in Article 17 of Decision No. 571, the following shall be taken in account:

(a) If the Customs Administration has reason to doubt the Andean Customs Value Declaration submitted with regard to the truth, accuracy or completeness of the elements appearing therein or in relation to the documents produced in support of this declaration, it shall request the importer to provide further explanations, including documents or other evidence, in order to carry out the necessary checks and determine the customs value applicable;
(b) if, after receiving further information or in the absence of a response, the Customs Administration still has reasonable doubts about the truth, accuracy or completeness of the declared value, it may, bearing in mind the provisions of Article 11 of the WTO Customs Valuation Agreement, decide that the customs value of the imported goods cannot be determined by applying the transaction value method and the goods shall be valued in accordance with the secondary methods, as indicated in Article 3.2 to 3.6 of Decision No. 571;
(c) before taking a final decision, the Customs Administration shall inform the importer in writing of its reasons for doubting the truth or accuracy of the information and documents submitted and shall give the importer a reasonable time to respond. When a final decision has been taken, the Customs Administration shall notify it to the importer in writing, giving the grounds for the decision.

Where such control is conducted during clearance, the importer may withdraw the goods if he provides an adequate guarantee in the form of a bond, a deposit or some other appropriate instrument to cover payment of the import duties, taxes and charges to which the goods might finally be subject.

2. If the supporting documents provided for the purpose of applying any of the secondary methods do not meet the requirements of the Customs Administration or are not furnished, the following methods may be applied, utilizing the elements available.

Article 52. Supporting documents

1. In addition to the commercial invoice, the transport document and the insurance document showing the amount for which the goods have been insured, the importer shall also submit other documents required in support of the customs value declared or the value to be determined. The Customs shall examine these documents in order to verify the elements of fact and the commercial circumstances of the transaction, and compliance with the provisions of the WTO Customs Valuation Agreement, Decision No. 571 and these regulations.

These documents may be submitted in hard copy or electronically. The requirements and time-limit for their submission shall be determined in domestic legislation, taking into account the provisions in paragraph 1(c) of the preceding Article.

2. The type of documents that may be required in order to verify or check the value declared depends on the stage of the controls being conducted by the Customs Administration and the valuation method utilized.

These documents concern, *inter alia*:

i. Documents in support of any other transport cost;
ii. documents in support of any other insurance cost paid to cover transport risks;
iii. proof that the goods have been paid;
iv. bank communications concerning payment, for example, fax, telex, email, etc.;
v. credit cards;
vi. documents submitted in order to obtain loans;
vii. price lists, catalogues;
viii. contracts;
ix. licensing agreements setting out the terms for using copyright, industrial property rights or any other intellectual property right;
x. agreements or letters appointing agents or agencies and relating to payment of commission;
xi. proof of the acquisition of benefits;
xii. correspondence and other commercial information;
xiii. accounts documents;
xiv. domestic invoices showing the resale price in Community Customs Territory;
xv. documents in support of costs related to such resale; and
xvi. in general, any document proving the conditions that permit use of one of the valuation methods, in sequential order.

Other documents which may be considered documents in support of the facts or circumstances relating to the commercial transaction or the customs value to be determined are the corresponding records drawn up by the customs authority concerning oral statements by the importer or his/her legal representative or an authorized person, duly endorsed by the latter and the customs officer.

Submission of the aforementioned documents alone does not imply acceptance of the declared value by the customs authority, which shall depend on the checks undertaken.

3. The type of document or evidence, and the procedures, conditions and requirements for requests to be made outside the customs territory of Andean Community member countries for the purpose of customs valuation shall be subject to the provisions in Andean and domestic legislation, taking into account the provisions in Article 16 of Decision No. 571 and Article 62 of these regulations.

Article 27 of Decision No. 574 or any provisions amending or superseding them shall apply to obtaining evidence.

Article 53. Use of reference prices

1. In implementation of the definition in Article 2(g) of these regulations, reference prices shall correspond to information on the international market over a specified period in order to ensure their validity and effectiveness.

2. Reference prices shall not be contrary to the provisions in Article 7 of the WTO Customs Valuation Agreement and, in particular, to the provisions in Article 45 of these regulations concerning the prohibitions on applying the "fall-back" method.

3. Reference prices shall be taken as indicative for controlling the declared value of the imported goods. Accordingly, they may be used to substantiate doubts arising between the

customs authority and the declarant regarding the declared value, in accordance with the provisions in Article 51 of these regulations.

4. In view of the provision in the preceding paragraph, the same reference price used for the purposes of comparison may be used for payment of the amount of the surety to be provided in order to obtain release of the goods, in accordance with the provisions in Article 61 of these regulations.

5. Reference prices may also be used as a basis for valuation, but only when the methods indicated in Article 3.1 to 3.5 of Decision No. 571 have been exhausted in sequence and use of a reasonable criterion for application of the "fall-back" method is required.

For this purpose, identical or similar goods from the same country of origin shall be taken into account or, if not available, from different countries but as far as possible taking due precautions concerning the country's level of development and its production costs, which affect the price level of the goods considered.

6. The reference prices shall be in effect at the same time or at about the same time as the date of the commercial invoice or the sales contract. If no reference prices in effect at the time of the transaction are available, prices corresponding to the closest possible economic period, the periods indicated above, may be used, updating them as appropriate.

7. The Customs Administrations of member countries, in accordance with the provisions in Article 25 of Decision No. 571, shall regularly update the reference prices, where necessary using the price or inflation indexes for the country of export or origin and continuously enter them in the data bases set up for this purpose.

Article 54. Fraudulent documents

1. The Customs Administrations of Andean Community member countries shall not accept documents submitted for the purpose of valuation which they deem to be counterfeit or false.

In such cases, the customs authority shall notify the lack of conformity in writing, giving the grounds therefor, and shall initiate the relevant investigation, taking into account the provisions in Chapter V of Decision No. 571 and in this Title, without prejudice to proceeding with an examination of the value or bringing any criminal proceedings that may be applicable.

2. If in the course of valuation or after having determined the customs value it is found that the supporting documents submitted are counterfeit or false, the examination of value initiated shall be suspended or the value already determined shall be nullified, as applicable. The declaration of goods and of value shall remain without effect and the relevant measures and penalties shall be imposed in accordance with domestic legislation.

3. If the prices declared are obviously and clearly low and may involve a case of fraud, the customs authority shall require the deposit of surety in the form of a bond, bank deposit in cash or of any other appropriate means, as indicated in Article 61 of these regulations, before allowing the goods to be released.

For payment of the surety, the reference prices referred to in the preceding Article may be taken into account. If there are no reference prices, the surety shall be sufficient to cover the amount of the import duties and taxes that may have been evaded, as provided in domestic legislation.

After release of the goods has been approved, the goods shall be valued in accordance with the provisions laid down in Title II of these Regulations.

If, in the course of the import procedure, the customs authority has technical elements enabling a final decision on the value of the goods to be taken, they may be valued in accordance with the provisions in Title II of these regulations and no surety need be required.

4. Taking into account the provisions in Articles 26 and 27 of Decision No. 571, the Customs Administrations of Andean Community member countries shall be kept informed of the findings of any investigation into fraud in respect of valuation so that they may apply the necessary preventive and dissuasive measures against the person who has committed the fraud and the procedure followed.

Likewise, the Committee Against Fraud, created by Decision No. 478 of the Commission of the Andean Community, shall be kept informed through the General Secretariat.

Article 55. Mutual assistance and cooperation with third countries

If the Customs Administrations of Andean Community member countries have reason to doubt the price declared for goods imported into Community Customs Territory or any of the other elements comprising the customs value of the goods, they may seek assistance from the Customs Administration of the exporting country, particularly with regard to the price declared upon export.

For this purpose, the agreements or decisions on cooperation and mutual assistance adopted within the World Trade Organization (WTO), the World Customs Organization (WCO), the Community regulations and bilateral or multilateral agreements or conventions mutually concluded with third countries shall be taken into account.

TITLE IV

FINAL PROVISIONS

Article 56. Permanent adjustments of value

1. If the additions referred to in Article 18 of these regulations have to be made repeatedly for each importation, under identical circumstances and by the same importer, the Customs may decide on permanent adjustments of value, which shall be notified to the importer, who shall reflect them in the Andean Customs Value Declaration.

Such adjustments shall be in the form of a percentage to be applied to the price actually paid or payable for the goods imported, as shown in the commercial invoice, without prejudice to any customs control of the value of the invoice in accordance with Title III of these regulations.

2. The adjustment shall apply to imports that occurred as of the date of the administrative decision determining them for the first time or the date on which the change occurred. For imports prior to this decision, the adjustment shall apply as prescribed in domestic legislation.

3. Permanent adjustments of value shall be determined either at the request of the importer, in execution of his/her customs commitments, or automatically following a proposal by the respective national valuation services as a result of their examinations and investigations.

4. Such adjustments may be revised inasmuch as their amount is determined by the factual elements, circumstances and objective and quantifiable data known to the Customs Administration at the time and they remain valid until the Customs Administration issues another decision.

Any change that occurs in the aforementioned factual elements, circumstances or data which gave rise to the adjustment shall immediately be brought to the attention of the Customs Administration for the purpose of making the necessary amendments.

Article 57. Transfer prices

1. Transfer prices mean the prices agreed between related firms for the transfer of profits and losses for various purposes.

2. As indicated in Article 8.10 of these regulations, in any agreement on transfer prices concluded between related parties, the importer shall prove that it is not simply an accounting operation, that the price corresponds to the actual value of the goods and that it includes both costs and profits.

3. If the requirements specified in Article 5 of these regulations are not met, the transfer prices may not be taken as the basis for valuing the goods imported.

Article 58. Generally accepted accounting principles

1. "Generally accepted accounting principles" are those which enjoy recognized consensus or substantial authoritative support within Community Customs Territory at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be calculated, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared.

Such standards may be broad generally applicable guidelines or detailed practices and procedures.

2. For the purposes of these regulations, the Customs Administration shall utilize information prepared in a manner consistent with generally accepted accounting principles in Community Customs Territory, according to the valuation method being applied.

In applying the deductive or computed value methods, in order to determine normal general profits and costs, information prepared in accordance with the accounting principles generally accepted in Community Customs Territory or in the producing country shall be used.

Likewise, determination of any of the elements provided in Article 18.1(b)(ii) of these regulations in Community Customs Territory shall utilize information consistent with the accounting principles generally accepted in the Territory.

Article 59. Values accepted by the Customs

1. For the purposes of applying the test values referred to in Article 15 of these regulations, the transaction value of identical or similar goods method or the "fall-back" method, the value shall be understood to have been accepted by the Customs if it has been determined that it is consistent with the assumptions and requirements specified in the WTO Customs Valuation Agreement for application of each of the methods.

2. If figures showing exceptionally low customs values are submitted to the Customs with a view to considering them to be test values or background information for application of the aforementioned valuation methods, the Customs Administration shall also initiate the relevant investigation in order to confirm or nullify them.

3. Values that are being investigated or examined or values that have subsequently been nullified shall not be accepted.

Article 60. Objective and quantifiable data

1. Information or data submitted on any of the elements constituting the customs value shall be objective and quantifiable, in other words, they shall be known and appear in the respective supporting documents.

2. The data shall be "objective", meaning they shall be based solely on factual elements without any personal interpretation. They shall be "quantifiable", meaning that it shall be possible to determine their amount using quantities and figures. They shall not be based on estimates, assessments or presumptions or on personal experience.

In the absence of such objective and quantifiable data, the price paid or payable may not be adjusted and the transaction value method provided in Article 1 of the WTO Customs Valuation Agreement and the provisions in Article 5 of these regulations may not be applied.

Objective and quantifiable data shall also be required for application of the other methods.

3. Deductions from the price paid or payable for the goods or inclusion of elements that form part thereof in the customs value shall only be made if they are distinguished objectively.

4. The expression "if they are distinguished objectively" in connection with information or data on costs, charges, duties, profits or any other element relating to the economic activity that is the subject of the transaction means that they must be known or be indicated separately from the price of the goods on the commercial invoice, in the sales or transport contract or in other commercial documents supplied for the purposes of customs valuation.

5. If such elements are not distinguished or are not indicated separately from the price of the goods, they shall be included in their customs value.

Article 61. Guarantees

1. In instances where it proves necessary to postpone the final determination of the customs value of the imported goods, the importer may withdraw its goods if, where so required, it provides a sufficient guarantee to cover payment of the customs duties and other charges which may apply to the said goods, in the form of sureties from banks or insurance companies, deposits or some other appropriate instrument.

If the delay in final determination of the value is attributable to reasonable doubts concerning the truth regarding the price actually paid or payable and the amount of the customs duties and other charges to which the goods may be subject cannot be determined, the basis for payment of the guarantee shall be 200% of the duties and charges resulting from the declared value of the goods.

In the case of natural persons who are unable to provide sureties from banks or insurance companies, at the request of the importer or when the Customs Administration so requires, personal guarantees may be given in the form of bank deposits.

Domestic customs legislation shall define the forms, procedures and time-limits for the posting of a guarantee.

Article 62. Obligation to supply information

1. In order to verify and/or determine the customs value of the imported goods, the importer or any person directly or indirectly related to the import transaction for the goods in question or subsequent transactions concerning the same goods, as well as any other person in possession of documents and information for the customs declaration of the imported goods and the Andean Customs Value Declaration shall, in a timely manner, supply the information, documents and evidence required by the customs authority for this purpose according to the form and conditions prescribed in domestic legislation.

2. In implementation of Article 10 of the WTO Customs Valuation Agreement, information provided which is, by its particular nature, confidential or which is provided on a confidential basis shall not be disclosed by the customs authority without the specific permission of the person or government providing such information, unless ordered by the courts.

3. Private documents such as contracts, especially sales, intellectual property, licensing, distribution and other contracts and, in general, information concerning the transaction and the importation of the goods shall be considered confidential by nature and may not be made public, being subject to the provision in the preceding paragraph.

Article 63. Conclusion of agreements with the private sector

The Customs Administrations of Andean Community member countries may enter into agreements with the private sector that fall within their scope when they deem it necessary for the proper application of customs legislation and, in particular, to enable information to be exchanged in order to ensure the correct payment of customs duties and taxes, especially information that facilitates determination of the customs value of imported goods.

Article 64. Right of appeal

1. Taking into account the provision in Article 11 of the WTO Customs Valuation Agreement, Andean Community member countries shall provide in their domestic legislation for a right of appeal by the importer or any other person liable for payment of customs duties and other import duties and taxes.

2. The importer shall not be subject to payment of a fine or the threat of fine merely because he has chosen to exercise his/her right of appeal.

Non-imposition of a fine does not apply to cases of fraud or to cases in which, prior to exercise of the right of appeal, payment or guarantee of a fine relating to the declaration of value has been determined, in accordance with the provisions in the applicable domestic legislation.

3. The right of appeal shall be exercised before the Customs Administration, an independent body or a judicial authority.

Article 65. Implementing instruments

1. The related implementing instruments in Article 22 of Decisions No. 571 concerning Decisions by the WTO Committee on Customs Valuation and the Advisory Opinions, Comments, Interpretative Notes, Case Studies and Studies of the WCO's Technical Committee on Customs Valuation attached as an Annex form an integral part of these Community regulations.

2. The General Secretariat of the Andean Community, following a study by the Working Group of Government Experts on Customs Valuation of the Andean Committee on Customs Matters, shall be responsible for updating the aforementioned Annex, incorporating by means of resolutions the various instruments that may be adopted by the issuing bodies after signature of these regulations and their timely disclosure.

Article 66. INCOTERMS

1. In order to facilitate valuation of goods and, in particular, application of the adjustments covered in Section II of Chapter I of Title II of these regulations, the international trade terms "INCOTERMS", published by the International Chamber of Commerce, shall be used or any other description concerning the terms for delivery of the imported goods by the seller, agreed under a contract.

2. The terms of delivery shall be set out in the commercial invoice and/or business contract and declared in the Andean Customs Value Declaration, as determined in the corresponding instructions.

Appendix WORLD CUSTOMS ORGANIZATION (WCO)

TEXTS OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

PRELIMINARY TEXTS

The Technical Committee on Customs Valuation adopted the text of a study on the procedure for adopting instruments containing the information and advice furnished by the Committee, together with guidelines for the designation and use of such instruments. These texts, together with the updated guidelines, are as follows:

STUDY

1. Article 18 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 provides that:

(1) There is hereby established under this Agreement, a Committee on Customs Valuation (referred to in the Agreement as the "Committee"), composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording members the opportunity to consult on matters relating to the administration of the customs valuation system by any Member as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Members. The WTO Secretariat shall act as the Secretariat of the Committee.
(2) There shall be established a Technical Committee on Customs Valuation (referred to in the Agreement as the "Technical Committee"), under the auspices of the Customs Co-operation Council (hereinafter referred to as the CCC in this Agreement), which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

2. Annex II to the Agreement defines the functions of the Technical Committee on Customs Valuation, established under the auspices of the CCC, namely:

(a) To examine specific technical problems arising in the day-to-day administration of the customs valuation systems of Members and to give advisory opinions on appropriate solutions based upon the facts presented;
(b) to study, as requested, valuation laws, procedures and practices as they relate to the Agreement and to prepare reports on the results of such studies;
(c) to prepare and circulate annual reports on the technical aspects of the operation and status of the Agreement;
(d) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Member or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;
(e) to facilitate, as requested, technical assistance to Members with a view to furthering the international acceptance of the Agreement;
(f) to carry out an examination of a matter referred to it by a panel under Article 19 of the Agreement; and
(g) to exercise such other responsibilities as the Committee may assign to it.

3. The Technical Committee may also exercise responsibilities in the consultation and dispute settlement proceedings provided in Article 19 of the Agreement. Such responsibilities are covered in subparagraph (d) above.

4. In addition, paragraph 23 of Annex II to the Agreement provides that the Technical Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or his designee shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the CCC.

5. The Agreement's intention with regard to the reports which the Technical Committee has to submit in consultation and dispute settlement proceedings pursuant to Article 19 is clear.

6. As a practical matter, the provisions in paragraph 23 of Annex II are sufficient with respect to the presentation of the reports of the Technical Committee to the Committee on Customs Valuation and the CCC, it being understood that either body may request reconsideration or further consideration on any matter covered in a given report.

7. In Annex II it is provided that some of the Technical Committee's work will be in the form of advisory opinions, commentaries or explanatory notes, as required by the topic. In accordance with the customary procedure, the texts of advisory opinions, commentaries or explanatory notes adopted by the Technical Committee shall be attached to the report of the session and shall form part thereof.

8. In considering the legal status of the decisions taken by the Technical Committee in exercise of its responsibilities in accordance with Annex II, it should not be forgotten that it derives clearly from the Agreement that the Technical Committee has to draw up instruments that enable uniformity in interpretation and application of the Agreement to be achieved at the technical level. The instruments for this purpose shall be the advisory opinions, commentaries, explanatory notes, studies and reports. Nevertheless, such instruments do not constitute international regulations Unlike the interpretative notes to the Agreement which appear in Annex I, none of the Agreement's provisions imply that decisions by the Technical Committee are legally binding on the signatories as long as they are not incorporated into their domestic legislation.

9. Notwithstanding the foregoing, the text of Annex II clearly shows that decisions by the Technical Committee are intended to play an important and essential role in achieving uniformity in the interpretation and application of the Agreement. The most appropriate way of meeting this objective is to create a reporting system that enables both the Council and the Committee on Customs Valuation, each within its own sphere of competence, the Council in accordance with its Convention and the Committee on Customs Valuation in accordance with the Agreement, to take into account the Technical Committee's work.

10. As Article 18 of the Agreement provides for the establishment of a Committee on Customs Valuation under the auspices of the CCC, it may be concluded that, as is the case for all the Council's Committees, the Technical Committee's report and any advisory opinion, explanatory note or other decision incorporated therein is subject to approval by the Council in respect of technical customs matters. As indicated above, the Council may request that any part of the Committee's report be reviewed or made subject to a more detailed study.

11. Like the Council, the Committee on Customs Valuation may consider it useful to request the Technical Committee to review a particular matter or to pursue its study.

12. If no request is made by the Committee on Customs Valuation or the Council, all official decisions by the Technical Committee such as advisory opinions, studies, commentaries or explanatory notes shall be published by the CCC in the form of a collection of loose-leaf sheets for the guidance of Customs Administrations and commercial spheres.

13. With regard to the practical implementation of the plan of work, Annex II to the Agreement provides that the Technical Committee shall meet as necessary but at least two times a year, whereas Article 18 provided that the Committee on Customs Valuation shall normally meet once a year, when it prepared its annual report to WTO Members. The Council also meets once a year. In order to avoid unnecessary delays in publication, therefore, it would be useful to submit a report on the instruments adopted by the Technical Committee to whichever of the two bodies that has to approve them meets first. The report in question should then be submitted to the first meeting of this body, accompanied by a statement of the measures already taken.

GUIDELINES

14. The general instruments to be published which contain information and advice supplied by the Technical Committee may normally be entitled:

- Advisory opinions;
- commentaries;
- explanatory notes;
- case studies;
- studies.

This list is not necessarily exhaustive because the Committee on Customs Valuation may assign other responsibilities to the Technical Committee.

15. The title given to a particular instrument will depend on the type of text adopted by the Technical Committee. The choice will often be obvious, but sometimes there may be two or more possibilities. As guidance for choosing the appropriate title, some definitions are given below, together with examples for each of them.

16. An advisory opinion is a response to a question on the methods for applying the Agreement to a series of actual or theoretical factual elements. Consequently, where the factual elements of a situation are identical to those described in the advisory opinion, Customs Administrations will have a clear-cut solution; where they are not identical, the advisory opinion may not be directly applicable, although it could provide guidance for resolving the problem.

Example

Advisory opinion no. 4.1 on royalties and licence fees

17. A commentary is a treatise consisting of a series of comments on part of the Agreement intended to clarify a situation where a literal reading of the text itself can usefully be supplemented by additional guidance. Commentaries may include examples when necessary. Commentaries will generally provide Customs Administrations with guidelines for applying a particular part of the Agreement in a certain number of situations.

Example

Commentary on the treatment applicable to subsidized goods or export premiums.

18. An explanatory note elucidates the Technical Committee's views on a question of a general nature arising from one or more provisions of the Agreement. An explanatory note may also examine trade practices relating to the question and reach the conclusions imposed. It will assist Customs Administrations in applying a provision of the Agreement to a certain number of commercial situations to which it relates.

Example

Explanatory note on commissions and brokerage.

19. A case study presents a set of facts based on an actual commercial transaction, which can be used to demonstrate the practical application of one or more provisions of the Agreement.

Example

Case study with particular reference to Article 8.1(b)(iv) of the Agreement.

20. A study sets out the results of an examination in some depth of any question related to the Agreement, in particular a question put to the Technical Committee under paragraph 2(b) of Annex II to the Agreement and which is not more suitably covered by any of the foregoing instruments. A case study may also deal with matters internal to the Technical Committee or

in the form of a report to the Committee on Customs Valuation and, accordingly, is only disclosed in official circles.

Example

Study on the treatment applicable to used motor vehicles.

PROCEDURE FOR CONSIDERATION OF MATTERS SUBMITTED TO THE TECHNICAL COMMITTEE

21. The following paragraphs describe the procedure normally to be followed for consideration of issues and/or for drawing up the instruments of the Technical Committee.

22. If an issue has been raised and included in the provisional agenda of the Technical Committee in accordance with paragraph 12 of Annex II to the Agreement, the Secretariat shall submit this for consideration by the Technical Committee in the form of an information document. Preparation of this document would be facilitated if the administration or organization submitting the question provided the maximum details possible using the format approved in Appendix I (T. Pre. 7) of this section. This would also guarantee the uniformity of such issues. The Secretariat document shall set out the factual elements and, to the extent possible, provide an analysis of the matter, proposing various solutions to the Technical Committee. Members and observers shall also be invited to submit comments in writing.

23. The Technical Committee shall consider the document and the written comments. At this stage, it shall decide what type of action will be required.

24. The Technical Committee may, *inter alia,* adopt any of the following options:

(i) Decide not to consider the issue;
(ii) decide that, although it is not in a position to consider the matter or does not find it necessary to do so at that particular time, the issue may be raised again in the future. If this is the case, the item shall be included in Part III of the "Conspectus of Technical Valuation Questions";
(iii) decide that the most appropriate way of dealing with the matter would be a report to be annexed to the report of the relevant meeting of the Technical Committee;
(iv) decide that an instrument is required.

25. If the Technical Committee decides that an instrument is required, it should instruct the Secretariat with regard to the category and content of the proposed instrument. The Secretariat will then prepare a draft instrument for circulation.

26. When an instrument has been adopted, it shall be submitted to the Council and the Committee on Customs Valuation, in accordance with the provision in paragraph 13 of the Study on the Texts of the Technical Committee on Customs Valuation.

PROCEDURE FOR REVIEW OF INSTRUMENTS OF THE TECHNICAL COMMITTEE

27. If a Member wishes to review an existing instrument, the procedure set out below shall be followed:

- The Member concerned shall forward a duly substantiated request to the Secretariat. The request shall describe in full and in detail the problems or lacunae found;
- the Secretariat shall send the appropriate notification regarding the request to all Members, giving them an opportunity to comment on it; and
- the request, together with the comments received by the Secretariat and, where applicable, comments by the Secretariat, shall be forwarded to the Technical Committee in the form of an information document for its consideration under the agenda item "Issues suggested since the previous session".

28. When examining a request for review of an instrument, the Technical Committee may decide:

(a) Not to review the instrument;
(b) that although the Committee is not in a position to review the matter or does not find it necessary to do so at that particular time, the issue may be raised again subsequently, and, if this is the case, the request for review shall be included in Part III of the "Conspectus of Technical Valuation Questions"; or
(c) to review the instrument.

29. If the Technical Committee decides to review the instrument, it may adopt, *inter alia,* any of the following options:

(i) Not to amend the instrument;
(ii) to amend the instrument;
(iii) to draw up a new instrument; or
(iv) to nullify the instrument and remove it from the Conspectus.

INSTRUMENTS CONTAINING INFORMATION AND ADVICE PROVIDED BY THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

ADVISORY OPINIONS

LIST OF ADVISORY OPINIONS

1.1 The concept of "sale" in the Agreement.
2.1 Acceptability of a price below prevailing market prices for identical goods.
3.1 Meaning of "provided that they are distinguished" in the Interpretative Note to Article 1 of the Agreement: duties and taxes of the country of importation.
4.1 Royalties and licence fees under Article 8.1(c) of the Agreement.
4.2 Ditto.
4.3 Ditto.
4.4 Ditto.
4.5 Ditto.
4.6 Ditto.
4.7 Ditto.
4.8 Ditto.
4.9 Ditto.
4.10 Ditto.
4.11 Ditto.
4.12 Ditto.
4.13 Ditto.
5.1 Treatment of cash discounts under the Agreement.
5.2 Ditto.
5.3 Ditto.
6.1 Treatment of barter or compensation deals under the Agreement.
7.1 Acceptability of test values under Article 1.2(b)(i) of the Agreement.
8.1 Treatment under the Agreement of credits in respect of earlier transactions.
9.1 Treatment of anti-dumping and countervailing duties when applying the deductive method.
10.1 Treatment of fraudulent documents.
11.1 Treatment of inadvertent errors and of incomplete documentation.
12.1 Flexible application of Article 7 of the Agreement.
12.2 Hierarchical order in applying Article 7.
12.3 Use of data from foreign sources in applying Article 7.
13.1 Scope of the word "insurance" under Article 8.2(c) of the Agreement.
14.1 Meaning of the expression "sold for export to the country of importation".
15.1 Treatment of quantity discounts.
16.1 Treatment of a situation where the sale or price is subject to some condition or consideration for which a value can be determined with respect to the goods being valued.
17.1 Scope and implication of Article 11 of the Agreement.
18.1 Implications of Article 13 of the Agreement.

19.1 Application of Article 17 of the Agreement and paragraph 6 of Annex III.
20.1 Conversion of currency in cases where the contract provides for a fixed rate of exchange.
21.1 Interpretation of the expression "partners in business" in Article 15.4(b).

ADVISORY OPINION 1.1

THE CONCEPT OF "SALE" IN THE AGREEMENT

The Technical Committee on Customs Valuation expressed the opinion that:

(a) The Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade 1994, hereinafter called the "Agreement", contains no definition of "sale". Article 1, paragraph 1, merely stipulates a specific commercial operation satisfying certain requirements and conditions.
(b) nevertheless in conformity with the basic intention of the Agreement that the transaction value of imported goods should be used to the greatest extent possible for customs valuation purposes, uniformity of interpretation and application can be achieved by taking the term "sale" in the widest sense, to be determined only under the provisions of Articles 1 and 8 read together.
(c) it would however be useful to prepare a list of cases which would not be deemed to constitute sales meeting the requirements and conditions of Articles 1 and 8 taken together. In these cases the valuation method to be used should of course be determined in accordance with the order of priority laid down by the Agreement.

The list prepared pursuant to this opinion is appended. It is not exhaustive and will be added to in the light of experience.

List of situations in which imported goods would not be deemed to have been the subject of a sale

I. Free consignments

Where transactions do not involve the payment of a price they cannot be regarded as sales under the Agreement.

Examples*:* Gifts, samples, promotional items.

II. Goods imported on consignment

Under this trading practice, the goods are dispatched to the country of importation not as a result of a sale, but with the 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.

Example

Producer P in the country of exportation E sends his agent X in the country of importation I a consignment of 50 carpets for sale by auction. The carpets are sold in the country of importation at a total price of 500,000 c.u. The sum to be transferred by X to producer P in payment of the imported goods will be 500,000 c.u., less the costs incurred by X in connection with the sale of the goods and his remuneration on the transaction.

Importations on consignment should not be confused with profit-sharing transactions. In the latter cases the goods are imported following a sale and provisionally invoiced at a certain price to which must be added part of the profit made when the goods are sold on the market in the country of importation. Transactions of this kind must be regarded as sales with a clause reserving determination of the final price; the nature of the transaction does not preclude valuation under Article 1, but of course particular attention has to be paid to the condition laid down in paragraph 1(c) of that Article.

III. Goods imported by intermediaries, who do not purchase the goods and who sell them after importation

A distinction must be made between the importations envisaged under this heading and importations of goods on consignment, dealt with under the previous heading; the latter constitute a separate and specific trading practice. The present category covers a whole range of situations encountered in commercial practice, whereby goods are delivered to intermediaries without having been the subject of a sale and in international usage are not universally considered as importations on consignment.

Example

Importer X in the country of importation I acts as an agent for the foreign manufacturer F in the country of exportation E. The imported goods are cleared through Customs by X for replenishment of the agency stocks and later sold in the country of importation for the account and at the risk of F.

It should be noted that agency importations for distribution made in pursuance of a contract of sale already concluded between the supplier and the customer - sometimes nominally between the agent and the customer - do constitute transactions which can be used as a basis for valuation under Article 1.

IV. Goods imported by branches which are not separate legal entities

In cases where a branch cannot be regarded as a separate legal entity under the legislation concerned, there can be no sale, bearing in mind that a sale necessarily involves a transaction between two separate persons.

V. Goods imported under a hire or leasing contract

Hire or leasing transactions by their very nature do not constitute sales, even if the contract includes an option to purchase the goods.

VI. Goods supplied on loan, which remain the property of the sender

Goods (often machinery) are sometimes loaned by the owner to a customer. These transactions do not involve sales.

Example

Manufacturer F in country E loans importer X in country of importation I a specialized machine for manufacturing packagings of plastic-coated paper.

VII. Goods (waste or scrap) imported for destruction in the country of importation, with the sender paying the importer for his services

This case relates to waste or scrap imported for destruction. As costs are incurred in connection with this destruction, the exporter pays the importer an amount for his services.

As the importer does not pay for the imported goods but, on the contrary, is paid for accepting and destroying them, no sale can be considered to have taken place under the terms of the Agreement.

ADVISORY OPINION 2.1

ACCEPTABILITY OF A PRICE BELOW PREVAILING MARKET PRICES FOR IDENTICAL GOODS

1. The question has been asked whether a price lower than prevailing market prices for identical goods can be accepted for the purposes of Article 1 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

2. The Committee considered this question and concluded that the mere fact that a price is lower than prevailing market prices for identical goods should not cause it to be rejected for the purposes of Article 1, subject of course to the provisions of Article 17 of the Agreement.

ADVISORY OPINION 3.1

MEANING OF "PROVIDED THAT THEY ARE DISTINGUISHED" IN THE INTERPRETATIVE NOTE TO ARTICLE 1 OF THE AGREEMENT: DUTIES AND TAXES OF THE COUNTRY OF IMPORTATION

1. When the price paid or payable includes an amount for the duties and taxes of the country of importation, should these duties and taxes be deducted in those instances where they are not shown separately on the invoice and where the importer has not otherwise claimed a deduction in this respect?

2. The Technical Committee on Customs Valuation expressed the following view:

Since the duties and taxes of the country of importation are by their nature distinguishable from the price actually paid or payable, they do not form part of the customs value.

ADVISORY OPINION 4.1

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. When a machine manufactured under a patent is sold for export to the country of importation 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, should the royalty be added to the price paid or payable under the provisions of Article 8.1(c) of the Agreement?

2. The Technical Committee on Customs Valuation expressed the following view:

The royalty should be added to the price actually paid or payable in accordance with the provisions of Article 8.1(c) 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.

ADVISORY OPINION 4.2

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. Phonograph records of a musical performance are purchased by an importer from a manufacturer. Under the laws of the country of importation when he resells the records the importer is required to pay a royalty of 3% of the sale price to a third party, the author of the musical composition, who holds a copyright. No part of the royalty accrues directly or indirectly to the manufacturer, nor is it paid as an obligation under the contract of sale. Should the royalty be added to the price actually paid or payable?

2. The Technical Committee on Customs Valuation expressed the following view:

The royalty should not be added to the price actually paid or payable in determining the customs value; payment of the royalty is not a condition of the sale for export of the imported

goods but arises from a legal obligation on this importer to pay the copyright holder when the records are sold in the importing country.

ADVISORY OPINION 4.3

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. Importer I acquires the right to use a patented process for the manufacture of certain products and agrees to pay the patent holder H a royalty on the basis of the number of articles produced using that process. In a separate contract, I designs and purchases from foreign manufacturer E a machine which is specially intended to perform the patented process. Is the royalty on the patented process part of the price paid or payable for the imported machine?

2. The Technical Committee on Customs Valuation expressed the following view:

Although the payment of the royalty in question is for a process embodied in the machine and one which constitutes the sole use of the machine, this royalty is not part of the customs value since its payment is not a condition of the sale of the machine for export to the importing country.

ADVISORY OPINION 4.4

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. A patented concentrate is purchased by importer I from manufacturer M who is also the patent holder; the imported concentrate is simply diluted with ordinary water and consumer-packed before it is sold in the importing country. In addition to the price of the goods, the purchaser is required to pay to manufacturer M, as a condition of sale, a royalty for the right to incorporate or use the patented concentrate in products intended for resale. The amount of the royalty is calculated on the sale price of the finished product.

2. The Technical Committee on Customs Valuation expressed the following view:

The royalty is a payment related to the imported goods that the buyer is required to pay as a condition of sale of those goods and accordingly should be added to the price actually paid or payable in accordance with Article 8.1(c). This opinion refers to a royalty paid for the patent incorporated in the imported goods and is without prejudice to other situations.

ADVISORY OPINION 4.5

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. Foreign manufacturer M owns a trademark protected in the country of importation. Importer I makes and sells under M's trademark six types of cosmetics. I is required to pay M a royalty calculated as 5% of his annual gross sales of all cosmetics sold under M's trademark. All of the cosmetics are manufactured to M's formula from ingredients obtained in the country of importation, with the exception of one for which the essential ingredients are normally purchased from M. How is the royalty to be treated with respect to the imported ingredients?

2. The Technical Committee on Customs Valuation expressed the following view:

The royalty is payable to M irrespective of whether I uses M's ingredients or those from local suppliers; it is therefore not a condition of sale of the goods, and for valuation purposes cannot be added by virtue of Article 8.1(c) to the price actually paid or payable.

ADVISORY OPINION 4.6

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. An importer makes two separate purchases of a concentrate from foreign manufacturer M. M owns a trademark which may or may not be applied to the goods when they are sold after dilution depending on the terms of a particular sale for importation. The fee for use of the trademark is paid on a per unit basis. The imported concentrate is simply diluted with ordinary water and consumer packed before sale.

In the first purchase, the concentrate is diluted and resold without trademark with no requirement that the fee be paid. In the second case, the concentrate is diluted and resold with trademark and as a condition of the sale for import there is a requirement for payment of the fee.

2. The Technical Committee on Customs Valuation expressed the following view:

Since the goods in the first purchase are resold without the trademark and no fee is paid, an addition is not appropriate. In the second purchase the fee required by M must be added to the price actually paid or payable for the imported goods.

ADVISORY OPINION 4.7

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. An agreement is entered into between record company R and artist A, both established in country of export X. According to the agreement, A is to receive a royalty payment for each recording sold at retail in consideration for A's assignment of worldwide reproduction, marketing and distribution rights. R subsequently enters into a distribution and sales agreement with importer I to supply I with records which reproduce a performance by the artist A for resale in the country of importation. As a part of that agreement, R subassigns the marketing and distribution rights to I and requires from I, in return, a royalty payment of 10% of the retail selling price of each record purchased and imported into the country of importation. I submits the 10% payment to R.

2. The Technical Committee on Customs Valuation expressed the following view.

- The royalty payment is a condition of sale because I is required to pay this amount as a consequence of the distribution and sales agreement with R. In order to protect his commercial interests R would not have sold the records to I if I had not agreed to those terms.
- The payment is related to the goods being valued as it is made for the right to market and distribute the particular imported goods and the amount of the royalty will vary according to the actual selling price of a particular record.
- The fact that R is obliged, in turn, to pay a "royalty" amount to A in respect of worldwide sales of A's performances, is not relevant vis-à-vis the contract between R and I. I is making the payment directly to the seller and it is of no concern or interest to I how R allocates his gross income receipts. The 10% royalty payment, therefore, should be added to the price actually paid or payable.

ADVISORY OPINION 4.8

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. Importer I enters into a licence/royalty agreement with licence holder L established in country X under which I agrees to pay L a fixed sum of royalty for each pair of shoes bearing the trademark of L imported into the country of importation. Licence holder L provides art and design work relating to the trademark. Importer I concludes another agreement with manufacturer M of country X for the purchase of shoes bearing the trademark of L affixed to the shoes by M, supplying M with the art and design work provided by L. Manufacturer M is not licensed by L. This sales agreement does not contain any reference to the payment of royalty. The manufacturer, the importer and the licensor are all unrelated.

2. The Technical Committee on Customs Valuation expressed the following view:

The importer is required to pay a royalty to obtain the right to use the trademark. This obligation results from a separate agreement unrelated to the sale for export of the goods to the country of importation. Goods are purchased from a supplier under another contract and payment of royalty is not a condition of sale of these goods. Therefore, the royalty payment in this case is not to be added to the price actually paid or payable.

Whether the supply of the art and design work relating to the trademark would qualify as dutiable under the provisions of Article 8.1(b) is a separate consideration.

ADVISORY OPINION 4.9

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. An agreement is entered into between the manufacturer/trademark holder of certain veterinary preparations and an import company. Under the agreement, the manufacturer grants the importer the exclusive right to manufacture, use and sell in the country of importation, "Licensed Preparation". These licensed preparations containing imported cortisone in a form suitable for veterinary use, are made from bulk cortisone supplied to the importer by or on behalf of the manufacturer. Cortisone is a standard, non-patented, anti-inflammatory agent, available from different manufacturers and is one of the main ingredients of the licensed preparations.

The manufacturer also grants the importer the exclusive right and licence to use the trademark in connection with the manufacture and sale of licensed preparations in the country of importation.

The payment provisions of the Agreement provide for the importer to pay the manufacturer a royalty at the rate of 8% of the first 2 million c.u. net sales of licensed preparations in any one calendar year, and 9% of the next 2 million c.u. net sales of licensed preparations in the same calendar year. A minimum royalty of 100,000 c.u. per year is also provided for. Under various circumstances outlined in the agreement, both parties could convert the importer's exclusive rights to non-exclusive rights. In which case, the minimum royalty would be reduced by 25% or, in some cases by 50%. Royalties based on sales could also be reduced under certain circumstances.

Finally, royalties based on sales of licensed preparations are payable within 60 days following the end of each quarter of the calendar year.

2. The Technical Committee on Customs Valuation expressed the following view:

The royalty payment is made for the right to manufacture the licensed preparations containing the imported product and eventually for the use of the trademark for the licensed preparation. The imported product is a standard, non-patented anti-inflammatory agent. The use of the trademark, therefore, is not related to the goods being valued. Payment of royalty is not a condition of the sale for export of the imported goods but a condition for manufacture and sale of the licensed preparations in the country of importation. Accordingly, it would not be appropriate to add this payment to the price actually paid or payable.

ADVISORY OPINION 4.10

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. Outer garments are purchased by importer I in country P from manufacturer M located in country X. M is also the holder of a trademark related to certain comic strip characters. According to the provisions of the licence agreement between I and M, M would produce the garments only for I and affix the comic strip characters and the trademark before the importation and I would resell these garments in country P. In consideration of this right, I agrees to pay M, in addition to the price for the garments, a licence fee calculated as a percentage of the net selling price of the garments to which the comic strip characters and the trademark are affixed.

2. The Technical Committee on Customs Valuation expressed the following view:

The payment of the licence fee for the right to resell the imported garments containing trademarked material is made a condition of the sale and relates to the imported goods. The imported goods cannot be bought and resold without the comic strip characters and the trademark. Therefore, this payment should be added to the price actually paid or payable.

ADVISORY OPINION 4.11

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. Sportswear manufacturer M and importer I are both related to parent company C which owns the rights of a trademark which is affixed to the sportswear. In the sales contract between M and I there is no requirement for the payment of royalty. I, however, in accordance with a separate agreement with C, is obliged to pay a royalty to C in order to obtain the right to use the trademark which is affixed to the sportswear I purchased from M. Is the royalty payment a condition of sale of, and related to, the imported sportswear?

2. The Technical Committee on Customs Valuation expressed the following view:

The sales contract between M and I covering trademarked goods does not contain specific conditions with respect to royalty payments. However, the payment in question is a condition of sale as I is obliged to pay the royalty to the parent company as a result of buying the goods. I does not have the right to use the trademark without payment of the royalty. The fact that there is no written contract with the parent company does not detract from the obligation of I to make a payment as required by the parent company. For reasons stated above, payments for the right to use the trademark are related to the goods being valued and the amount of the payments should be added to the price actually paid or payable.

ADVISORY OPINION 4.12

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. Importer I and seller S enter into a sales contract for the supply of rolling mill equipment. This equipment is to be incorporated into a continuous copper rod plant already existing in the country of importation. Incorporated in the rolling mill equipment is technology involving a patented process which the rolling mill is intended to perform. The importer, in addition to the price of the equipment has to pay 15 million c.u. as licence fee for the right to use the patented process. Seller S will receive payment for the equipment and the licence fee from the importer, and will then transfer the entire amount of the licence fee to the licensor.

2. The Technical Committee on Customs Valuation expressed the following view:

The licence fee is for a technology incorporated in rolling mill equipment which enables it to perform the patented process. The rolling mill equipment has been purchased specifically to carry out the patented production process. Thus, since the process for which the 15 million c.u. licence fee is paid is related to the goods being valued and is a condition of the sale, it should be added to the price actually paid or payable for the imported rolling mill equipment.

ADVISORY OPINION 4.13

ROYALTIES AND LICENCE FEES UNDER ARTICLE 8.1(c) OF THE AGREEMENT

1. Importer I purchases sports bags from foreign manufacturer M, as well as from other suppliers. Importer I, manufacturer M and other suppliers are all unrelated.

Importer I, on the other hand, is related to company C which holds the right of a trademark. Under the terms of a contract between I and C, C transfers the right to use the trademark to I against a royalty payment.

Importer I furnishes manufacturer M and other suppliers with labels bearing the trademark, which are affixed to the sports bags before the importation.

Is the royalty related to the goods being valued? Does the payment from I to C form part of a condition of sale between M and I and I and other suppliers?

2. The Technical Committee on Customs Valuation expressed the following view:

Although the importer is required to pay a royalty to obtain the right to use the trademark, this results from a separate agreement unrelated to the sale for export of the goods to the country of importation. The imported goods are purchased from various suppliers under different contracts and the payment of the royalty is not a condition of the sale of these goods. The buyer does not have to pay the royalty in order to purchase the goods. Therefore, it should not be added to the price actually paid or payable as an adjustment under Article 8.1(c).

Whether the supply of labels evidencing a trademark would qualify as dutiable under the provisions of Article 8.1(b) is a separate consideration.

ADVISORY OPINION 5.1

TREATMENT OF CASH DISCOUNTS UNDER THE AGREEMENT

1. When, prior to the valuation of imported goods, a buyer has availed himself of a cash discount offered by the seller, should that cash discount be allowed in determining the transaction value of the goods?

2. The Technical Committee on Customs Valuation expressed the following view:

Since the transaction value under Article 1 of the Valuation Agreement is the price actually paid for the imported goods, the cash discount should be allowed in determining the transaction value.

ADVISORY OPINION 5.2

TREATMENT OF CASH DISCOUNTS UNDER THE AGREEMENT

1. When a cash discount offered by the seller is available but payment for the goods has not yet been made at the time of valuation, would the requirements of Article 1.1(b) of the Agreement preclude using the sale price as a basis for the transaction value?

2. The Technical Committee on Customs Valuation expressed the following view:

The fact that a cash discount, although available, has not been availed of because payment has not yet been made at the time of valuation, does not mean that the provisions of Article 1.1(b) apply; there is, thus, nothing that precludes using the sale price in establishing transaction value under the Agreement.

ADVISORY OPINION 5.3

TREATMENT OF CASH DISCOUNTS UNDER THE AGREEMENT

1. When a cash discount is available to the buyer but payment has not been made at the time of valuation what amount should be accepted as a basis for transaction value under Article 1 of the Agreement?

2. The Technical Committee on Customs Valuation expressed the following view:

When a cash discount is available but payment has not yet been made at the time of valuation, the amount the importer is to pay for the goods should be taken as the basis for transaction value under Article 1. Procedures for determining what is to be paid may vary;

for example, a statement on the invoice might be accepted as sufficient evidence or a declaration by the importer as to the amount he is to pay could be the basis for action, subject to verification and to possible application of Articles 13 and 17 of the Agreement.

ADVISORY OPINION 6.1

TREATMENT OF BARTER OR COMPENSATION DEALS UNDER THE AGREEMENT

1. How are barter or compensation deals to be treated with reference to Article 1 of the Agreement?

2. The Technical Committee on Customs Valuation expressed the following opinion:

International barter takes various forms. In its purest form, it consists of an exchange of goods or services of approximately equal value, without recourse to a common unit of measurement (money) to express the transaction.

Example

X tons of product A from country E are exchanged for Y units of product B from country I.

Disregarding the question as to whether a sale has occurred in cases of pure barter, where the transaction is neither expressed nor settled in monetary terms, and there is no transaction value or objective and quantifiable data for determining that value, the customs value should be established on the basis of one of the other methods set out in the Agreement, taken in the sequence prescribed.

For a variety of reasons (e.g. bookkeeping, statistics, taxation, etc.), it is hard to dispense entirely with reference to money in international trade relations and, hence, pure barter is rarely encountered nowadays. Barter now usually involves more complex transactions in which the value of bartered goods is determined (e.g. on the basis of current world market prices) and expressed in monetary terms.

Example

Manufacturer F in the country of importation I has the opportunity of selling electrical equipment in country E provided an equivalent value of goods produced in country E is bought and exported from that country. After an arrangement between F and X trading in plywood in country I, X imports into country I a quantity of plywood from country E and F exports electrical equipment to country E, the equipment being invoiced at 100,000 c.u.

The invoice presented on importation of the plywood also shows a value of 100,000 c.u.; no financial settlement is however made between X and the seller in country E, the payment for the goods being covered by exportation of the electrical equipment by F.

Although many barter deals expressed in monetary terms are concluded without a financial settlement being made, there are situations where money does change hands, for example, when a balance has to be paid in clearing operations, or in cases of partial barter where part of the transaction involves a money payment.

Example

Importer X in country I imports from country E two machines priced at 50,000 c.u. on the understanding that only one fifth of this sum is to be the subject of a financial settlement, the rest being offset by the delivery of a specified quantity of textile products.

The invoice presented on importation shows a value of 50,000 c.u.; however, the financial settlement between X and the seller in country E involves only 10,000 c.u., the balance being covered by the delivery of the textile products.

Under the legislation of some countries barter transactions expressed in monetary terms can be regarded as sales, such transactions however will of course be subject to the provisions of Article 1(b) of the Agreement.

Barter or compensation deals should not be confused with certain sales transactions in which the supply of the goods, or their price, is governed by factors extraneous to the transaction concerned. This would apply in the following cases:

- The price of the goods is fixed by reference to the price of other goods which the buyer may sell to his supplier.

Example

Manufacturer F in country of exportation E has an agreement with importer X in country I to supply specialized equipment designed by F, at a unit price of 10,000 c.u., on condition that importer X supplies him with relays used in the production of the equipment, at a unit price of 150 c.u.

- The price of the imported goods depends on the purchaser's willingness to obtain from the same supplier other goods, in a specified quantity or at a specified price.

Example

Manufacturer F in country of exportation E sells leather goods to buyer X in country I at a unit price of 50 c.u., on condition that X also purchases a consignment of shoes at a unit price of 30 c.u.

It should be pointed out that these transactions too are subject to the condition laid down in Article 1(b).

ADVISORY OPINION 7.1

ACCEPTABILITY OF TEST VALUES UNDER ARTICLE 1.2(b)(i) OF THE AGREEMENT

1. Can a price below prevailing market prices for identical or similar goods be used as a test value for the purposes of Article 1.2(b)(i) of the Agreement?

2. The Technical Committee on Customs Valuation expressed the following opinion:

When a price between unrelated parties has satisfied the conditions prescribed in Article 1 and, with any necessary adjustments in accordance with the provisions of Article 8, has been accepted by customs as a transaction value, that value can be used as a test value. That is not of course the case where a price is still the subject of an enquiry or where the final determination of the customs value otherwise remains provisional (see Article 13 of the Agreement).

ADVISORY OPINION 8.1

TREATMENT UNDER THE AGREEMENT OF CREDITS IN RESPECT OF EARLIER TRANSACTIONS

1. How are credits made in respect of earlier transactions to be treated under the Valuation Agreement when valuing goods that have received the benefit of that credit?

2. The Technical Committee on Customs Valuation expressed the following view:

The amount of the credit represents an amount already paid to the seller and accordingly is covered by the Interpretative Note to Article 1 on "price actually paid or payable", which specifies that the price actually paid or payable is the total payment for the imported goods made, or to be made, to the seller. Thus, the credit is part of the price paid and for valuation purposes must be included in the transaction value.

The treatment to be accorded by customs to the previous transaction which gave rise to the credit must be decided separately from any decision on the proper customs value of the present shipment. The decision whether adjustment may be made to the value of the previous shipment will depend on national legislation.

ADVISORY OPINION 9.1

TREATMENT OF ANTI-DUMPING AND COUNTERVAILING DUTIES WHEN APPLYING THE DEDUCTIVE METHOD

1. When imported goods which are subject to anti-dumping or countervailing duties fall to be valued by the deductive method under Article 5 of the Agreement, should those duties be deducted from the selling price in the country of importation?

2. The Technical Committee on Customs Valuation expressed the following opinion:

In the determination of customs value under the deductive method, anti-dumping and countervailing duties should be deducted under Article 5.1(a)(iv) as customs duties and other national levies.

ADVISORY OPINION 10.1

TREATMENT OF FRAUDULENT DOCUMENTS

1. Does the Agreement require Customs Administrations to rely on fraudulent documentation?

2. The Technical Committee on Customs Valuation expressed the following view:

Imported goods have to be valued under the Agreement on the basis of actual facts. Therefore any documentation which contained false information as to the facts would be contrary to the intention of the Agreement. In this respect it is noted that Article 17 of the Agreement and paragraph 6 of Annex III underline the right of Customs Administrations to satisfy themselves as to the truth and accuracy of any statement, document or declaration presented to them for customs valuation purposes. It follows that an administration cannot be required to rely on fraudulent documentation. Further, should documentation prove to be fraudulent subsequent to the determination of a customs value, invalidation of that value would be a matter for national legislation.

ADVISORY OPINION 11.1

TREATMENT OF INADVERTENT ERRORS AND OF INCOMPLETE DOCUMENTATION

1. Under the Agreement how should the documents which are incomplete or which are found to contain inadvertent errors be treated?

2. The Technical Committee on Customs Valuation expressed the following view:

In determining value under the Agreement, Customs Administrations cannot be required to rely on documents which are incomplete in respect of relevant information or which contain inadvertent errors which have the effect of distorting the relevant information.

However, situations do arise when it becomes necessary to use the information contained in an incomplete document and to make further enquiries so as to obtain information or facts missing from such a document. Similarly, only a part of a document might contain inadvertent error and reliance might be placed on other parts of the document which do not have any such error. Recourse could be taken to provisional clearance as provided by Article 13 of the Agreement pending the importer or his agent furnishing complete information or causing the error in the document to be rectified.

Thus, the treatment of documents which are incomplete or which contain inadvertent errors can differ from one case to another. In this regard, it is also recognized that there will be differences in the practices followed by Customs Administrations and the degree of discretion prescribed by them.

ADVISORY OPINION 12.1

FLEXIBLE APPLICATION OF ARTICLE 7 OF THE AGREEMENT

1. In the application of Article 7, can methods other than those set out in Articles 1 to 6 be used, if they are not prohibited by Article 7.2(a) to (f) and are consistent with the principles and general provisions of the Agreement and of Article VII of the GATT 1994?

2. The Technical Committee on Customs Valuation expressed the following opinion:

Paragraph 2 of the Interpretative Note to Article 7 provides that the methods to be employed under Article 7 should be those laid down in Article 1 to 6 inclusive but applied with a reasonable flexibility.

However, if a customs value cannot be determined by using these methods even in a flexible manner, as a final resort the customs value may be determined using other reasonable methods provided that such methods are not precluded by Article 7.2.

In determining the customs value under Article 7, the method used must be consistent with the principles and general provisions of the Agreement and of Article VII of the GATT 1994.

ADVISORY OPINION 12.2

HIERARCHICAL ORDER IN APPLYING ARTICLE 7

1. When applying Article 7, is it necessary to follow the hierarchical order with respect to the methods of valuation in Articles 1 to 6?

2. The Technical Committee on Customs Valuation expressed the following view:

There is no provision in the Agreement that specifically provides that the hierarchical order of Articles 1 to 6 should be followed when Article 7 is applied. However, Article 7 requires the use of reasonable means consistent with the principles and general provisions of the Agreement and this indicates that, where reasonably possible, the hierarchical order should be followed. Thus, where several acceptable methods can be used to determine customs value under Article 7, the hierarchy should be maintained.

ADVISORY OPINION 12.3

USE OF DATA FROM FOREIGN SOURCES IN APPLYING ARTICLE 7

1. When applying Article 7 can Customs use information furnished by the importer but obtained by him from foreign sources?

2. The Technical Committee on Customs Valuation expressed the following view:

It is to be expected, in dealing with transactions which originate outside the country of importation, that a certain amount of data would come from foreign sources. However, Article 7 is silent as to the original source of information to be used in its application, merely requiring that such data be available in the country of importation. The source of the information would therefore not in itself be a bar to its use for the purposes of Article 7 provided that the information was available in the country of importation and Customs were able to be satisfied as to its truth or accuracy.

ADVISORY OPINION 13.1

SCOPE OF THE WORD "INSURANCE" UNDER ARTICLE 8.2(c) OF THE AGREEMENT

1. What interpretation should be given to the word "insurance" in Article 8.2(c) of the Agreement?

2. The Technical Committee on Customs Valuation expressed the following opinion:

It is apparent from the context of paragraph 2 of Article 8 that that paragraph concerns charges connected with the shipment of the imported goods (cost of transport and transport-related costs). Hence the word "insurance" used in subparagraph (c) should be interpreted as referring solely to insurance costs incurred for the goods during the operations specified in Article 8.2(a) and (b) of the Agreement.

ADVISORY OPINION 14.1

MEANING OF THE EXPRESSION "SOLD FOR EXPORT TO THE COUNTRY OF IMPORTATION"

1. What interpretation should be given to the expression "sold for export to the country of importation" in Article 1 of the Agreement?

2. The Technical Committee on Customs Valuation expressed the following opinion:

The Council's Glossary of International Customs Terms defines the term importation as "the act of bringing any goods into a Customs territory" and the term exportation as "the act of taking any goods out of the Customs territory". Therefore, the fact that the goods are presented for valuation of itself establishes their importation which, in turn, establishes the fact of their exportation. The only remaining requirement then, is to identify the transaction relating thereto.

In this respect, there is no need that the sale take place in a specific country of exportation. If the importer can demonstrate that the immediate sale under consideration took place with the view to export the goods to the country of importation, then Article 1 can apply. It follows that only transactions involving an actual international transfer of goods may be used in valuing merchandise under the transaction value method.

The following examples illustrate the above principles:

Example 1

Seller S in the exporting country X enters into a contract to sell electric appliances to importer A in the importing country I at a price of 5.75 c.u. per piece. S concludes an agreement with manufacturer M also in country X to manufacture the goods. Manufacturer M on behalf of S, ships the goods to A in country I. M's selling price to S is 5 c.u. per piece.

In this case, the transaction between S and A involves an actual international transfer of goods and constitutes a sale for export to the country of importation; it would, therefore, be a basis for valuation under Article 1 of the Agreement.

Example 2

Buyer B in country of importation I purchases goods from seller S in the same country I. The goods are stocked by S in country X. Necessary arrangements for shipment and export of the goods from country X are completed by S and the goods are imported by B into country I.

It is not necessary that the sale take place in a specific country of exportation. Whether seller S is located in country X or I or a third country is not a relevant factor. The transaction between buyer B and seller S is a sale for export to the country of importation and would be the basis for valuation of the goods under Article 1.

Example 3

Seller S in country X sells goods to buyer B in country I. The goods are shipped from country X in bulk and are subsequently wrapped and put into packages by seller S at a transit port located in country T before being imported into country I.

The principle applicable to Example 2 would apply to this example also. Whether the country of export is X or T is not a material issue in this case and the sale agreement between seller S and the buyer B constitutes a sale for export to the country of importation and would be the basis for valuation of the goods under Article 1.

Example 4

Seller S in country X sells goods to buyer A in country I and accordingly ships the goods. While the goods are on the high sea, buyer A informs seller S that he is unable to make the payment and take delivery of the goods. The seller is able to locate another buyer B also in country I and arranges the sale and delivery of the goods to buyer B. Accordingly B imports the goods into country I.

In the above example, the sale between seller S and buyer B results in the importation of the goods which, in turn, establishes it as being a sale for export. The transaction constitutes an international transfer of goods and would be the basis for valuation of the goods under Article 1.

Example 5

The head office of a multinational hotel chain located in country X purchases supplies for its operation. At the beginning of each year, chain hotels in countries I, I2 and I3 submit purchase orders to the head office for their supplies. The head office then adds up all the orders from each hotel in the chain and issues purchase orders to various suppliers in country X. The supplies are either sent directly by the suppliers to each of the hotels in the chain or are shipped to the head office and subsequently shipped to those hotels. In either case, the suppliers bill the head office in country X which then separately bills each hotel in the chain.

In the above example, the sale between the head office and the suppliers both located in country X does not involve an international transfer of goods but is a domestic sale in the country of exportation since the head office purchases the supplies from the suppliers and then sells them to each separate hotel in the chain for export to the country where each separate hotel is located. In this case, the transactions between the head office and each separate hotel would constitute sales for export to the country of importation. Provided that the relationship did not influence the price, these sales would be the basis for valuation of the goods under Article 1.

Example 6

Buyer A in country I purchases 500 chairs from seller S in country X at a price of 20 c.u. per unit. Buyer A instructs seller S to ship 200 chairs to him for his own use in country I and 300 chairs to a warehouse in country X. Buyer A subsequently agrees to sell the remaining 300 chairs to buyer B in country I for 25 c.u. per unit. Buyer A then instructs his warehouse in country X to ship the goods directly to buyer B in country I.

In this example, there are two cases where the goods must be valued. In the first instance, the transaction between seller S and buyer A at 20 c.u. per unit would constitute a sale for export to the country of importation and would be the basis for the valuation of the 200 chairs under Article 1. In the second instance, the selling price of 20 c.u. of the goods placed in a warehouse is not relevant for valuation purposes since the subject goods were not sold for export to country I. The sale between buyer A and buyer B at 25 c.u. per unit, which involves an actual international transfer of goods, would constitute the sale for export to the country of importation and would be the basis for valuation under Article 1.

ADVISORY OPINION 15.1

TREATMENT OF QUANTITY DISCOUNTS

1. How are quantity discounts to be treated with reference to Article 1 of the Agreement?

2. The Technical Committee on Customs Valuation expressed the following opinion:

Quantity discounts are deductions from the price of goods allowed by the seller to customers according to the quantities purchased over a given basic period.

The WTO Valuation Agreement makes no reference to a standard quantity which would need to be taken into consideration when deciding whether the price actually paid or payable for the imported goods is a valid basis for the determination of the customs value under Article 1.

It therefore follows that for customs valuation purposes it is the quantity which has determined the unit price of the goods being valued when they were sold for export to the country of importation that is relevant. Thus, quantity discounts arise only when it is shown that a seller sets the price for his goods according to a fixed scheme based upon the quantity of the goods sold. Such discounts fall into two broad categories:

(1) those established prior to the importation of goods; and
(2) those established subsequent to the importation of goods.

These considerations are illustrated by the following examples:

General Facts

There is demonstrated evidence that the seller offers the following quantity discounts on the goods purchased within a given specified period e.g. a calendar year.

- 1 to 9 units - no discount
- 10 to 49 units - 5% discount
- Over 50 units - 8% discount

In addition to the above discounts a further discount of 3% is granted at the end of the specified period calculated retrospectively by reference to the total quantity purchased in that period.

Example 1

First situation: Importer B in country X purchases and imports 27 units in a single shipment. The invoice price reflects a 5% discount.

Second situation: Importer C in country X purchases 27 units in a single transaction at a price which reflects a 5% discount but imports them in 3 separate shipments each comprising 9 units.

Valuation treatment

In both situations, the customs value is to be determined on the basis of the price actually paid or payable for the imported goods, i.e. those prices reflecting a 5% discount which contributed to the setting of those prices.

Example 2

Subsequent to the purchase and importation of the 27 units, importers B and C purchase and import within the same calendar year a further 42 units (i.e. a total of 69 units each). The price charged to both B and C for the second purchase of 42 units reflects an 8% discount.

First situation: Importer B's first purchase of 27 units and the second purchase of 42 units are the subject of two separate contracts which are entered into in the context of an initial generation agreement which provides for the cumulative progressive discounts between the buyer and the seller.

Second situation: The position is as in the first situation above except that importer C's purchases are not the subject of an initial general agreement. The cumulative progressive discounts are however offered by the seller as a feature of his general terms of sale.

Valuation treatment

With respect to both situations the 8% discount on the 42 units is a feature of the seller's price; it contributed to the setting of the unit price of the goods when they were sold for export to the country of importation. It therefore follows that it should be allowed in determining the customs value of those goods.

In this respect, the fact that the quantity discount is granted by the seller taking into account quantities purchased previously by the buyer does not mean that the provisions of Article 1.1(b) apply.

Example 3

In this example, the position is as in example 2 above except that the discounts are also granted retrospectively. In each case, the importer purchases and imports 27 units and a further 42 units within the same calendar year.

For the first shipment of 27 units, B is charged a price which reflects a 5% discount and for the second shipment of 42 units, the price charged reflects an 8% discount, with an additional reduction representing a further discount of 3% on the first shipment of 27 units.

Valuation treatment

The 8% discount on the 42 units should be allowed in determining the customs value of the imported goods. However, the additional 3% discount granted retrospectively should not be allowed for the second importation as it did not contribute to the setting of the unit price of 42 units being valued but relates to the previously imported 27 units. As to the treatment to be accorded by Customs to the 27 units, guidance is already provided in Advisory Opinion 8.1 on credits in respect of earlier transactions and Commentary 4.1 on price review clauses.

Example 4

After all importations during the specified period have been completed, an accounting is taken. On the basis of the total quantity which had been imported during the period, the importer qualifies for an additional 3% discount.

Valuation treatment

The discount of 3% granted retrospectively cannot be taken into account for the reasons set out in paragraph 16. However, it should be noted that the Committee has already provided guidance in Advisory Opinion 8.1 on credits in respect of earlier transactions and in Commentary 4.1 on price review clauses.

ADVISORY OPINION 16.1

TREATMENT OF A SITUATION WHERE THE SALE OR PRICE IS SUBJECT TO SOME CONDITION OR CONSIDERATION FOR WHICH A VALUE CAN BE DETERMINED WITH RESPECT TO THE GOODS BEING VALUED

1. What treatment should be given to the situation where the sale or price is subject to some condition or consideration for which a value can be determined with respect to the goods being valued?

2. The Technical Committee on Customs Valuation expressed the following view:

According to clause (b) of Article 1.1, the customs value of the imported goods cannot be established on the basis of the transaction value if the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued.

The provision of clause (b) of Article 1.1 should be interpreted to mean that if the value of a condition or consideration can be determined with respect to the goods being valued, the customs value of the imported goods should, subject to the other provisions and conditions of Article 1, be the transaction value as determined under that Article. Interpretative Notes to Article 1 and Annex III make it very clear that the price actually paid or payable is the total payment made by the buyer to or for the benefit of the seller, that the payment may be made directly or indirectly and that the price includes all payments actually made or to be made by the buyer to the seller, or by the buyer to a third party. Thus, the value of the condition, when it is known and relates to the imported goods, is a part of the price actually paid or payable.

It should rest with individual administrations as to what they consider would be sufficient information to specifically determine the value of a condition or consideration.

ADVISORY OPINION 17.1

SCOPE AND IMPLICATION OF ARTICLE 11 OF THE AGREEMENT

1. Does the phrase "without penalty", which is used in respect of the appeal provisions contained in Article 11, prohibit Customs from requiring the full payment, prior to the appeal, of any penalties imposed as a result of valuation fraud and other forms of contravention of valuation law?

The question arises because paragraph 3 of the Interpretative Note to Article 11 refers to the full payment, prior to the appeal, of assessed customs duties but does not address cases involving fines and penalties.

2. The Technical Committee on Customs Valuation concluded that paragraph 2 of the Interpretative Note to Article 11 is explicit in its definition of the words "without penalty" which "means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal".

Furthermore, the importer's right of appeal under this Article is in respect of decisions taken by the Customs Administration with regard to the determination of customs value within the provisions of the Agreement.

It follows that cases of fraud fall outside the scope of this Article; in such cases, appeal procedures would be governed by national legislation which could provide for prior payment of penalties as well as of the duty.

ADVISORY OPINION 18.1

IMPLICATIONS OF ARTICLE 13 OF THE AGREEMENT

1. The question has been asked whether the guarantee to be provided by the importer for the withdrawal of goods under Article 13 covers only the customs duties, leaving the Customs without adequate security to recover fines and penalties that may be leviable on the goods and persons.

2. The Technical Committee on Customs Valuation concluded that Article 13 comes into operation only in those cases where, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value. An example of this situation is where adjustments are necessary under Article 8 but the relevant information is not available at the time of importation. Numerous cases of this nature could, in fact, arise in the course of determining customs value under the Agreement. In these circumstances, the terms of this Article provide for the release of the goods if a guarantee or security sufficient to cover the ultimate payment of the customs duties is furnished.

Article 13 is not intended to cover cases which involve violations of customs laws or fraud; in such situations, the release of the goods or the provision of guarantee in relation to fines or penalties should be governed by national legislation.

ADVISORY OPINION 19.1

APPLICATION OF ARTICLE 17 OF THE AGREEMENT AND PARAGRAPH 6 OF ANNEX III

1. The question has been asked whether Article 17 read with paragraph 6 of Annex III gives sufficient powers to the Customs Administration to detect and establish valuation offences including fraud, and whether the burden of proof in the course of determination of the customs value is on the importer?

2. The Technical Committee on Customs Valuation concluded that, in examining this matter, it has to be noted that Article 17 states that the Agreement does not restrict or call into question the rights of the Customs Administration. Paragraph 6 of Annex III elaborates on those rights, referring specifically to the right of national administrations to expect the full cooperation of importers in enquiries concerning the truth or accuracy of any statement, document or declaration. This position is reiterated in Advisory Opinion 10.1.

It would be incorrect to suggest that any other rights of the Customs Administrations which are not mentioned in Article 17 or paragraph 6 of Annex III are, by implication, excluded.

Other than those which are specifically mentioned in the Agreement, the rights and obligations of importers and Customs in the determination of the customs value would depend on national laws and regulations.

ADVISORY OPINION 20.1

CONVERSION OF CURRENCY IN CASES WHERE THE CONTRACT PROVIDES FOR A FIXED RATE OF EXCHANGE

1. The question has been asked whether conversion of currency is necessary in cases in which the contract of sale of the imported goods provides for a fixed rate of exchange.

1. The Technical Committee on Customs Valuation considered this question and advised that the conversion of currency is not necessary if the settlement of the price is made in the currency of the country of importation.
2. Therefore, what is important in this matter is the currency in which the price is settled and the amount of the payment.

Example 1

The commercial invoice shows an amount in the currency of the country of exportation (MX). It specifies that the settlement is to be made however in the currency of the country of importation (MY). The amount to be paid is arrived at by conversion of the amount invoiced at a fixed rate of exchange. This rate is 1 MX (export currency) = 2 MY (import currency).

Question

Should the invoiced amount be converted to the currency of the country of importation on the basis of the contracted rate of exchange or that in effect (in the country of importation) at the time of exportation or the time of importation of the goods (see Article 9.2 of the Agreement)?

Answer

The conversion of currency, as provided for in Article 9, is not necessary. The contract of sale provides for the payment of a fixed amount in the currency of the country of importation. The amount to be paid in the currency of the country of importation is determined by multiplying the amount invoiced by two, i.e. the rate agreed upon by the buyer and the seller.

Example 2

The commercial invoice shows an amount in the currency of the country of importation (MY) but it specifies that the settlement is to be made in the currency of the country of exportation (MX). The amount to be paid is arrived at by conversion of the amount invoiced at a fixed rate of 1 MX = 2 MY.

Question

Is the amount invoiced (in the currency of the country of importation) to be accepted without further conversion?

Answer

The amount invoiced cannot be accepted as the customs value. The contract of sale provides for the payment of a fixed amount in the currency of the country of exportation. It is this amount which must be converted. The amount contracted to be paid in MX should first be arrived at by dividing the invoiced amount by two. The resultant sum should then be converted to MY in accordance with Article 9 at the appropriate rate published by the competent authority in the country of importation.

Example 3

The commercial invoice shows an amount in the currency of the country of exportation (MX) but it specifies that the settlement is to be made in the currency of a third country (MZ). The amount to be paid is arrived at by conversion of the amount invoiced at a fixed rate of 1 MX = 6 MZ.

Question

The foreign currency amount (i.e. MX or MZ) is to be converted to the currency of the country of importation?

Answer

The currency of the third country is to be converted. The amount in that currency is to be arrived at by calculation of the invoiced amount at the contracted fixed rate of exchange (i.e. invoiced amount x 6 = amount actually payable in currency of third country). The resultant sum should then be converted to the currency of the country of importation in accordance with Article 9 at the appropriate rate published by the competent authority in the country of importation.

Example 4

The commercial invoice shows an amount in the currency of the country of importation (MY) but it specifies that the settlement is to be made in the currency of a third country (MZ). The amount to be paid is arrived at by conversion of the invoiced amount at a fixed rate of 1 MY = 3 MZ.

Question

Is the invoiced amount (in the currency of the country of importation) to be accepted without further conversion?

Answer

The invoiced amount cannot be accepted without conversion. The invoiced amount should be determined in the currency of the third country at the fixed rate of exchange (i.e. invoiced amount x 3 = amount to be paid in the currency of the third country). The resultant sum should

then be converted to the currency of the country of importation in accordance with Article 9 at the appropriate rate of exchange published by the competent authority in the country of importation.

ADVISORY OPINION 21.1

INTERPRETATION OF THE EXPRESSION "PARTNERS IN BUSINESS" IN ARTICLE 15.4(b)

1. Are sole agents, sole distributors and sole concessionaires "legally recognized partners in business" in terms of Article 15.4(b) of the Agreement?

2. The Technical Committee on Customs Valuation expressed the following view:

The position in regard to sole agents, sole distributors and sole concessionaires is set out in Article 15.5 of the Agreement, which provides that persons associated in business as sole agents, sole distributors or sole concessionaires are only deemed to be related persons under the Agreement if they fall within the criteria of Article 15.4.

Article 15.4(b) deems persons to be related if "they are legally recognized partners in business". The Webster's Dictionary defines the word "partner" as:

- "One who is associated with one or more persons in the same business and shares with them its profits and risks; a member of a partnership".

The word "partnership" is in turn defined as:

- "An association of two or more people who contribute money or property to carry on a joint business and who share profits and losses in certain proportions".

In commercial law, the simple definitions set out above are usually backed up by a complex set of legal provisions and principles intended to define, interpret and codify through contract, tax and other laws the legal relationship implied in the term "partner".

An association would be a partnership only where the national legal requirements for the creation of a partnership are satisfied. Thus, persons are not related under the Agreement simply because one person is the sole agent, sole distributor or sole concessionaire of the other.

While it is true that sole agents, sole distributors, etc. may have a close association with their suppliers, this fact alone would provide no reason to treat them differently from any other unrelated party.

For the purpose of clarification, a Member may choose to incorporate or refer to its national law of partnership in the valuation provisions of its customs law. However, it would not be appropriate for a Member to devise a different definition of partnership specifically for the interpretation of the valuation provisions of its customs law.

COMMENTARIES

LIST OF COMMENTARIES

11.1 Treatment of tie-in sales.
12.1 Meaning of the term "restrictions" in Article 1.1(a)(iii).
13.1 Application of the decision on the valuation of carrier media bearing software for data processing equipment.
14.1 Application of Article 1, paragraph 2.
15.1 Application of deductive value method.
16.1 Activities undertaken by the buyer on his own account after purchase of the goods but before importation.
17.1 Buying commissions.
18.1 Relationship between Articles 8.1(b)(ii) and 8.1(b)(iv).
19.1 Meaning of the expression "Right to reproduce the imported goods" within the meaning of the Interpretative Note to Article 8.1(c).
20.1 Warranty charges.
21.1 Cost of transportation: Free-on-board system of valuation.

COMMENTARY 1.1

IDENTICAL OR SIMILAR GOODS FOR THE PURPOSE OF THE AGREEMENT

1. This commentary examines the question of identical and similar goods in the general context of the application of Articles 2 and 3.

2. The principles in question are set out in Article 15; they provide that "identical goods" are those goods that are the same in all respects, including:

(a) Physical characteristics;
(b) quality; and
(c) reputation.

Minor differences in appearance do not preclude goods otherwise conforming to the definition from being regarded as identical.

3. "Similar goods" are goods which, although not alike in all respects, have:

(a) Like characteristics and
(b) like componental materials;
(c) perform the same function;
(d) are commercially interchangeable.

When determining whether goods are similar, consideration is to be given, among other factors, to the quality of the goods, their reputation and the existence of a trademark.

4. Article 15 also provides that only goods produced in the same country as the goods being valued can be considered identical or similar to those goods, and it specifies that goods produced by persons other than the producer of the goods being valued be taken into account only when there are no identical or similar goods made by producers of the goods being valued. It further provides that goods incorporating or reflecting engineering, development, artwork, design work, and plans and sketches undertaken in the country of importation are not covered by the term "identical goods" or "similar goods".

5. Before considering the application of those principles, it would be useful to examine the determination of identical and similar goods in the general context of the application of Articles 2 and 3. Those two Articles are not expected to come into question frequently since Article 1 will be applied to the vast majority of importations. In those instances in which Article 2 or 3 are applied, there may have to be consultations between Customs and the importer with a view to arriving at a value under one of those Articles. These consultations, together with information from other sources, should enable Customs to determine what, if any, goods might be considered identical or similar for purposes of the Agreement. Obviously, there will be many instances where the answer is self-evident and no market enquiries or consultations with importers are necessary.

6. The principles in Article 15 must be applied on the basis of the particular facts in the market in question with respect to the goods being compared. The questions that might arise in making such determinations will vary because of the nature of the goods being compared and because of differences in market conditions. A careful analysis of the facts in each case, in the light of the principles set out in Article 15, will be necessary to arrive at sound decisions.

7. The following examples are intended to illustrate application of the principles for determining whether goods are identical or similar in accordance with Article 15; they are not meant to form part of a series of decisions on specific cases. Each example is limited in its scope: in addition to the conditions set out in each of them, any remaining requirements of Article 15 would of course have to be fulfilled before goods could be considered as identical or similar.

Example No. 1

Steel sheets of identical chemical composition, finish and size imported for different purposes.

Although the importer is to use some of the sheets for automobile bodies, and others for furnace liners, the goods are nevertheless identical.

Example No. 2

Wallpaper imported by interior decorators and by wholesale distributors.

Wallpaper which is identical in all respects remains identical for the purposes of Article 2 of the Agreement even if it is imported at different prices by interior decorators on the one hand and by wholesale distributors on the other.

Although differences in price might indicate differences in quality or reputation, which are factors to be taken into account in considering whether goods are identical or similar, price itself is not such a factor. Adjustment for commercial level and/or quantity may of course be necessary in applying Article 2.

Example No. 3

Garden insecticide sprayers which are unassembled and goods of identical design already assembled.

The sprayer consists of two dismountable parts: (1) a pump and nozzle affixed to a lid and (2) a container for the insecticide. In order to use the sprayer, it is disassembled, the container is filled with insecticide and the lid is screwed on; the sprayer is then ready for use. The sprayers being compared are identical in all respects, including physical characteristics, quality and reputation, except that in one case they are assembled and in the other unassembled.

An assembly operation will normally preclude treating assembled and unassembled goods as identical or similar, but when, as in this case, the goods are designed to be assembled and disassembled in the ordinary course of their use, the nature of the assembly operation would not preclude them from being considered identical.

Example No. 4

Tulip bulbs of the same size but of different varieties, producing flowers of approximately the same shape and size and of the same colour.

Since the bulbs are not of the same variety, they are not identical goods; however, because they produce flowers of approximately the same size and shape and of the same colour, and they are commercially interchangeable, they are therefore similar goods.

Example No. 5

Inner tubes imported from two different manufacturers.

Rubber inner tubes in the same range of sizes are imported from two different producers, both located in the same country. While each producer uses a different trademark, the inner tubes made by both are to the same standard, are of the same quality, enjoy equivalent reputations and are used by motor vehicle manufacturers in the country of importation.

As the inner tubes bear different trademarks, they are not the same in all respects and should not be regarded as identical in terms of Article 15.2(a).

Although not alike in all respects, the inner tubes do have like characteristics and component materials which enable them to perform the same functions. As the goods are made to the same standard, are of the same quality, have equivalent reputations and carry trademarks, they should be considered similar, even though the trademarks are different.

Example No. 6

Normal grade sodium peroxide for bleaching purposes compared with a special grade of sodium peroxide used for analytical purposes,

The special grade of sodium peroxide is manufactured by a process using very pure raw material in dust form; it is thus much more expensive than the normal grade. The normal grade sodium peroxide cannot be used in place of the special grade because the normal grade is not pure enough to meet analytical specifications and neither is it clearly soluble nor in dust form. Since the goods are not the same in all respects they are not identical; With respect to similarity, the special grade would not be used for bleaching purposes, or for the large scale production of chemicals, as the price of the special grade is prohibitive for these applications. While both kinds of sodium peroxide certainly have like characteristics and like component materials, they are not commercially interchangeable since the normal grade could not be used for analytical purposes.

Example No. 7

Ink of paper quality and ink of paper and textile quality.

To be similar for the purposes of Articles 3 and 15.2(b) of the Agreement, goods must *inter alia* be commercially interchangeable with each other. Ink of a quality suitable only for paper printing would not be similar to ink of a quality for paper and textile printing, even though the latter would be commercially acceptable in the paper printing trade.

COMMENTARY 2.1

GOODS SUBJECT TO EXPORT SUBSIDIES OR BOUNTIES.

1. Broadly speaking, export subsidies and bounties are instruments of trade policy which take the form of economic aid granted by governments to natural or legal persons or to administrative bodies, either directly or indirectly; they are intended to promote the production, manufacture or exportation of a product. In this respect the Agreement on Subsidies and Countervailing Measures in Annex 1 A to the Agreement establishing the WTO is noted.

2. In Article 32 of the above-mentioned Agreement, it is stated that "no specific action against a subsidy of another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement". However, a footnote qualifies that this paragraph is not intended to preclude action under other relevant provisions of GATT 1994, where questions may arise in respect of treatment of subsidies under the Agreement on Implementation of Article VII.

3. The first point to decide is whether a subsidized price can in fact be accepted for the purposes of establishing a transaction value under Article 1. In the case of subsidized goods, as in any other case, to reject the transaction value there must be non-fulfilment of one of the conditions set out in Article 1.1. The question here is whether a subsidy could be regarded as

a condition or consideration to which the sale or price is subject and for which a value cannot be determined. However, since the basic concept of the Agreement relates to the transaction between the buyer and the seller and what takes place directly or indirectly between them, a condition or consideration in this context must be interpreted as an obligation between the buyer and the seller. Accordingly, Article 1.1(b) cannot apply merely because a sale is subsidized.

4. Another question is whether the amount of the subsidy could be regarded as forming part of the total payment. The Interpretative Note to Article 1 of the Agreement states that 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. A subsidy received by the seller from his government is clearly not a payment by the buyer and does not therefore form part of the price paid or payable.

5. A further question to be answered in considering the treatment of subsidies is whether the price paid or payable by the buyer can be increased by the amount of the subsidy to determine the transaction value. Article 8.4 of the Agreement states that no additions shall be made to the price actually paid or payable in determining the customs value except as provided in that Article; since a subsidy cannot be regarded as equivalent to any of the elements mentioned in Article 8, there is no possibility of making an adjustment under this head.

6. It follows from the above that the treatment to be applied for the valuation of subsidized goods is the same as that applied to other goods.

COMMENTARY 3.1

GOODS SOLD AT DUMPING PRICES

1. Article VI of the General Agreement on Tariffs and Trade 1994 defines dumping as the introduction of products of one country into the commerce of another country at less than the normal value of the products; it also provides that dumping is to be condemned and may be offset or prevented by anti-dumping duties if it causes or threatens material injury to an established industry in the territory of a Member or materially retards the establishment of a domestic industry.

2. According to the general introductory commentary to the Valuation Agreement, the Members recognize "that valuation procedures should not be used to combat dumping". Therefore, where the existence of dumping of any description is suspected or established, the correct procedure for combating it is by means of the anti-dumping rules in effect in the country of importation as they may be applicable. There can thus be no question of:

(a) Rejecting the transaction value as a basis for valuing the dumped goods, unless one of the conditions laid down in Article 1.1 is not fulfilled;
(b) adding to the transaction value an amount to take account of the margin of dumping.

3. It follows from the above that the treatment to be applied for the valuation of dumped goods is the same as that applied to goods imported at a price below prevailing market prices for identical goods.

COMMENTARY 4.1

PRICE REVIEW CLAUSES.

1. In commercial practice some contracts may include a price review clause whereby the price is only provisionally fixed, the final determination of the price payable being subject to certain factors which are set forth in the provisions of the contract itself.

2. The situation can occur in a variety of ways. The first is where the goods are delivered some considerable time after the placing of the original order (e.g. plant and capital equipment made specially to order); the contract specifies that the final price will be determined on the basis of an agreed formula which recognizes increases or decreases elements such as cost of labour, raw materials, overhead costs and other inputs incurred in the production of the goods.

3. The second situation is where the quantity of goods ordered is manufactured and delivered over a period of time; given the same type of contract specifications described in paragraph 2 above, the final price of the first unit is different from that of the last unit and all other units, notwithstanding that each price was derived from the same formula specified in the original contract.

4. Another situation is where the goods are provisionally priced but, again in accordance with the provisions of the sales contract, final settlement is predicated on examination or analysis at the time of delivery (e.g. the acidity level of vegetable oils, the metal content of ores, or the clean content of wool).

5. The transaction value of imported goods, defined in Article 1 of the Agreement, is based on the price actually paid or payable for the goods. In the Interpretative Note to that Article, the price actually paid or payable is the total payment made or to be made by the buyer to the seller for the imported goods. Hence, in contracts containing a price review clause, the transaction value of the imported goods must be based on the total final price paid or payable in accordance with the contractual stipulations. Since the price actually payable for the imported goods can be established on the basis of data specified in the contract, price review clauses of the type described in this commentary should not be regarded as constituting a condition or consideration for which a value cannot be determined (see Article 1.1(b) of the Agreement).

6. As to the practical aspects of the matter, where the price review clauses have already produced their full effect by the time of valuation, no problems arise since the price actually paid or payable is known. The situation differs where price review clauses are linked to variables which come into play some time after the goods have been imported.

7. However, given that the Agreement recommends that, as far as possible, the transaction value of the goods being valued should serve as a basis for customs valuation, and given that Article 13 provides for the possibility of delaying the final determination of customs value, even though it is not always possible to determine the price payable at the time of importation, price review clauses should not, of themselves, preclude valuation under Article 1 of the Agreement.

COMMENTARY 5.1

TREATMENT OF GOODS RETURNED AFTER TEMPORARY EXPORTATION FOR MANUFACTURING, PROCESSING OR REPAIR

1. When goods which are reimported after manufacturing, processing or repair abroad are declared for home use national legislations may or may not provide for total or partial exemption from import duties and taxes. In either instance however the determination of the value of the goods as reimported must of course be made in accordance with the applicable provisions of the Agreement.

2. Those situations where total or partial exemptions are granted are encompassed by the term "Temporary exportation for outward processing", which is defined in Annex E.8. of the Kyoto Convention as:

"Customs procedure under which goods which are in free circulation in a Customs territory may be temporarily exported for manufacturing, processing or repair abroad and then reimported with total or partial exemption from import duties and taxes.".

3. Where such exemptions apply, the question that arises is whether, at importation, the products may be regarded as a separate category of importation whose treatment is a matter of customs technique involving no question of valuation or whether they can and should be valued at importation like any other goods.

4. In this regard, it is noted that under provisions for exemption the assessment of import duties and taxes may sometimes be made by deducting from the amount of the import duties and taxes applicable on the full value of the reimported goods the amount of the import duties and taxes that would be charged on importation of the goods temporarily exported. The assessment may alternatively be based on the value added by the processing of the goods abroad, and this

may involve apportioning the full value of the reimported goods between the goods temporarily exported and the process abroad. In some instances moreover the rate of duty will depend on the value of the reimported goods, which must then be established for this purpose.

5. In all these cases it will be necessary to determine the full value of the goods as reimported in accordance with the applicable provisions of the Agreement (as for the importations referred to in paragraph 1 above). The method used for this purpose as well as the result should be uniform for all administrations. The treatment under any provisions for relief is a matter separate from valuation.

6. The following examples illustrate the range of situations which can arise.

Examples

(i) Importer X of machine-tools in country I imports certain specialized machines manufactured abroad. As imported these machines have been equipped with electric motors supplied by X to exporter E.
(ii) importer X in country I imports men's shirts. The fabric for the shirts is supplied by X to exporter E, who is responsible only for the making up and the provision of accessories (buttons, thread and labels).
(iii) importer X imports into country I plastic gear wheels. These products have been manufactured abroad by exporter E using polyamide moulding material supplied by X.
(iv) company X in country I imports a machine-tool after having sent it abroad for repair; on reimportation company X pays only the repair charges to exporter E.

7. Clearly, in the cases envisaged, both the transaction giving rise to the importation of the goods in question and the price made relate not to the goods in the state in which they are imported, but to the materials used and the services supplied by the foreign manufacturer, and in some cases to the services alone.

8. However the following points should be borne in mind.

9. Article 8.1(b) of the Agreement stipulates that in determining the transaction value of the imported goods there shall be included the value, apportioned as appropriate, of certain goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods.

10. It is thus possible to establish the transaction value under Articles 1 and 8, taken together, in cases of the kind illustrated by examples (i) to (iii) where it could be said that a sale has taken place, and wherever the conditions of Article 1 are fulfilled the transaction value so established will constitute the customs value of the goods in the state in which they are imported.

11. Situations of the kind illustrated by example (iv), where it is more a matter of the supply of services, at first glance appear to constitute a different case. However, the following considerations should be borne in mind:

- As far as possible, all reimported goods should be treated in the same way for valuation purposes, particularly in the light of the statement in the Preamble "that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply".
- the basic intention of the Agreement is that the transaction value established under Articles 1 and 8 should be used to the greatest extent possible for customs valuation purposes.
- Advisory Opinion 1.1 on the concept of "sale" in the Agreement states that uniformity of interpretation and application can be achieved by taking the term "sale" in the widest sense, to be determined only under the provisions of Articles 1 and 8 read together.

12. On the basis of the above argumentation it could be concluded that goods imported after repair abroad should, for valuation purposes, be treated in the same way as those obtained as a result of manufacturing or processing. Otherwise, the hierarchical sequence of the Agreement will have to be followed. Since in the specific instance of repair it is unlikely that one of the other methods laid down by the Agreement would be applicable, Article 7 would apply for example by means of a flexible interpretation of the provisions of Articles 1 and 8 taken together.

13. Administrations applying the rules of customs valuation in this context are, of course, free to grant exemption from duty under national legislation.

COMMENTARY 6.1

TREATMENT OF SPLIT SHIPMENTS UNDER ARTICLE 1 OF THE AGREEMENT

General remarks

1. For the purposes of this commentary the term "split shipments" means consignments of goods which, though forming the subject of one transaction between a buyer and a seller, are not presented for clearance in a single shipment for reasons connected with delivery, transportation, payment or the like and are consequently imported in partial or successive shipments, either through the same Customs office or through different Customs offices.

Specific situations

2. Most cases of goods being imported in split shipments will fall into one of the following three categories:

A. The goods constitute a complete industrial installation or plant and are split up because they come from different sources, or because it would be physically impossible to import them in a single shipment, or because of the necessity or convenience of staggering the shipments to conform to a plant assembly schedule.
B. The shipments are split because the quantity is such that it would be impossible or inconvenient for the parties to import all the goods in one shipment.
C The shipments are split for reasons of geographical distribution.

A. Splitting up of industrial installations or plants

1. This type of case concerns the importation of certain groups of goods and whole installations which, on account of their size, have to be imported in several shipments. The treatment of these split shipments for tariff and customs technique purposes will of course depend on national legislation in the country of importation.

2. The customs value of each shipment will be based on the price actually paid or payable, that is, an appropriate proportion of the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods, as reflected in the transaction concluded by the parties.

3. If the partial shipment has been the subject of a separate invoice it will be necessary to add to the amount of the invoice the adjustments determined under Article 8 (where appropriate making an apportionment for the total transaction) and to treat deductions similarly.

4. If the partial shipment has not been the subject of a separate invoice, in determining its customs value, an apportionment of the total value of the transaction could be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

5. In general in these cases the customs value of each consignment cannot be finally determined at the time of importation since such importations often involve elements such as engineering costs or price review clauses (see Commentary 4.1). If it becomes necessary to delay the final determination of the customs value, the importer will nevertheless be able to withdraw his goods from Customs by virtue of Article 13 of the Agreement. The provisional duty assessed by

the Customs in cases where goods are imported in split shipments may of course be amended when the customs value is finally determined.

B. Shipments split for reasons of quantity

6. In this case it is assumed that the transaction involves a quantity of goods consisting of identical units or sets sold at an agreed unit price. The delivery dates may have been fixed in advance or left to the convenience of the parties.

7. Since for the purposes of Article 1 neither the time at which the sale contract was concluded nor market fluctuations after the date when the contract was concluded have to be taken into account (see Explanatory Note 1.1), the determination of the customs value of the goods is to be based on the price actually paid or payable.

8. However, if importations in split shipments are not effected within a reasonable time reflecting the normal commercial practice in the trade concerned, the Customs Administration may consider it necessary to make enquiries concerning the price actually paid or payable, verifying especially whether there is a complementary agreement which modifies the original price. This action could be taken under the provisions of Articles 13 and 17 of the Agreement.

9. The unit price may well depend on the total number of units involved in the transaction, but Article 1.1(b) is nevertheless not applicable. When the Interpretative Note to paragraph 1(b) of Article 1 quotes as an example of such a condition the case where the seller establishes the price of the imported goods on condition that the buyer also acquires a certain quantity of other goods, it lays down a principle relating to other goods, not to the same goods involved in a single transaction.

C. Shipments split for reasons of geographical distribution

10. This situation is in fact a usual practice in international trade. The buyer agrees to buy from a seller in a single transaction a quantity of goods to be sent in separate shipments to two or more ports or Customs offices of one country of importation or two or more countries of importation. The customs value of the fraction of the goods imported through each Customs office or each Customs territory has to be determined under Article 1 of the Agreement on the basis of the price actually paid or payable for this fraction.

Conclusion

11. In the light of the above considerations concerning the treatment of the various types of split shipments, it will be seen that the valuation method envisaged in Article 1 can be applied to split shipments provided the requirements of Article 1 can be met.

COMMENTARY 7.1

TREATMENT OF STORAGE AND RELATED EXPENSES UNDER THE PROVISIONS OF ARTICLE 1

I. General

1. The treatment of storage expenses for customs valuation purposes requires the determination of the exact nature of the expenses as well as where and by whom they are incurred.

2. This commentary is based on the assumption that the transactions in question meet the requirements of Article 1 of the Agreement. If this is not the case, Article 1 would not be applicable and one of the other methods in the Agreement, selected in the prescribed sequence, would have to be used.

3. The commentary covers only the aspect of storage and the expenses related to moving the goods into and out of storage. It does not encompass other activities such as cleaning, sorting or repacking which may take place in a warehouse.

4. No distinction is to be made between ordinary storage warehouses and customs warehouses where goods are stored under customs control in a designated place without payment of import duties and taxes. The valuation treatment of storage expenses would be the same in either case.

5. The situations regarding storage in which a valuation question may arise include the following:

- The goods are in storage abroad at the time of the sale for export to the country of importation;
- the goods are put into storage abroad subsequent to their purchase but prior to their export to the country of importation;
- the goods are put into storage in the country of importation prior to their clearance for home use;
- the goods are temporarily stored incidental to their transport.

6. The treatment of expenses incurred in these situations is examined in Parts II to V below.

7. While this list of situations is not exhaustive, the examples serve to illustrate the general principles involved in the treatment of storage and related expenses. Obviously, ach case must be considered individually having regard to the relevant circumstances.

II. The goods are in storage abroad at the time of the sale for export to the country of importation

8. Examples

(a) Buyer A in country of importation I purchases from seller B in country of exportation X goods warehoused by B in country X. The ex-warehouse price paid by A to B includes the warehousing expenses incurred.
(b) Buyer A in country of importation I purchases at an ex-factory price from seller B in country of exportation X goods which, at the time of the transaction, are warehoused by B in country X. In addition to the price for the goods, buyer A pays seller B the warehousing expenses on the basis of a separate invoice.
(c) Buyer A in country of importation I purchases at an ex-factory price from seller B in country of exportation X goods which, at the time of the transaction, are warehoused by B in country X. In addition to the price for the goods, buyer A is required to pay the warehouse proprietor the storage expenses incurred by seller B.

9. The Interpretative Note to Article 1 specifies that 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.

10. It can be assumed that the warehousing expenses will be recovered by the seller as part of the price actually paid or payable by the buyer. If not, these expenses should be included in this price if they constitute a payment made directly or indirectly to the seller or for his benefit.

11. Thus, in the case of the examples above, the warehousing expenses will be part of the price actually paid or payable for the goods.

III. The goods are put into storage abroad subsequent to their purchase but prior to their export to the country of importation

12. Example

Buyer A in country of importation I purchases goods from seller B. Upon arrival at the port of importation, buyer A stores the goods on his own account in a customs warehouse pending the starting of his production schedule in which the imported goods are to be manufactured into other products. Three months later, buyer A presents the declaration for home use and pays the storage charges.

13. Expenses incurred by the buyer after purchase cannot be considered as a payment made directly or indirectly to the seller or for his benefit; hence they are not part of the price actually paid or payable. On the other hand, these expenses do represent activities undertaken by the buyer on his own account; the costs of these activities are to be added to the price actually paid or payable for the imported goods only if Article 8 provides for adjustment in respect of them. In this example no such provisions exist and the storage expenses would not be part of the customs value.

IV. The goods are put into storage in the country of importation prior to their clearance for home use

14. Example

Buyer A in country of importation I purchases goods from seller B. Upon arrival at the port of importation, buyer A stores the goods on his own account in a customs warehouse pending the starting of his production schedule in which the imported goods are to be manufactured into other products. Three months later, buyer A presents the declaration for home use and pays the storage charges.

15. The Interpretative Note to Article 1 specifies that 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. In that respect, it is also stated that the costs of activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, shall not be added to the price actually paid or payable.

16. Expenses incurred by the buyer after purchase cannot be considered as a payment made directly or indirectly to the seller or for his benefit; hence they are not part of the price actually paid or payable. On the other hand, these expenses do represent activities undertaken by the buyer on his own account; the costs of these activities are to be added to the price actually paid or payable for the imported goods only if Article 8 provides for adjustment in respect of them. In this example, no such provision exists and the storage expenses would not be part of the customs value.

V. The goods are temporarily stored incidental to their transport.

17. Examples

(a) Importer I purchases goods ex-factory in the country of exportation. Storage expenses are incurred at the port of export pending the arrival of the exporting vessel.
(b) At importation, a period of time elapses between the unloading of the goods and the lodgement of the customs declaration. During this period, the goods are stored under customs control thus incurring storage expenses.

18. Expenses of this kind, arising out of incidental storage of goods during transport, should be regarded as charges associated with the transport of goods. They are, therefore, to be treated in accordance with the provisions of Article 8.2(b) of the Agreement; if the expenses are incurred after importation, they must be treated in accordance with the Interpretative Note to Article 1 which provides that the cost of transport after importation shall not be included in the customs value provided it is distinguished from the price actually paid or payable for the imported goods.

COMMENTARY 8.1

TREATMENT OF PACKAGE DEALS

1. For the purpose of this commentary, a package deal is taken to be an agreement to pay a lump sum for a correlated group of goods, or a group of goods sold together, the price of the goods sold constituting the only consideration.

2. Examples of package deal 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 country of importation;
(C) Different goods, included in the same transaction, are invoiced at individual prices established solely for tariff or other reasons.

Valuation treatment

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

3. Presuming that the other conditions of Article 1 have been met, the fact of a single overall price for different goods does not constitute an impediment to establishing transaction value. In those instances where the goods are classifiable under separate tariff headings at different rates of duty, the overall price which has been negotiated as part of a package deal which meets the requirements of Article 1 of the Agreement should not be rejected when applying that Article, solely for the purposes of tariff classification.

4. In addition, there is the practical problem of the proper apportionment of the overall price among the goods which are classifiable in different headings. Several methods are possible including, for example, the use of prices or values of identical or similar goods in previous importations, if such methods can provide a valid indication of the price of the various goods covered by the package deal. Suitable price breakdowns, based on generally accepted accounting principles, could also be supplied by the importer.

(B) Goods of different quality sold and invoiced at a single overall price are only partially declared for home use in the country of importation

5. In this situation, the nature of the problem is different and can be illustrated by the following example:

- A consignment comprising goods of three different qualities (top quality A, average quality B and low quality C) is purchased at an overall unit price of 100 currency units per kilo. In the country of importation, the buyer declares quality A for home use at 100 currency units per kilo but assigns the other qualities to some other procedure.

6. Since the overall price actually paid or payable has been agreed for a set of goods of various qualities there is no selling price for the goods declared for home use and Article 1 of the Agreement is therefore not applicable in this instance.

7. Article 1 of the Agreement is applicable however if, in the above example, instead of only one of the different qualities of goods being declared for home use, a specified and equal proportion (one third or a half, for example) of each of the products contained in the total package making up the consignment were declared for home use. It would then be possible to retain as a basis for transaction value, under the terms of Article 1, the price represented by the proportion of the total price which the quantity of goods declared for home use bears to the total quantity purchased.

(C) Different goods, included in the same transaction, are invoiced at individual prices established solely for tariff or other reasons as illustrated in the following example.

Products A and B, which have been purchased in a package deal at a price of 100 c.u. are invoiced at 35 and 65 in order to reduce the total liability of the importer for the customs duty (the rates being 15% for product A and 6% for product B), without altering the overall price of the transaction payable to the seller.

8. In the above example the prices have been set or modified (some upwards and some downwards) to inappropriately reduce liability for customs duties. This type of practice may also be used to circumvent anti-dumping measures or quotas.

9. Noting the fact that a case of price manipulation of the kind described above is a matter for the customs enforcement authorities, the imported goods nevertheless need to be valued for customs purposes.

10. In this connection it should be noted that the offsetting arrangement in the example in question represents a condition or consideration for which value cannot be determined with respect to the goods being valued. Therefore, the provisions of Article 1.1.(b) apply and valuation cannot be based on the transaction value of the imported goods.

COMMENTARY 9.1

TREATMENT OF COSTS OF ACTIVITIES TAKING PLACE IN THE COUNTRY OF IMPORTATION

1. This commentary examines the treatment of costs of activities taking place in the country of importation within the context of Article 1 and its Interpretative Note.

2. In dealing with this question, a listing of activities in the country of importation and their treatment for valuation purposes would not be a useful approach. Such a listing could not be exhaustive and, moreover, in many instances, the valuation treatment of any given activity would differ depending on the circumstances of the transaction. On the other hand, a brief statement of principle would cover a wide range of possibilities.

3. In this respect, in the determination of the customs value under Article 1 of the Agreement, when the costs of activities occurring after importation are not included in the price actually paid or payable, they are not to be included in the customs value unless it is specifically provided for by virtue of Article 8. This includes those which might be regarded of benefit to the seller but undertaken by the buyer on his own account.

4. Conversely, when such costs are included in the price actually paid or payable for the imported goods, they are not to be deducted from that price unless there is compliance with the relevant provisions of the Interpretative Note to Article 1 1 of the Agreement which states that:

- "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:

  (a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
  (b) the cost of transport after importation;
  (c) duties and taxes of the country of importation" (considered to be by their nature distinguishable, see Advisory Opinion 3.1).

5. The meaning of the term "importation" needs to be clearly established. In the Customs Co-operation Council's Glossary of International Customs Terms, the term importation is defined as "the act of bringing or causing any goods to be brought into a Customs territory". It is noted however that various national legislations provide more specific definitions to the term than the one above. Therefore, any reference to that term must be within the context of the national legislation of the country in question.

6. With respect to subparagraph (a) of the Interpretative Note to Article 1, the phrase "undertaken after importation" should be flexibly interpreted as covering activity carried out in the country of importation. In that context, the cost of activities covered in subparagraph (a) would also be excluded from the customs value even if they take place prior to importation so long as they are carried out as part of the installation of the imported goods. An example of this would be a charge for the laying of a concrete foundation undertaken prior to the importation of the machinery which is subsequently erected on that foundation.

7. On the specific question regarding transport, it is worth noting that, while subparagraph (b) of the Interpretative Note to Article 1 refers to the cost of transport after importation, it would be consistent with the overall thrust of the Interpretative Note as it relates to post-importation

charges and costs to encompass within this expression loading, unloading and handling costs taking place after importation. The same rationale would also apply to post-importation insurance charges.

COMMENTARY 10.1

ADJUSTMENT FOR DIFFERENCE IN COMMERCIAL LEVEL AND IN QUANTITY UNDER ARTICLE 1.2(b) AND ARTICLES 2 AND 3 OF THE AGREEMENT.

General

1. When applying the Agreement, it may be necessary to make an adjustment to take account of demonstrated differences in commercial level and quantity in respect of Articles 1.2(b) (test values), 2.1(b) (identical goods) and 3.1(b) (similar goods). Although the wording in Article 1.2(b) is somewhat different from that found in Articles 2.1(b) and 3.1(b), it is clear that the principles involved are the same: account has to be taken of differences attributable to commercial level or quantity and it must be possible to make the necessary adjustment on the basis of demonstrated evidence which clearly establishes its reasonableness and accuracy.

2. When Customs is made aware of a transaction which may be used to establish a test value under Article 1.2(b) or the transaction value of identical or similar goods under Articles 2 and 3, it must be established whether that transaction was made at the same commercial level and in substantially the same quantities as that of the goods being valued. If the commercial level and quantities are comparable in terms of the transaction no adjustment for these factors is necessary.

3. However, if there are differences in commercial level and quantity it will then be necessary to determine whether the price or value is affected by those differences. It is important to bear in mind that the mere existence of a difference in commercial level or quantity would not of itself require that an adjustment be made; an adjustment will be necessary only if a difference in the price or value results from a difference in commercial level or quantity and then the adjustment must be made on the basis of demonstrated evidence which clearly establishes its reasonableness and accuracy. If this requirement cannot be met, the adjustment cannot be made.

4. The following examples illustrate situations involving questions of adjustments only for different commercial levels and quantities and do not include other adjustments such as for differences in distances and modes of transport. For the purpose of the examples on Articles 2 and 3, it is presumed that the customs value of the imported goods cannot be determined under the provisions of Article 1 and is to be determined on the basis of the previously accepted transaction value of identical or similar goods.

5. The following examples which deal with identical goods have equal application to similar goods.

Application of Articles and 3

Same commercial level and quantity - No adjustment

6. Example No. 1

There is the following transaction value involving a sale of identical goods:

Seller Quantity Price Importer Level Commercial Unit

R 1,700 6 c.u. Wholesaler c.i.f.

In this case, no adjustments are necessary and the transaction value of 6 c.u. c.i.f. would be the customs value under Article 2.

Same commercial level, different quantity - No adjustment

7. Situations can also arise where there are differences in either level or quantity but in which those differences have no commercial relevance because the seller does not take either level or quantity into account when selling his goods. In such cases also no adjustment is required.

8. Example No. 2

Supplier Quantity Price Importer Individual Commercial Level

- E 2,000 5 c.u. Wholesaler articles c.i.f.

There is the following transaction value involving a sale of identical goods:

Seller Quantity Price Importer Individual Commercial Level

- R 1,700 6 c.u. Wholesaler articles c.i.f.

Customs have determined that R sells his goods at a price of 6 c.u. to all purchasers who buy at least 1,000 units of his goods but does not otherwise vary his price according to the quantity purchased. In this case, although there is a difference in quantities, that difference has not affected the price because the seller of the identical goods does not vary his price within the quantity range in which both sales were made; therefore, no adjustment for quantity is required. The transaction value of 6 c.u. c.i.f. would be the Customs value under Article 2.

Different commercial level, different quantity - No adjustment

9. Example No. 3

Supplier Quantity Price Importer Individual Commercial Level

- E 1,500 5 c.u. 1 wholesaler articles c.i.f.

There is the following transaction value involving a sale of identical goods:

Seller Quantity Price Importer Individual Commercial Level

- R 1,200 6 c.u. Retailer articles c.i.f.

R does not vary his price according to level of purchase but will sell to anyone who purchases at least 1,000 units at 6 c.u. each. In this example, although there is a difference in commercial level, no difference in price is attributable to level because the seller of the identical goods sells to all purchasers without regard to commercial level. Also, since both transactions are comparable with respect to the quantity in that they are both in excess of 1,000 units, no adjustment for quantity is required. In this case, the transaction value of 6 c.u. c.i.f. would be the customs value under Article 2.

Different commercial level or different quantity - Adjustment

10. In those instances where a difference in price is attributable to commercial level or quantity, an adjustment must be made in order to arrive at a value at the same commercial level and for substantially the same quantities as the goods being valued. When making such adjustment, the sales practices of the seller of the identical or similar goods is the governing factor.

11. If an adjustment is necessary because of differences in quantity, the amount of the adjustment should be readily determinable. With respect to commercial level, however, the criteria used may not be that evident. Customs will have to examine the sales practices of the seller of the identical or similar goods. Once the seller's practice is clear, an examination of the activities of the importer of the goods to be valued should provide a basis for determining what commercial level the seller of the identical or similar goods would accord to the importer. Development of this information, as noted in the general introductory commentary, will require consultation with the parties concerned.

12. Example No. 4

There is the following transaction value of identical goods:

Seller Quantity Price Importer Individual Commercial Level

- F 2,300 4.75 c.u. R Wholesaler articles c.i.f.

Customs have established that a price list from which F sells is bona fide and that he sells his goods to all purchasers at a price which varies according to the quantity purchased: for purchasers who buy less than 2,000 articles, the price is 5 c.u. c.i.f., while for those who buy 2,000 or more articles, the unit price is 4.75 c.u. c.i.f.

The difference in quantities purchased is a commercially relevant factor which affects the price at which the goods are sold and an adjustment must be made for the difference attributable to quantity. The amount of the adjustment for quantity in this case would be 0.25 c.u., i.e. 5 c.u. c.i.f. would be the customs value under Article 2.

13. As previously noted Articles 2 and 3 require that an adjustment must be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment.

14. The Interpretative Notes to Articles 2 and 3 provide as an example of such evidence that of price lists which contain prices referring to different levels or different quantities. The determination as to the bona fides of price lists will have to be made on a case-by-case basis. In the absence of such an objective measure, the determination of customs value under the provisions of Articles 2 and 3, as the case may be, would not be appropriate.

15. Example No. 5

Supplier Quantity Price Importer Individual Commercial Level

- D 2,800 1. 05 c.u. K Wholesaler articles c.i.f.

There is the following transaction value for identical goods:

Seller Quantity Price Importer Individual Commercial Level

- E 2,800 2.50 c.u. c.i.f. R Retailer articles less 15%

Customs has ascertained that E adheres to a published price list from which he allows a 20% discount to wholesalers and a 15% discount to retailers. In the foregoing transaction, the sale to R is in accord with this price list. Accordingly, this evidence would permit an adjustment of the transaction value of the identical goods by using the price list unit price of 2.50 c.u. c.i.f. and the 20% discount to the wholesale level. Thus, 2.50 c.u. less 20% would be the customs value under Article 2.

Application of Article 1.2(b)

Different commercial level, same quantity - Comparable test value

16. In a sale between related parties, Article 1.2(b) provides the importer the opportunity to demonstrate that his value closely approximates one of the test values set out in the subparagraphs of that provision; it follows that the test value must be demonstrated in all its aspects, including where appropriate, level and quantity. The principles involved in Article 1.2(b) for adjustments for these factors are the same as those for Articles 2 and 3, except that the adjustments to the transaction value of identical or similar goods are for the purpose of establishing the customs value of the imported goods, while under Article 1.2(b) the adjustments are made to the test value only for comparison purposes.

17. Example No. 6

I provides Customs with the following test value which is a transaction value of identical goods to an unrelated buyer.

Customs ascertains that F sells his goods to wholesalers at a price of 5 c.u. c.i.f. and that I is a wholesaler.

The amount of the adjustment in this case would be 1 c.u. The test value, after taking account of the difference attributable to level, would be 5 c.u. Since the related-party price equals the test value as determined above, that price can be accepted as transaction value under Article 1.

Lack of demonstrated evidence - Test value rejected

18. Example No. 7

Supplier Quantity Price Importer Individual Commercial Level

- E 20,050 1.50 c.u. F Wholesaler articles c.i.f.

I provides the following test value which is a transaction value of identical goods to an unrelated purchaser:

Seller Quantity Price Importer Individual Commercial Level

- E 1,020 2.10 c.u. F Retailer articles c.i.f.

E states that he only occasionally sells to independent retailers; he further states that he has made no sales to independent wholesalers but that, if he were to do so, his price would be 1.50 c.u. each c.i.f.

Since E has made no sales to unrelated wholesalers, but merely indicates a willingness to do so at the indicated price, there is a lack of demonstrated evidence which would establish the reasonableness of the adjustment. Because no adjustment can be made for the difference in level, the test value presented by I is not acceptable for comparison purposes.

19. In order to value the goods under Article 1 when there is a question of relationship, or under Article 2 or 3, there should normally be consultations between the importer and Customs. These consultations, and information from other sources, should enable Customs to determine whether an adjustment need be made and whether it can be made on the basis of demonstrated evidence.

COMMENTARY 11.1

TREATMENT OF TIE-IN SALES

1. There are two broad categories of tie-in sales. In one, the condition or consideration relates to the price of the goods, in the other, it relates to the sale of the goods. Situations where the conditions or considerations relate to the price as well as the sale are to be treated as tie-in sales of the first category.

2. In tie-in sales of the first category the price of one transaction is conditioned by terms of other transactions between the seller and the buyer. It follows that in such sales the price is not the sole consideration. Such tie-in sales represent a situation wherein the price is subject to a condition or consideration for which a value cannot be determined with respect to the goods being valued and, accordingly, the price must be rejected for the purpose of establishing the transaction value in accordance with the provision of Article 1.1(b). The Interpretative Note to that Article lists three examples which include: (1) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities; (2) 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; and (3) 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 he will receive a specified quantity of the finished goods.

3. In this respect, however, caution must be exercised to ensure that the application of Article 1.1(b) is not extended beyond the intended purposes.

4. For example, if a seller grants a quantity discount calculated on the quantity or the monetary value of a single order, the fact that a buyer qualified for the discount by placing an order consisting of a number of different items, none of which of themselves would have qualified for the discount, does not represent a situation where Article 1.1(b) would apply.

5. The second category of tie-in sales, where condition or consideration relates to the sale of the goods, includes what has commonly been termed as "countertrade". Countertrade is taken to mean transactions in which sales to a country are intimately linked to sales from that country although in some instances, sales from yet another country can be involved. Countertrade is essentially a mechanism of paying for goods in international trade through the exchange of products for products. In some instances, countertrade can involve the exchange of services for products and vice versa.

6. Countertrade provides a means by which a country can obtain required goods from foreign sources and at the same time maintain balanced trade flows by ensuring export sales of its own products - counterproducts. Countertrade may involve the full or partial payment for an imported product in the form of products produced in and exported from the importing country, rather than payment in currency. Frequently, however, payment for both transactions will be in currency.

7. A listing of the more common countertrade practices are as follows:

(a) Barter: a single exchange of goods for goods, no payment in currency made (note Advisory Opinion 6.1);
(b) counterpurchase: an exchange of goods for goods and money, or an exchange of goods for services and money;
(c) evidence account: counterpurchase is often expressed in the form of an evidence account. For the purpose of payment, the evidence account is established with the foreign trade bank or a central bank and the exporter's counterpurchases are credited against current or future counterpurchase obligations. Such deals provide a degree of flexibility to the exporter, since instead of facing an immediate demand, the evidence account allows the exporter more time to leisurely "shop around" to effect the counterpurchase;
(d) compensation or buyback: the sale of machinery, equipment, technology or a manufacturing or processing plant in exchange for a specified amount of the final product as full or partial payment;
(e) clearing agreement: a bilateral arrangement between two countries to purchase designated amounts of each other's products over a specified period of time, with the use of a freely convertible clearing currency of a third country, i.e. a "hard" currency;
(f) switch or triangular trade: an arrangement whereby one of the parties to a bilateral trade agreement (such as a clearing agreement in subparagraph (e) above) transfers its credit balance to a third party. For example, countries A and B have a clearing agreement and A buys a product from country C and payment is effected by having country B transfer its payment under the clearing agreement to country C instead of to country A;
(g) swap: the exchange of identical or similar goods from different locations in order to save transportation costs. This type of transaction differs from barter in (a) above, in that an identical or similar product is exchanged solely for the purpose of gaining the advantage of a closer source of supply such as where a Japanese buyer purchases a quantity of Venezuelan made oil and swaps it for an equal amount of Alaskan crude which had been purchased by an East Coast American buyer;
(h) offset arrangement: the sale of a product, usually of a high technology nature, is possible on the condition that the exporter incorporates in his final product specified materials, parts or components which he has acquired from the country of importation.

8. There does not appear to be a single reliable estimate of how much international trade involves the use of countertrade. Estimates which do exist vary widely, ranging from one percent of world trade to one quarter of the world's international commerce. This diversity of opinion is primarily due to the fact that, as opposed to the usual methods of measuring world trade, there are no means of reporting and analysing countertrade transactions as such. In fact countertrade is not always easy to identify especially in those cases where transactions are expressed in monetary terms and are paid for separately. However, while there is no agreement as to the magnitude of countertrade, there is general agreement that it is becoming a larger factor in world trade.

9. As to the effect of countertrade on the price or cost of the goods, again there does not appear to be a single opinion. It can be said, however, that the exporter considering a counterpurchase must price his goods in the knowledge that not only must he sell his own goods but also those of his customer. It can be expected that the exporter may increase his price because of this factor. Hence, the price of goods exported to a country requiring or practising countertrade can be expected to be equal to or higher than the price of the goods had there been no countertrade.

10. By the same token, either in lieu of or in addition to the foregoing, the exporter may be able to command a lower price for the goods which he has to purchase. Hence, the price for the counterpurchased goods can be expected to be equal to or lower than the price had there been no countertrade. These goods, of course, may be imported into the exporter's own country or they may be sent to any other country.

11. With respect to customs valuation, the first consideration would necessarily be one of whether the conditions of Article 1 would or would not preclude the application of that Article to any transaction involving countertrade. In view of the number of different forms countertrade can take, it would be unlikely that any single conclusion in this regard could be made and it would be necessary to take a decision on the basis of the facts of each transaction, including the type of countertrade involved.

COMMENTARY 12.1

MEANING OF THE TERM "RESTRICTIONS" IN ARTICLE 1.1(a)(iii)

1. Under the provisions of Article 1 of the Agreement, the customs value of imported goods shall be the transaction value provided, inter alia, there are no restrictions as to the disposition or use of the goods by the buyer other than those which:

(i) Are 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.

2. Due to their nature, identification of the first two exceptions noted above would not normally create problems. In the case of the third exception, however, a number of factors may have to be taken into consideration to determine whether the restriction has substantially affected the value or not. These factors include the nature of the restriction, the nature of the imported goods, the nature of the industry and its commercial practices, and whether the effect on the value is commercially significant. Since these factors may vary from case to case, it would not be proper to apply a fixed criterion in this respect. For example, a small effect on the value in a case involving one type of goods may be treated as substantial while a much greater change in the value of goods of another type may not be treated as substantial.

3. An example of restrictions as to the disposition or use of the goods which do not substantially affect the value of the goods is mentioned in the Interpretative Notes to Article 1, i.e. where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year. Another such example would be where a manufacturing firm of cosmetics imposes through contractual provisions a requirement on all importers that its product be sold to consumers exclusively through individual sales representatives undertaking house-to-house sales since its whole distribution system and advertising approach is based on this kind of sales effort.

4. On the other hand, a restriction which could have a substantial effect on the value of the imported goods is one that is not usual in the trade concerned. An example of such a restriction would be the case where a machine is sold at a nominal price on condition that the buyer uses it only for charitable purposes.

COMMENTARY 13.1

APPLICATION OF THE DECISION ON THE VALUATION OF CARRIER MEDIA BEARING SOFTWARE FOR DATA PROCESSING EQUIPMENT

1. This commentary examines the question of the valuation of carrier media bearing software for data processing equipment in the specific context of the application of paragraph 2 of the decision adopted by the Committee on Customs Valuation.

2. The principle to be taken into consideration in this respect is that 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.

3. A problem encountered in applying this decision relates to the provision to distinguish the cost or value of the data or instructions from the cost or value of the carrier medium; sometimes, only one price of the software and the carrier medium is available; at other times, only the price of the carrier medium is invoiced or only cost or value of the data or instructions is known.

4. As there is an option to apply or not to apply paragraph 2 of the decision, countries which choose to apply that decision should interpret this paragraph in the widest possible terms so as not to negate the intention of the decision. Therefore, the expression "distinguish" should be interpreted in such a manner that, if only the cost or value of the carrier medium is known, the cost or value of the data or instructions should be considered as distinguished.

5. If for any reason an administration considers that a separate declaration of the two costs or values is necessary and only one of the two is available, the second one could be determined by estimation, using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of the General Agreement. Similar estimation for arriving at separate values could be done in cases where only the total price of the two elements is available. Customs administrations which choose to follow the practice of estimation may find that consultation with the importer is necessary in arriving at a reasonable solution.

6. When at the time of importation the importer is not in a position to furnish sufficient information for this purpose, the provisions of Article 13 may apply.

7. The practice recommended in this Commentary is applicable to the valuation for customs purposes of carrier media bearing software and does not take into account other requirements such as the collection of statistics.

COMMENTARY 14.1

APPLICATION OF ARTICLE 1, PARAGRAPH 2

1. This commentary examines the rights and obligations of Customs Administrations and importers under the Agreement with respect to the treatment to be accorded to related party transactions in the application of Article 1.2.

2. The General Introductory Commentary to the Agreement recognizes that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be their transaction value. The transaction value is, however, pursuant to Article 1, only acceptable as the customs value if all of the four limitations set out in subparagrahs 1(a) to 1(d) of Article 1 are satisfied. The fourth limitation, 1(d), requires that the buyer and the seller not be related, although it does provide that where they are related the transaction value is acceptable subject to the provisions of paragraph 2 of Article 1 being satisfied. This textual construction means that the

existence of a relationship between buyer and seller raises a question which serves to alert the importer and Customs as to the acceptability of the price as the basis of the transaction value.

3. However, in cases where it can be shown that the provisions of paragraph 2(b) of Article 1 can be met (i.e., transaction value closely approximates to one of the three "test" values provided therein), this would establish the acceptability of the price as the basis of transaction value and preclude the need for any enquiry under paragraph 2(a) of Article 1 into the circumstances surrounding the sale of those goods being imported.

4. In the absence of such a test value, the following questions and answers provide guidance to Customs Administrations and to importers vis-à-vis the application of subparagraph 2(a) of Article 1.

Question No. 1

5. Does the existence of a relationship, as defined in paragraph 4 of Article 15 between the buyer and the seller give Customs the right to reject the transaction value?

Answer

6. No. Relationship, in itself, is not grounds to reject transaction value. Subparagraph 2(a) of Article 1 is clear on this point. The existence of a relationship does, though, serve to alert Customs to the fact that there may be a need to enquire as to the circumstances surrounding the sale.

Question No. 2

7. Does Customs need to have grounds to enquire into the circumstances surrounding the sale?

Answer

8. No. Subparagraph 2(a) of Article 1 directs that the circumstances surrounding a sale between related persons shall be examined. However, the Interpretative Notes to Article 1, paragraph 2, provide, in paragraph 2 thereof, that an examination of the circumstances will not be required in every case but only in those where Customs has doubts about the acceptability of the price.

Question No. 3

9. Does the Agreement provide detailed guidance as to the doubts about the acceptability of a price that would cause Customs to enquire into the circumstances surrounding the sale?

Answer

10. No. However, the very structure of the Agreement is such that the existence of a relationship itself gives cause to question whether the price between the seller and the buyer is or is not influenced by the relationship as the price can only be used as the basis of transaction value in circumstances where the relationship has not influenced that price. In addition, Article 17 provides that nothing in the Agreement shall prevent Customs from satisfying itself as to the truth or accuracy of any statement, document or declaration. Such a declaration would include that made by the related buyer, explicitly or implicitly depending upon the documentation and declaration requirements of the importing country, when the transaction value method is used, i.e., "the price is not influenced because of my relationship with the seller".

Question No. 4

11. Does Customs have to communicate its "doubts" to the importer when seeking information on the circumstances surrounding the sale or on whether the price has been influenced by the relationship between the buyer and the seller?

Answer

12. No. Nothing in the Agreement requires Customs to justify the reasons for it requesting information from an importer with regard to an import transaction. Indeed, paragraph 6 of Annex III and Article 17 recognize that Customs may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes and has the right to expect the full cooperation of importers in those enquiries. There is no pre-condition placed upon Customs to the effect that it must justify its reasons for enquiring into a transaction. There is, however, nothing to prevent Customs from informing an importer of the reasons for its doubts. This would be desirable if it is able to do so.

Question No. 5

13. If Customs has grounds for believing that the price of goods in a transaction has been influenced by the relationship, does it have to advise the importer of the reasons why it so believes?

Answer

14. Yes. Subparagraph 2(a) of Article 1 provides that, where Customs has grounds for considering the transaction value is unacceptable because the relationship has influenced the price and that Article 1 does not therefore apply to the transaction, Customs shall communicate its grounds to the importer. Moreover, the importer must be given a reasonable opportunity to respond and is entitled to be advised in writing of the grounds for Customs' beliefs.

Question No. 6

15. Is the importer responsible for ensuring that the price has not been influenced by the relationship before declaring the goods to be valued under the provisions of Article 1?

Answer

16. Yes. When declaring the customs value under the transaction value method, the importer has an obligation to ensure to the greatest extent possible that the price is not influenced. This is placed upon the importer by virtue of Article 1, which stipulates that the transaction value shall be used provided that the buyer and seller are not related or, where the buyer and seller are related, it can be shown that the relationship did not influence the price.

Question No. 7

17. If Customs has previously examined the circumstances surrounding a sale and the relationship between the buyer and seller in general and has found that the relationship had not influenced the price, is Customs precluded from requesting the same or further information at a later date?

Answer

18. No. Although it is not intended that Customs examine the circumstances surrounding each and every sale, whenever Customs has a doubt about the acceptability of a price it may direct a new enquiry to the importer.

COMMENTARY 15.1

APPLICATION OF DEDUCTIVE VALUE METHOD.

1. This commentary addresses questions of a general nature that may arise in administering the provisions of Article 5.1. In this regard, it is recognized that the Interpretative Notes to that Article already provide considerable guidance.

2. In general, the application of the deductive value method under Article 5 of the Agreement may differ in one set of circumstances from another. Therefore, the practical application of Article 5 requires a flexible approach, having regard to the circumstances in each case.

3. In determining the sales in the greatest aggregate quantity, the first question that may arise is whether the application of Article 5.1 is restricted to sales of the imported goods or identical or similar imported goods made by the importer of the imported goods or would the Article permit taking into consideration sales of identical or similar goods imported by other importers?

4. While paragraph 1(a) of Article 5 and its Interpretative Notes do not appear to prohibit taking into consideration sales of identical or similar goods imported by other importers, as a practical measure, if sales of the imported goods or identical or similar goods have been made by the importer, it may not be necessary to look for sales of identical and/or similar goods made by other importers.

5. Customs would have to decide, having regard to the circumstances of each individual case, whether sales made by other importers need to be taken into consideration when there are sales of the imported goods or sales of identical or similar imported goods by the importer of the imported goods being valued.

6. Another question, closely related to the first one, is whether, in applying Article 5.1, there is any hierarchy in using sales of the imported or identical or similar imported goods in determining the price per unit.

7. A practical application of paragraph 1(a) of Article 5 would require that, if sales of the imported goods are available, it may not be necessary to take into consideration sales of identical or similar imported goods for the purpose of arriving at the price per unit of the sales in the greatest aggregate quantity. When sales of the imported goods are not available, sales of identical or similar goods may be taken in sequential order.

8. After determining the price per unit under Article 5.1, it is necessary to deduct the elements provided for in the said Article.

9. In the practical administration of this provision, several factors need to be considered. One relates to the criteria necessary to determine the amount of commission or profit and general expenses that could be considered as "usually paid or agreed to be paid".

10. The wording of Article 5 and its Interpretative Notes makes it clear that the deduction to be made is for the amount of commission or profit and general expenses that is usually obtained in sales in the country of importation of imported goods of the same class or kind. This deduction should be based on figures supplied by or on behalf of the importer unless these figures are inconsistent with the usual.

11. The usual amount for commission or profit and general expenses could constitute a range of amounts which probably would vary according to the class or kind of the goods being valued. In order for a range to be acceptable, it should be neither too wide nor too deficient in population. The range should be obvious and easily discernible in order for it to be the "usual" amount. Other approaches might also be possible, e.g. the use of a preponderant amount (where such an amount exists) or an amount derived by simple - or weighted - averaging.

12. Another consideration is that Article 5 merely stipulates that the deduction will be for either commission or profit and general expenses but it does not establish the criteria for determining which of those is to be deducted. In dealing with this issue and having regard to the General Introductory Commentary of the Agreement, which recognizes that customs value should be based on simple and equitable criteria consistent with commercial practices, a deduction for commission would normally occur where the sale in the country of importation of the goods being valued was or is to be made on an agency/commission basis. The deduction for profit and general expenses would normally be resorted to in transactions which do not involve commissions.

13. Another question has to do with collecting and maintaining up-to-date data on the usual amounts of commission and profit and general expenses.

14. As a practical matter, it would not appear useful that data necessary for ascertaining the usual amounts for commission or profit and general expenses be obtained and maintained on an ongoing basis. Where need arose, such data could be generated only to meet specific requirements. In many instances, practical application will require Customs to consider situations involving multi-product companies, small industries with a limited number of importers, industries with a large number of related party transactions, etc. on a case-by-case basis. In this context, Customs could have recourse to its own records. The data could also be obtained from trade organizations, other importers, accounting firms, government agencies responsible for commerce and fiscal affairs or any other reliable source.

15. The methodology for obtaining the data may vary according to national considerations but may include, *inter alia*, surveys of known importers of goods of the same class or kind, who, upon request, may supply that data on a courtesy basis and valuation reviews involving known importers. Considering that companies may not maintain information on profit and general expenses by specific product, administrations may have to follow the principle of examining profits and general expenses from the narrowest group or range of goods for which sufficient information can be obtained.

COMMENTARY 16.1

ACTIVITIES UNDERTAKEN BY THE BUYER ON HIS OWN ACCOUNT AFTER PURCHASE OF THE GOODS BUT BEFORE IMPORTATION

1. This commentary examines the circumstances under which the cost of the activities undertaken by the buyer on his own account after purchase of the goods but before importation would or would not be considered as part of the customs value determined under the provisions of Article 1.

2. The second paragraph of the Interpretative Note to Article 1, "Price actually paid or payable", establishes the principle in the Agreement with respect to activities that are undertaken by the buyer on his own account. The cost of these activities shall not be added to the price actually paid or payable unless an adjustment is provided under Article 8.

3. An example which illustrates such a situation would be as follows:

Importer I of country of importation Y purchases a machine from seller S of country of exportation X for an amount of 30,000 c.u. In order to confirm that the machine meets the specifications in the sales contract, buyer I, after purchasing the machine, entrusts an additional testing of it to expert T, also in country X, and pays T 500 c.u. for this test. Additional testing in this context means testing which is not considered as part of the manufacturing process of the goods. The additional testing is not a condition of the sale between I and S.

The payment for testing the machine by I to T, who is unrelated to S, is not made, either directly or indirectly, to or for the benefit of S. It is not therefore part of the price actually paid or payable. Furthermore, this activity undertaken by the buyer is not one of those for which an adjustment is provided in Article 8. If the other conditions of Article 1 are fulfilled, the machine would be valued on the basis of Article 1, provided that the goods have not been altered, adjusted, improved or in any way changed in nature.

4. In commercial practice, the activities that a buyer could undertake after the purchase of the goods but before importation can vary. In the context of Articles 1 and 8 and their Interpretative Notes, these may include activities undertaken with the aim of promoting the sale and distribution of the goods in the country of importation. The cost of these activities when they are undertaken by the buyer on his own account should not be considered an indirect payment to the seller, even though they might be regarded as for the benefit of the seller. The following example illustrates this principle:

Firm A is a dealer in electrical goods in country I. He markets these goods through a network of dealers (retail outlets and service centres) operating under franchise agreements with him. Firm A concludes a long-term contract with foreign manufacturer S for the supply of a new type of electrical appliance. Under the terms of the contract, the appliance is to be marketed under

S's trademark and A undertakes to bear on his own account the cost of all marketing in the country of importation. Firm A places an order for an initial stock of the appliances and, prior to importation, conducts an advertising campaign.

5. In the above example, the cost of the advertising campaign is not a part of the customs value nor shall it result in rejection of the transaction value, as these activities are those related to marketing the imported goods as stated in the final sentence of paragraph 1(b) of the Interpretative Note to Article 1.

COMMENTARY 17.1

BUYING COMMISSIONS

1. The valuation treatment and the definition of buying commissions are stated in paragraph 1(a)(i) of Article 6 of the Agreement and in its relevant Interpretative Note.

2. While the provisions of the Agreement are clear and raise no particular question of principle, the treatment of commissions for customs valuation purposes depends upon the exact nature of services rendered by the intermediaries.

3. Explanatory Note 2.1 of the Technical Committee on Customs Valuation examines commissions and brokerage in the context of Article 8, identifying the common characteristics of intermediaries, and concludes that, since the nature of the services rendered by the intermediaries is often not apparent from the commercial documents, national administrations will need to take necessary reasonable measures to ensure the proper application of this provision of the Agreement.

4. This commentary provides guidelines on the question of the evidence necessary to establish under what circumstances fees paid by a buyer to an intermediary can be considered as a buying commission.

5. In this context, all relevant documents necessary to ascertain the existence and precise nature of the services in question should be made available to Customs.

6. Among such documents, one would be the agency contract between the agent and the buyer, stating the formalities and the activities which the agent may have to perform in the discharge of his duties up to the time that he puts the goods at the disposal of the buyer. The agency contracts should accurately reflect the terms of the agreement between the buyer and the agent and other documentary evidence such as purchase orders, telexes, letters of credit, correspondence, etc. which clearly supports the bona fides of the agency contract are to be produced should Customs so request.

7. In cases where written agency contracts do not exist, alternative documentary evidence, such as mentioned in paragraph 6 above, which clearly establishes the existence of an agency relationship, is to be produced should Customs so request.

8. In cases where sufficient evidence establishing an agency relationship is not produced, Customs may conclude that no buying agency relationship exists.

9. 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 and various factors, as explained below, be examined.

10. One of the questions which could be the subject of an enquiry is whether the so-called buying agent assumes any risk or performs additional services other than those which are indicated in paragraph 9 of Explanatory Note 2.1 and would normally be carried out by a buying agent. The extent of these additional services could affect the treatment of the buying commission. An example could be where the agent uses his own funds for the payment of the imported goods. This opens the possibility of the so-called buying agent sustaining a loss or gaining a profit arising from ownership of the goods rather than receiving an agreed fee from

acting as a buying agent. In this situation, the totality of the circumstances which apparently establishes a buying agency arrangement may be examined.

11. The result of this enquiry could indicate that the agent is acting on his own account and/or that he has proprietary interest in the goods. In this respect, attention is drawn to export houses or so-called independent agents who carry out similar activities but, unlike buying agents, have proprietary interest in the goods and exercise control over the transaction or over the price paid by the importer. In these cases, the so-called intermediary in question cannot be considered as a buying agent.

12. Another factor to be examined is the relationship, within the meaning of Article 15.4, of the parties involved in the transaction. For instance, the relationship of the agent with the seller or with a person related to the seller has a bearing on the ability of the alleged agent to represent the buyer's interest. Despite the existence of an agency contract, the Customs is entitled to examine the totality of the circumstances to determine whether the so-called agent is, in fact, acting on behalf of the buyer and not on the account of the seller, or even on his own account.

13. In certain transactions, the agent concludes the contract, reinvoices the importer distinguishing the price of the goods and his fee. The mere act of reinvoicing does not make him the seller of the goods. However, since the price paid to the supplier is the basis for the transaction value under the Agreement, the Customs may require the declarant to produce the invoice issued by the supplier and other documents to substantiate the declared value.

14. Failure by the importer to supply Customs with the commercial invoice from the supplier to the agent, or other satisfactory evidence of sale, may prevent Customs from verifying the price actually paid or payable in the purported sale for export to the country of importation and could preclude Customs from considering that sale as the bona fide sale for export.

15. The compatibility of fees charged in relation to services rendered could also be the subject of scrutiny. At times, a buying agent may perform other services which are outside of the scope of the usual functions of a buying agent. These additional services would affect the fees charged to the buyer. For example, a buying agent instead of arranging the transport of the goods from the factory to the port or place of exportation, transports the goods himself and his charges include the cost of transport(*). In the above example, the total fee charged cannot be considered as buying commission; however, the identifiable portion of the fee that relates to the buying agency services may be considered as a buying commission.

16. On the basis of the above considerations, it could be concluded that various avenues are available to Customs to verify the nature of the services in question. During this process administrations expect the full cooperation of the importers to establish the truth and accuracy of any statement, document or declaration as provided for in Article 17 of the Agreement and paragraph 6 of Annex III. In this respect, it is recognized that some of the information required by the Customs may be considered commercially confidential by the parties involved. In such cases Customs would be governed by the provisions of Article 10 of the Agreement and by the legislation of the importing country.

(*) It should be noted that the ultimate dutiability of the charges set forth in paragraph 15 could be impacted by the transport option selected by Signatories under Article 8.2.

COMMENTARY 18.1

RELATIONSHIP BETWEEN ARTICLES 8.1(b)(ii) AND 8.1(b)(iv)

1. Article 8.1(b) of the Agreement provides that, in determining the customs value under Article 1, there shall be added to the price actually paid or payable, certain goods and services which 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.

2. Under Article 8.1(b)(ii), the value of tools, dies, moulds and similar items used in the production of imported goods is to be added to the price actually paid or payable for the imported

goods in determining the customs value. Under Article 8.1(b)(iv), the value of engineering, development, artwork, design work, etc. undertaken elsewhere than in the country of importation and necessary for the production of the imported goods is to be added to the price actually paid or payable for the imported goods. Often, however, engineering, development and design work, etc. are included in the value of tools, dies or moulds.

3. The question which then arises is whether such design work when it is undertaken in the country of importation should be excluded from the value of the assists specified in Article 8.1(b)(ii) when these assists are used to produce the imported goods.

4. Neither the Agreement nor its Interpretative Notes specifically addresses the question raised. Paragraph 2 of the Interpretative Note to Article 8.1(b)(ii) though provides clear instruction as to how the value of the elements mentioned in paragraph 1(b)(ii) is to be determined:

> "If the importer acquires the element from a seller not related to him 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 him, its value would be the cost of producing it.".

5. In other words, the value of the assists mentioned in Article 8.1(b)(ii) is either the total cost of their acquisition or the cost of producing the assist as reflected in the records of the producer of the assist, in accordance with generally accepted accounting principles. In that regard, the General Note relating to "Use of generally accepted accounting principles" states that the determination of the value of an element provided for in Article 8.1(b)(ii) undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

6. The structure of the assist provisions suggests that each category stands on its own and this provides further weight in support of the conclusion that no exclusion should be made for costs associated with elements of the type listed in Article 8.1(b)(iv).

7. In view of the above, the value of the elements mentioned in Article 8.1(b)(ii) would include the value of the design work incorporated (even if that work has been undertaken in the country of importation) as part of the cost of acquisition or of production.

COMMENTARY 19.1

MEANING OF THE EXPRESSION "RIGHT TO REPRODUCE THE IMPORTED GOODS" WITHIN THE MEANING OF THE INTERPRETATIVE NOTE TO ARTICLE 8.1(c)

1. This commentary seeks to provide guidance on the types of activities intended to be covered by the phrase "right to reproduce". The Interpretative Note to paragraph 1(c) of Article 8 provides that the terms "royalties" and "licence fees" appearing in Article 8.1(c) include, among other things, "payments in respect to patents, trademarks and copyrights". The Interpretative Note goes on to say that "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. As it appears in the Interpretative Notes to Article 8.1(c), the term "right to reproduce" would seem to refer not only to the physical reproduction of the imported goods (e.g., a sample article is imported and a mould is produced by the importer which is used to manufacture exact copies of the original imported article), but also to the right to reproduce an invention, creation, thought or idea incorporated in the imported goods. Examples of the latter would include an importation of a schematic diagram containing newly developed circuitry to be etched onto circuit boards (invention), an importation of a sculpture by a museum to be reproduced into miniature versions for resale (creation) and an importation of a transparency embodying a drawing of a cartoon character to be reproduced on to greeting cards (thought or idea).

3. It would also refer to originals and copies of scientific works (such as the importation of a new strain of bacterium which will be reproduced into a form necessary for the production of a vaccine), originals of literary works (such as an importation of a manuscript for the purpose of reproduction into a book), models (importation of a scaled down model of a new type

of automobile to be reproduced into other identical models), prototypes (a prototype of a new toy which will be reproduced into exact copies of the new toy) and animal or plant species (a genetically altered insect which will be reproduced to combat the spread of the original species).

4. With respect to the right of reproduction, an analysis of the following elements may provide some direction:

(a) Whether an idea or original work is incorporated in the imported goods;
(b) whether the reproduction of the idea or work is the subject of a reserved right;
(c) whether the right of reproduction has been assigned to the buyer in the contract of sale or through a separate agreement;
(d) whether the holder of the reserved right has required a remuneration for the assignment of the right of reproduction.

5. The acquisition of goods covered by a reserved right usually does not, of itself, confer the right to reproduce those goods. In many cases, that right is obtained through a special agreement.

6. In conclusion, each situation involving the right of reproduction should be considered on a case-by-case basis.

COMMENTARY 20.1

WARRANTY CHARGES

1. The application of "warranty" to commercial transactions and the varied nature of the associated charges, present Customs Administrations with many questions. This Commentary is intended to provide a response to those questions on the treatment of warranty charges.

2. The question of warranty related to imported goods has been raised in two other Technical Committee instruments, namely:

(a) Case study 6.1 "Insurance premiums for warranty"; and
(b) the Explanatory Note on the distinction between the term "maintenance" in the Interpretative Note to Article 1 and the term "warranty".

3. Case Study 6.1, through the examination of a specific case, conveys the general principle that, regardless of how an amount is invoiced, a payment falls within the definition of price actually paid or payable and thus is an element of the transaction value. Moreover, even though the term "warranty" appears in the case study, this case study deals above all with insurance, the relationship between the two concepts of warranty and insurance as well as their impact on the price actually paid or payable.

4. The Explanatory Note mentioned in paragraph 2 (b) above defines the term "warranty" as follows:

> "Warranty is a form of guarantee on goods, such as motor vehicles and electrical appliances, which covers costs of correcting defects (parts and labour) or replacement subject to certain conditions being met by the warranty holder. If those conditions are not met, warranty can be voided. Warranty covers hidden defects in the goods, i.e. defects which should not exist and which prevent the use of the goods or reduce their usefulness."

5. Basically, two situations arise:

(a) The seller directly or indirectly bears the cost and undertakes the risk of warranty, the provision of which is reflected in the price for the goods;
(b) the buyer directly or indirectly bears the cost and undertakes the risk of warranty and the price for the goods takes this into account.

Warranty undertaken by the seller

6. Difficulties in the treatment of warranty charges under the Agreement should not arise if the warranty is included in the unit price of goods. When the seller provides a warranty to a customer, the seller will take this into account when pricing the goods. Any extra cost attributable to the warranty will be part of the price and will be paid as a condition of the sale. In this case, the Agreement does not allow any deduction, and the cost of the warranty is part of the transaction value even if it is distinguished from the price actually paid or payable for the goods.

7. Where the seller imposes warranty on the buyer, the seller may choose to invoice the warranty separately from the goods. In such a case, the warranty cost nevertheless remains a condition of the sale for exportation and is considered part of the price actually paid or payable, i.e. the total payment.

8. If the seller contracts to transfer warranty risk to a third party, it may appear that the transaction has been split. That the seller has entered into a contract with the third party indicates that any warranty risk undertaken by the third party is at the behest of the seller and therefore to his benefit. The price actually paid or payable is defined in the Interpretative Note to Article 1 as the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. This definition is further amplified in paragraph 7 of Annex III, which states that the price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller. Consequently, where the seller requires the buyer to make a payment to a third party with whom the seller has contracted to provide warranty cover, the payment must be included in the transaction value of the imported goods. The same would also be true where warranty cover is provided by other parties related to the seller.

Warranty undertaken by the buyer

9. As stated in paragraph 5(b), there may be cases where the buyer may decide to bear the cost of warranty on his own account. In these circumstances, any payments, or other costs incurred by the buyer for warranty, are not part of the price actually paid or payable by application of the Interpretative Note to Article 1, since this is an activity undertaken by the buyer on his own account.

Warranty agreements

10. Situations can also arise whereby the transaction is the subject of two separate contracts, one for the goods and one for the warranty. Sellers/buyers sometimes separate warranty payments by having "separate" legal agreements drawn up. In these instances, all the circumstances surrounding the "sale" of the goods and "warranty" should be carefully examined. The warranty agreement will be linked to the contract of sale of the goods by the fact that the warranty is a guarantee for the goods. Even though a separate warranty agreement may exist, where the seller has placed an obligation on the buyer, as a condition of the sale of the goods, this simply becomes just another variation on the situations outlined above.

Other questions related to warranty

11. Where parts are delivered free of charge to the buyer in accordance with the initial contract some days or months after the goods were imported, in fulfilment of a warranty contract, they must be valued using the methods provided for in Articles 2 to 7 of the Agreement.

12. Buyers may claim that duties were already paid at the time of importation, since the price of the imported goods covered any potential warranty charges and, therefore, should not be assessed again on "free" replacement goods. Questions in this regard should properly be addressed through the application of appropriate national customs procedures and techniques.

COMMENTARY 21.1

COST OF TRANSPORTATION: FREE-ON-BOARD SYSTEM OF VALUATION

1. Article 8.2 of the Agreement provides that "... each Member shall provide for the inclusion in or exclusion from the customs value, in whole or in part, of ... :

(a) The cost of transport of the imported goods to the port or place of importation;
(b) ...".

2. Some Members have opted to exclude the transportation costs referred to in the previous paragraph and adopt what is generally described as an f.o.b. system of customs valuation. Members choosing to do so, nevertheless, encounter imported goods sold on c. & f. and c.i.f. terms. Where the price actually paid or payable for the goods includes a charge for transportation beyond the point of export, questions may arise about the amount to be deducted for such transportation to derive the f.o.b. valuation.

3. The WTO Valuation Agreement establishes a system of valuation based on actual values, as opposed to notional or estimated values. Article 8.3 provides that adjustments under Article 8 should be "made only on the basis of objective and quantifiable data". It follows that the deduction to take account of transport costs included in c. & f. and c.i.f. prices should be made on the basis of the actual costs. The actual costs would be those amounts ultimately paid to, for example, the international carrier or freight forwarder for the movement of those goods subject to the transaction.

4. The following example illustrates the principle expressed in paragraph 3:

- Price actually paid or payable (c & f);
- actual overseas freight paid to the carrier: 100;
- f.o.b. customs value*: 95

* it is assumed that no other adjustments under Article 8 are required.

EXPLANATORY NOTES

1. Time element in relation to Articles 1, 2 and 3 of the Agreement.
2. Commissions and brokerage in the context of Article 8 of the Agreement.
3. Goods not in accordance with contract.
4. Consideration of relationship under Article 15.5, read in conjunction with Article 15.4.
5. Confirming commissions.
6. Distinction between the term "maintenance" in the Note to Article 1 and the term "warranty".

EXPLANATORY NOTE 1.1

TIME ELEMENT IN RELATION TO ARTICLES 1, 2 AND 3 OF THE AGREEMENT

Article 1

1. Article 1 of the Agreement on Customs Valuation stipulates that the customs value of the imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the country of importation, subject to any necessary adjustments and provided that certain conditions are satisfied.

2. Neither in this Article nor in the corresponding Interpretative Notes is there any reference to a time standard external to the actual transaction, which would need to be taken into consideration when deciding whether the price actually paid or payable is a valid basis for the calculation of the customs value.

3. Under the valuation method in Article 1 of the Agreement, the basis for establishing customs value is the actual price made in the sale giving rise to the importation, the time at which the transaction took place being immaterial. In this connection the expression "when sold ..." in paragraph 1 of Article 1 is not to be regarded as giving any indication of the time to be taken into consideration when deciding whether a price is valid for the purposes of Article 1; it merely indicates the type of transaction involved, namely, one in which the goods were sold for export to the country of importation.

4. Consequently, provided that the conditions prescribed in Article 1 are fulfilled, the transaction value of imported goods should be accepted irrespective of the time at which the sale contract was concluded, and hence, irrespective of any market fluctuations after the date when the contract was concluded.

5. Article 1 does make a subsidiary reference to a time standard in paragraph 2(b); this relates only to "test" values and thus does not influence the situation that there is no time element involved in determining transaction value under Article 1.

6. Paragraph 2(b) provides that in a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of three alternatives occurring at or about the same time. But if the term "occurring at or about the same time" were the only reference to be taken into consideration, there could in some cases be a substantial difference between the conditions affecting the goods being valued and those affecting the goods furnishing the test value, and an inappropriate comparison could result.

7. The application of paragraph 2(b) must be in a manner consistent with the principles of the Agreement. The time of export, which is the standard of comparison for the purposes of Articles 2 and 3 would be one approach.

8. Other measures within the framework of the Agreement would also be possible, in particular time standards adapted to the principles underlying the test values in question, namely: for subparagraph 1.2(b)(i) the time of export to the country of importation of the goods being valued, for subparagraph 1.*2*(b)(ii) the time of sale in the country of importation of the goods being valued, and for subparagraph 1.2(b)(iii) the time of import of the goods being valued.

Articles 2 and 3

9. The time element is treated differently in Articles 2 and 3 of the Agreement. Unlike Article 1, in which the valuation of imported goods is based on an autonomous element, namely, the price actually paid or payable for the goods, Articles 2 and 3 refer to values previously established in accordance with Article 1, namely, transaction values of identical or similar imported goods.

10. To provide uniformity of application, Articles 2 and 3 state that the customs value determined under the provisions of these Articles is the transaction value of identical or similar goods exported at or about the same time as the goods being valued. Thus, these Articles establish an external time standard to be taken into consideration for their application.

11. It should be noted that the external time standard applicable under Articles 2 and 3 is the time when the goods to be valued are exported, and not the time when they are sold.

12. This external time standard must allow for practical application of the Article in question. Hence, the words "or about" should be regarded as intended simply to make the terms "at the same time" somewhat less rigid. In addition, it should be noted that according to its General Introductory Commentary, the Agreement seeks to base customs value on simple and equitable criteria consistent with commercial practice. Starting from these principles, "at or about the same time" should be taken to cover a period of time as close to the date of exportation as possible within which commercial practices and market conditions which affect price remain the same. In the final analysis, the question must be decided on a case-by-case basis within the overall context of the application of Articles 2 and 3.

13. The requirements in respect of time of course cannot alter the strict hierarchical order of the Agreement, which requires that Article 2 must be exhausted before Article 3 can be invoked. Thus, the fact that the time of exportation of similar goods (as opposed to identical goods) is closer to that of the goods to be valued can never reverse the order of application of Articles 2 and 3.

The material time for customs valuation

14. The foregoing remarks on the role of the time element in the application of Articles 1, 2 and 3 of the Agreement do not, of course, have any bearing on the material time for customs valuation. Article 9 makes provision for the time to be taken into consideration for conversion of currency only.

EXPLANATORY NOTE 2.1

COMMISSIONS AND BROKERAGE IN THE CONTEXT OF ARTICLE 8 OF THE AGREEMENT

Introduction

1. Article 8, paragraph 1(a)(i) of the Agreement states that, in determining customs value under the provisions of Article 1, commissions and brokerage, except buying commissions, shall be added to the price actually paid or payable to the extent that they are incurred by the buyer but are not included in the price. According to the Interpretative Note to Article 8, 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.

2. Commissions and brokerage are payments made to intermediaries for their participation in the conclusion of a contract of sale.

3. Although the legal position may differ between countries with regard to the designation and precise definition of the functions of these intermediaries, the following common characteristics can be identified.

Buying and selling agents

4. The agent (also referred to as an "intermediary") is a person who buys or sells goods, possibly in his own name, but always for the account of a principal. He participates in the conclusion of a contract of sale, representing either the seller or the buyer.

5. The agent's remuneration takes the form of a commission, generally expressed as a percentage of the price of the goods.

6. A distinction can be made between selling agents and buying agents.

7. A selling agent is a person who acts for the account of a seller; he seeks customers and collects orders, and in some cases he may arrange for storage and delivery of the goods. The remuneration he receives for services rendered in the conclusion of a contract is usually termed "selling commission". Goods sold through the seller's agent cannot usually be purchased without payment of the selling agent's commission. These payments can be made in the ways set out below.

8. Foreign suppliers who deliver their goods in pursuance of orders placed through a selling agent usually pay for the latter's services themselves, and quote inclusive prices to their customers. In such cases, there is no need for the invoice price to be adjusted to take account of these services. If the terms of the sale require the buyer to pay, usually direct to the intermediary, a commission that is additional to the price invoiced for the goods, this commission must be added to the price when determining transaction value under Article 1 of the Agreement.

9. A buying agent is a person who acts for the account of a buyer, rendering him services in connection with finding suppliers, informing the seller of the desires of the importer, collecting

samples, inspecting goods and, in some cases, arranging the insurance, transport, storage and delivery of the goods.

10. The buying agent's remuneration which is usually termed "buying commission" is paid by the importer, apart from the payment for the goods.

11. In this case, under the terms of paragraph 1(a)(i) of Article 8, the commission paid by the buyer of the imported goods must not be added to the price actually paid or payable.

Brokers (and brokerage)

12. There is a somewhat theoretical difference between the terms "brokers" and "brokerage" on the one hand and the terms "buying/selling agent" and "commissions" on the other; in practice there is no clear-cut distinction between the two categories. Moreover, in some countries the terms "broker" and "brokerage" are seldom, if ever, employed.

13. Where the term "broker" is in use, it generally refers to an intermediary who does not act for his own account; he acts for both buyer and seller and usually has no role other than to put both parties to the transaction in touch with each other. The broker's remuneration is known as brokerage which is usually a percentage on the business concluded as a result of his activities. The percentage received by a broker is commensurate with his rather limited responsibilities.

14. Where the broker is paid by the supplier of the goods, the total brokerage will normally be included in the invoice price; in such cases, no problem arises with regard to valuation. In case it is not so included, and yet incurred by the buyer, it should be added to the price paid or payable. On the other hand, the broker may be paid by the buyer, or each of the parties to the transaction may pay part of the brokerage; in these cases, the brokerage should be added to the price actually paid or payable insofar as it is incurred by the buyer, is not already included in that price and does not constitute a buying commission.

Conclusion

15. To sum up, when determining the transaction value of imported goods it will be necessary to include in that value commissions and brokerage incurred by the buyer, except buying commissions. Accordingly, the question of whether or not payments made to intermediaries by the buyer and not included in the price actually paid or payable should be added to that price will depend, in the final analysis, on the role played by the intermediary and not on the term ("agent" or "broker") by which he is known. It is also clear from the provisions of Article 8 that commissions or brokerage payable by the seller but which are not charged to the buyer could not be added to the price actually paid or payable.

16. It may also be worth pointing out that the existence and the nature of services rendered by intermediaries in connection with a sale are often not apparent from the commercial documents presented with the customs declaration. In view of the importance of the interests at stake, national administrations will need to take whatever reasonable measures they consider necessary to ascertain the existence and precise nature of the services in question.

EXPLANATORY NOTE 3.1

GOODS NOT IN ACCORDANCE WITH CONTRACT

GENERAL

1. The treatment of goods not in accordance with contract poses a preliminary question, namely whether some or all of the situations are to be dealt with as matters of customs valuation or, alternatively, are to be handled as matters of customs technique (see Annex F.6. to the Kyoto Convention).

2. Although it seems that some situations involve questions that, in most countries, depend on national legislation not relating to customs valuation, other situations may demand the application of valuation standards. This explanatory note therefore aims at the formulation of valuation rules

for all foreseeable normal situations for the guidance of administrations which wish to treat those situations by valuation methods.

TYPES OF CASES

3. The term "goods not in accordance with contract" can have different meanings under various national legislations. For example, some administrations consider damaged goods as falling under this term while others limit the term to sound goods which do not meet contractual specifications, the question of damaged goods being handled under separate procedures or other provisions of law. Therefore, the present document has been subdivided to identify situations to facilitate arriving at a uniform approach under the Agreement. These are:

I. Damaged goods:

(A) Upon importation, the shipment is found to be totally damaged, having no value.
(B) Upon importation, the shipment is found to be partially damaged, or having scrap value only.

II. Goods not in accordance with specification, i.e. goods which are not damaged but which are not in accordance with the original contract or order.

III. Importation of goods replacing goods under I or II above:

(A) In a subsequent shipment.
(B) In the same shipment.

4. Since the nature of the damage and the type of goods can create an unlimited number of individual circumstances, it is not intended in this explanatory note to go into detail with respect to the differences between "totally damaged" and "partially damaged" for valuation purposes.

VALUATION TREATMENT

I. Damaged goods

(A) The goods are totally damaged

5. On the presumption of the existence of national procedures for the re-exportation, abandonment or destruction of the goods, there is no liability to duty (see also Standard 6 of Annex F.6 to the Kyoto Convention).

(B) The goods are partially damaged or have scrap value only

6. Where the goods are re-exported, abandoned or destroyed, as in subparagraph (A) above, there is no liability to duty.

7. If, however, the importer takes delivery of the goods, the Agreement would apply in the following manner:

Article 1: The price actually paid or payable was not for the damaged goods actually imported, and therefore Article 1 is not applicable. However, if only a portion of the shipment is found to be damaged, one could accept as transaction value the price represented by the proportion of the total price which the undamaged quantity bears to the total quantity purchased. The damaged portion of the shipment will be valued under one of the subsequent provisions of the Agreement, in the prescribed order, as set out below.

Article 2: In the majority of instances it would be improbable that a damaged shipment could be valued on the basis of the transaction value of identical goods, i.e. damaged goods being sold for export to the country of importation. That is not to say, however, that this standard can be completely ignored since certain products might lend themselves to such an approach.

Article 3: The comments under Article 2 would have application under Article 3.

Article 5: If the damaged goods or identical or similar goods are sold in the country of importation in the condition as imported and all other requirements of the provision are met, the customs value of the damaged goods could be properly determined under the deductive method. If the goods are repaired prior to sale, and if the importer so requests, the value could be determined under the provisions of Article 5.2.2 with an allowance for the cost of repairs.

Article 6: Not applicable inasmuch as damaged goods are not manufactured or produced as such.

Article 7: While, as noted above, there are distinct possibilities of arriving at a customs value for damaged goods under one of the preceding standards of the hierarchy, it could be anticipated that the majority of instances would be dealt with under the provisions of Article 7. In this event, the value must be determined using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of the General Agreement, and on the basis of data available in the country of importation.

8. The method of valuation to be employed under Article 7 could be a flexible application of Article 1, that is, in the example cited:

(a) A renegotiated price (bearing 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 to him, or both);
(b) the full price originally paid or payable, reduced by an amount equal to any one of the following:

    (i) the estimate of a surveyor independent of the buyer and seller;
    (ii) the cost of repairs or refurbishing;
    (iii) the insurance settlement.

Attention is drawn to the fact that an insurance settlement may not be an accurate measure of the reduction of value due to damage, because it can be affected by extraneous circumstances such as over-insurance, under-insurance or negotiations. Nevertheless, payment of an insurance settlement to the buyer does not affect acceptance by Customs of a price reduced by reason of damage at importation. In other words, even though the price actually paid or payable to the seller remains unchanged, with the compensation for the damage being handled as a separate matter between the insurance carrier and the importer, the value of the goods must be established on the basis of their condition as imported.

II. Goods not in accordance with specification

(A) Re-exportation, abandonment or destruction

9. On the presumption of the existence of national procedures for the re-exportation, abandonment or destruction of the goods, there is no liability to duty (see also Standard 8 of Annex F.6 to the Kyoto Convention).

(B) Retained

10. If, despite the non-conformity to specifications found upon delivery, the goods are kept by the importer, the determination of the customs value would be influenced by the nature of the non-conformity. Goods of this type would fall into two categories: those which involve a shipment of the wrong goods (e.g. a shipment of woollen gloves against an order of sweaters) and those which are, in fact, the goods actually ordered but which fail to conform to the specifications in the original order to such an extent that the buyer seeks some form of reimbursement from the seller.

11.(i) Wrong goods

Article 1: If there is no sale for export, transaction value is not applicable.

Article 2: Applicable, on the basis of the transaction value of identical goods if available.

Article 3: In the absence of a transaction value for identical goods, the transaction value of similar merchandise could apply.

Article 5: In the absence of a customs value determined under Article 2 or 3, the value could properly be determined under the deductive method, either if the goods are sold in the condition as imported or, if the importer so requests, under the provisions of Article 5.2.

Article 6: Computed value would have application in the context of the hierarchical order. However, a judgement would have to be made, in view of the relative origins of the situation, as to whether this Article could be applied, particularly noting the provisions of the first sentence of Article 6.2.

Article 7: In the absence of a determination of the customs value under the preceding standards, Article 7 would apply. In the example cited, a price agreed to and paid by the importer for the gloves, even though after actual importation, might be accepted under a flexible application of Article 1 (but see the caveat in paragraph 8(a)).

II. Goods not conforming to specification

A number of situations may arise depending on the level of agreement, or disagreement, between the buyer and the seller. For example, the seller may take steps to bring the goods into conformity, either directly or through other parties, or he may render some form of compensation to the buyer which is extraneous to the goods themselves. On the other hand, the seller may not agree that there is, in fact, a non-conformity to specifications or, alternatively, the buyer may be seeking an amount of redress from the seller which is predicted on damages resulting from the non-specification rather than on a measure of the non-specification itself. From the customs valuation aspect, however, the price actually paid or payable still exists and since the Agreement does not make specific provision for this situation, if all other conditions are met, the value will be determined on the basis of transaction value under Article 1. Nothing in this section precludes "goods not conforming to specification" being considered as "wrong goods" and dealt with as in (i) above.

III. Replacement goods

12.(A) In a subsequent shipment

There are two possibilities. The replacement may be sent:

(a) invoiced at the original price, separate arrangements having been made as regards credit for the original goods; or
(b) invoiced free of charge.

In the case of (a), other conditions being met, the price would form the basis for determination of the customs value under Article 1.

Where replacement goods are sent free of charge, as in (b), they should be regarded as goods imported in fulfilment of the original transaction; in these circumstances it would be therefore appropriate to accept the price in that transaction for determination of the customs value under Article 1, the treatment of the first shipment being a matter for separate consideration.

(B) In the same shipment

With certain types of goods it is trade practice for the sellers to include in their shipments a quantity of articles "free of charge" as replacements for articles which experience shows are likely to be defective or damaged in transit: similarly materials somewhat in excess of the ordered measurements may be sent, for example because the edges are known to be liable to damage in transit. In these cases, the sale price should be regarded as covering the total quantity shipped, no attempt being made to value separately the "free replacements" or to take account of the additional quantity for valuation purposes.

EXPLANATORY NOTE 4.1

CONSIDERATION OF RELATIONSHIP UNDER ARTICLE 15.5, READ IN CONJUNCTION WITH ARTICLE 15.4.

1. Article 15.4 of the Agreement sets out eight situations only where, for the purposes of the Agreement, persons shall be deemed to be related.

2. In Article 15.5 the Agreement further provides that persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire (hereinafter referred to for brevity as sole agent), however described, of the other shall be deemed to be related for the purposes of the Agreement only if they fall within the criteria of paragraph 4 of Article 15.

3. The wording of Article 15.5 of the Agreement has two objectives. The first is to provide a clear departure from the concept held in certain valuation systems that sole agents are by their nature related to their suppliers.

4. On the other hand, it is recognized that parties who have been established as being sole agents should not on that basis alone be considered as being unrelated if, in fact, they meet one of the criteria in Article 15.4. Therefore, the second objective of Article 15.5 is to direct consideration of the relationship of parties solely within the provisions of Article 15.4.

5. The persons who wish to become associated in business in that one will become the sole agent of the other, will contact each other through a variety of means such as notices in business and trade journals and other avenues available in trade circles. Negotiations will be undertaken and, in most cases, written contracts will result which specify the terms and conditions of the sole agency agreement.

6. It can be expected that three situations will be encountered. The first involves an established and reputable manufacturer/seller whose products are much sought after in the markets of the importing country. Obviously, in these circumstances, the manufacturer/seller will be in the stronger negotiating position and the terms of the contract will weigh more heavily in his favour in terms of the conditions and requirements placed upon the sole agent. Parenthetically, however, this inevitably is accompanied by a higher price for the goods.

7. The second situation is the reverse, wherein the importer is a large enterprise with many distribution, sales and service locations in a lucrative market. In this instance, the importer would have more influence in the negotiating process in terms of the conditions and requirements placed upon the supplier. The supplier, moreover, would be likely to accept a somewhat lower price to gain access to the advantages of the importer's large distribution and sales structure. The third situation is between these two extremes where the parties open and conclude their negotiations on a more equal footing.

8. In such cases, the resulting contract becomes critical, recognizing that such contracts are freely entered into, usually have termination or renewal provisions, and are enforceable under the civil laws of the countries concerned in the event of a breach of a condition by one of the parties.

9. The question which must be considered is whether the terms or conditions of the contract are such as to meet one of the provisions of Article 15.4. There will be instances where the contract establishing a sole agency does establish a relationship, such as when the contract includes a provision relating to persons appointed as officers or directors of one another's businesses under Article 15.4(a), or where there is an exchange of stock (5% or more) under Article 15.4(d). It could be envisaged that some contracts could create a third entity which might bring in the provisions of Articles 15.4(f) and (g), while others could create a partnership under 15.4(b). On the other hand, it is reasonable to assume that such contracts would not usually create an employer/employee relationship under Article 15.4(c) nor a family relationship under Article 15.4(h).

10. It can therefore be concluded with some assurance that the specific provisions of the contract can be expected to give a clear indication of the applicability or non-applicability of the provisions of the Agreement in question.

11. The remaining provision of Article 15.4 defining relationships is that of 15.4(e) wherein one person directly or indirectly controls the other. The Interpretative Note to Article 15.4(e) provides that "for the purposes of this Agreement, 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".

12. Obviously, caution must be exercised in this respect to ensure that unintended results do not occur through improper interpretations of this provision when considering the terms and conditions of contracts which have been freely entered into by otherwise unrelated parties. The examples given in paragraphs 6 and 7 above represent situations wherein the terms and conditions of the contracts are weighted in favour of one party over the other and the former would be legally in a position to enforce its contractual rights over the latter. However, in any contract, verbal or written, even of the most simple type, one party is always in a position to specify certain rights, obligations and other expectations which are legally enforceable on the other.

13. For example, in a basic contract to deliver at a given price, both parties have an expectation that their legal rights and obligations will be honoured, that is, one must deliver and one must pay a certain price. This, however, would not create a relationship under Article 15.4(e). Even in a more complex contractual arrangement where the seller, because of royalty payments on the imported goods, has the right to establish and audit the accounting systems the importer must use to account for the royalties, the exercise of this right would not in itself create a relationship under Article 15.4(e).

14. It can be concluded that it is not the intent of the Agreement to create a relationship out of every contract or agreement which of their very nature establish legal rights or obligations enforceable under national laws. Therefore, the wording of the Interpretative Note to Article 15.4(e) must normally be taken to apply to situations which go beyond usual buyer/seller or distribution arrangements and involve a position to exercise restraint or direction in respect of essential aspects relating to the management of the activities of the other person.

15. The consideration of control and the existence of a position to exercise restraint or direction requires the determination of questions of fact and degree which must be based on the particulars of each individual situation.

EXPLANATORY NOTE 5.1

CONFIRMING COMMISSIONS

General remarks

1. Exporters protect themselves against the financial risk of non-payment for goods and services supplied in international trade, through the use of financial services, including those which provide confirmation to guarantee payment. Various forms of financial services are available to exporters to guarantee against the risk of non-payment or insolvency on the part of a buyer. While these services can vary from country to country, they generally give rise to a payment to an intermediary (often a bank), which, for a fee, will accept the risk on behalf of the exporter. The payments made for such services are often known as "confirming commissions". They may, however, be denoted by other names in various countries.

Confirming commissions

2. The confirmation or the guarantee of the payment for the goods by the buyer can be undertaken through normal banking channels, government agencies, insurance companies or specialized commercial companies dealing with such matters.

3. The situation is frequently as follows: a buyer opens a letter of credit with his own bank. However, the seller may lack confidence in the status and reliability of the letter of credit raised by

the buyer's bank. He seeks to confirm the letter of credit through another bank (usually in his own country) which guarantees the seller against the commercial risk of non-payment by the buyer's bank. The fee charged by the bank for this service is a confirming commission.

4. There are specialized commercial companies called confirming houses, which act either for buyers or for sellers. Among the variety of services performed by them is the guarantee of payment. The commission charged for the service is often called a confirming commission.

Determination of the valuation treatment

5. The determination of the valuation treatment to be given to confirming commissions is a complex question inasmuch as the issue relates to a variety of financial practices which may not be defined uniformly among countries.

6. It would be normal practice that a seller, incurring this expense, would seek to recover his confirming commission costs from a buyer. In the great majority of cases, he would do this by including the commission cost directly in his price for the goods. In such cases, the confirming commission would be included in the price actually paid or payable for the goods and there is no provision under the Agreement which would allow for its deduction in determining the transaction value.

7. Situations will occur where the charge for confirming commissions is separately identified, either by the seller in the invoice of sale for the goods, or in a separate invoice sent to the buyer by the seller or by the confirming institution.

8. In examining the above situations, it seems that the type of activity giving rise to the payment of a confirming commission is not one envisaged under the provisions of Article 8 of the Agreement, either as a "commission" under Article 8.1(a) or as "insurance" under Article 8.2(c). Confirming commissions are more in the nature of premiums for insurance against the risk of non-payment for the goods, rather than commissions in the strict sense of the word. Similarly, the insurance referred to under Article 8.2(c) would be that incurred for the transport of the imported goods only, as noted in Advisory Opinion 13.1. Therefore, the question which needs to be addressed is whether the payments for confirming commissions are part of the price actually paid or payable for the imported goods.

9. The Interpretative Note to Article 1 and paragraph 7 of Annex III make it clear that the price actually paid or payable is the total payment made or to be made directly or indirectly by the buyer to or for the benefit of the seller for the imported goods. That price includes all payments actually made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller. Subject to paragraph 10 of this Explanatory Note, if a confirmation of the instrument of payment for the imported goods is considered to be for the benefit of the seller because it insures the seller against the risk of non-payment by the buyer's bank, and if confirming commissions are paid by the buyer to the seller or to a third party as a condition of the sale of the imported goods, the price actually paid or payable would include any confirming commission.

10. There may be cases where a buyer undertakes on his own initiative to provide a seller with an irrevocable and confirmed letter of credit, the primary purpose being to ensure the conclusion of the contract of sale. Any commission charges arising in those cases could be paid by the buyer directly to the confirming institution. In these circumstances, there being no condition imposed in the sale contract and the benefit being realized by the buyer rather than the seller, the amount paid for the confirming commission would not be part of the price actually paid or payable.

EXPLANATORY NOTE 6.1

DISTINCTION BETWEEN THE TERM "MAINTENANCE" IN THE NOTE TO ARTICLE 1 AND THE TERM "WARRANTY"

1. The Interpretative Note to Article 1, in the paragraphs related to "price actually paid or payable", stipulates *inter alia* that the customs value shall not include charges for maintenance, undertaken after importation on imported goods such as industrial plant, machinery or equipment,

provided that they are distinguished from the price actually paid or payable for the imported goods.

2. Since the concept of "maintenance" is not specifically defined in the Agreement, that term has to be given its ordinary meaning.

3. Reference works define "maintenance" in general terms as, for example:

- "The upkeep or preservation of condition of property, including the cost of ordinary repairs necessary and proper from time to time for that purpose" (Black's Law Dictionary, Sixth Edition, 1990, page 953); or
- in respect of assets, the term maintenance is defined as "expenditures undertaken to preserve an asset's service potential for its originally-intended life; these expenditures are treated as periodic expenses or product costs" (Black's, page 954); or
- the "action of keeping something in good condition, of providing what is necessary for that purpose"; the "service in a company responsible for maintaining the performance of equipment and materials" (French dictionary Petit Larousse Illustré, 1987 - translation).

4. The question has arisen as to whether the scope of the term "maintenance", referred to in the Interpretative Note to Article 1, includes warranty. This question is examined below.

5. The difference between "warranty" and "maintenance" is as follows:

- Maintenance is a form of preventative care on goods such as industrial facilities and equipment to ensure the upkeep of those facilities and equipment to a standard which enables them to perform the function for which they were acquired;
- warranty is a form of guarantee on goods, such as motor vehicles and electrical appliances, which covers costs of correcting defects (parts and labour) or replacement subject to certain conditions being met by the warranty holder. If those conditions are not met, warranty can be voided. Warranty covers hidden defects in the goods, i.e. defects which should not exist and which prevent the use of the goods or reduce their usefulness;
- maintenance must always be performed, whereas warranty is only a contingency measure which might be invoked in the case of failure or under-performance of goods.

6. There is, therefore, a fundamental difference between the two concepts, and the term "maintenance" in the Interpretative Note to Article 1 cannot be applied to warranties.

CASE STUDIES

LIST OF CASE STUDIES

1. Report on a case study with special reference to Article 8.1(b): engineering, development, artwork, etc.
2. Application of Article 8.1(d) of the Agreement.

2.2 Treatment of proceeds under Article 8.1(d).

1. Restrictions and conditions in Article 1.
2. Treatment of rented or leased goods.
3. Application of Article 8.1(b).

1. Ditto.
2. Insurance premiums.
3. Application of the price actually paid or payable.
4. Application of Article 8.1.

1. Ditto.
2. Sole agents, sole distributors and sole concessionaires
3. Application of Article 1.2.
4. Application of Article 15.4 - related party transactions.

CASE STUDY 1.1

REPORT ON A CASE STUDY WITH SPECIAL REFERENCE TO ARTICLE 8.1(b): ENGINEERING, DEVELOPMENT, ARTWORK, ETC.

Facts of the transaction*/

1. The NAVAL company, domiciled in country of importation I, signs a contract with the BORG company, domiciled in country of exportation E, for the construction and sale by BORG or a processing plant for the production of liquid methane gas. The selling price of the plant to be paid by NAVAL to BORG, is 2,000 million currency units (c.u.). However, a clause in the contract provides for a further 500 million c.u. to be paid by NAVAL to BORG in respect of the engineering and development necessary for the plant's construction.

2. In addition, since the production of liquid gas requires a specific technology that BORG does not possess, the contract also stipulates that NAVAL will undertake to make available to BORG the materials and engineering services required for the design, construction and installation of aluminium liquid gas tanks. NAVAL also agrees in the contract to provide the technical studies and design work needed for the plant's pipeline system and for certain auxiliary equipment.

*/ The names used in this study are fictitious.

The pipeline system will be supplied free of charge by NAVAL.

3. For this purpose, acting on the advice of BORG (who prepared tender specifications and studied bids received), NAVAL:

(a) Engages AMERICA, a company located in a foreign country, to supply from that country:

  (i) the special materials required by BORG for the construction of the aluminium liquid gas tanks, at a selling price of 400 million c.u.;
  (ii) plans, sketches and drawings, at a total price of 200 million c.u., for the construction of those tanks not only for the plant to be built by BORG, but also for three other plants to be built for NAVAL by the VIKING company in the country of importation;
  (iii) technical assistance in respect of the construction of the tanks for each of the plants at a total price of 100 million c.u.;
  (iv) 10 special machines for welding the aluminium tanks in BORG's factory, at a hire charge per unit of 1 million c.u.;
  (v) 500 cylinders of gas employed by the machines for welding the tanks in BORG's factory, at a unit price of 10,000 c.u.

(b) engages VESPUCIO, a company located in a foreign country, to supply from that country

  (i) the steam system for the four plants ordered by NAVAL, at a total price of 1,200 million c.u.;
  (ii) technical collaboration through the provision of plans, drawings and technical documentation for the construction of the steam system, at a total price of 180 million c.u.;

(c) commissions CARTAGO, its foreign subsidiary, to execute the design work and supply plans and sketches for the auxiliary equipment common to the four plants at a total price of 600 million c.u., and orders it to send one set of them to BORG;
(d) commissions its foreign-based CRIMEA design centre to prepare drawings of the furnace system for the four plants and to send one set of them to BORG. The design centre's records show that this work involves 8,000 man-hours, and its accounts indicate an hourly cost of 2,000 c.u.;

(e) commissions its engineering division to prepare a list of all the materials required for the plant's construction and to carry out pressure and temperature studies for a variety of production conditions. The graphs and drawings reflecting the results of these studies are prepared by the SERVO company, which has its headquarters in the country of importation and receives payment of 12 million c.u. from NAVAL. NAVAL sends BORG one set of these engineering studies, graphs and drawings for use in the plant's construction.

4. All post-importation construction etc. work is undertaken by NAVAL on its own account.

Determination of customs value

5. NAVAL, the importing company, presents to the Customs of the country of importation a declaration of value based on the transaction value, together with all the commercial documentation and accounts relating to the construction and sale of the plant by BORG and to the contracts with the other companies for materials and services.

6. After considering the question, the Customs arrive at the conclusion that the goods should be valued under Article 1.

7. The transaction value is calculated by adding the following amounts to the selling price of the plant, fixed in the contract with BORG at 2,000 million c.u.:

(a) 500 million c.u., payable to BORG in respect of the engineering and development necessary for the plant's construction (see paragraph 1 above).

This addition does not constitute an adjustment under Article 8 but is in fact part of the total price actually paid or payable under the contract. Very often the engineering supplied by the seller of the goods himself is invoiced separately. In some countries, this distinction is due to the different kind of authorization for payments abroad (Trade Department for goods, Industry Department for technical assistance). The price actually paid or payable is the total payment made or to be made by the buyer to the seller for the imported goods.

(b) 400 million c.u., payable to AMERICA for supplying BORG with the special materials required for the construction of the aluminium tanks (see paragraph (a)(i) above).

This adjustment is not added under subparagraph (iv) of Article 8.1(b), but under subparagraph (i), because it involves materials and components which are incorporated in the imported plant at the time of valuation. The buyer of the plant supplied them free of charge to the seller for use in connection with the production and sale for export of the plant and their value is not included in the amount of 2,000 million c.u. fixed as the selling price of the plant.

(c) 50 million c.u., corresponding to one quarter of the 200 million c.u. payable to AMERICA for the plans, sketches and drawings for the construction of the tanks in four plants (see paragraph 3(a)(ii) above).

This is an adjustment under Article 8.1(b)(iv). It covers design work, plans and sketches undertaken outside the country of importation necessary for the production of the plant and supplied free of charge by the buyer. According to subparagraph (b) of Article 8.1, the value of this assistance, fixed at 200 million c.u., must be apportioned between the four plants which incorporate identical aluminium tanks.

(d) 25 million c.u., representing one quarter of the 100 million c.u. payable to AMERICA for technical assistance in respect of the construction of the tanks (see paragraph 3(a)(iii) above).

The value of the technical assistance furnished by the staff of the firm AMERICA to BORG's factory and supplied free of charge by the importer, must be added to the price payable for the plant by virtue of Article 8.1(b)(iv), which covers such engineering services. It must also be apportioned between the four plants.

(e) 10 million c.u., payable to AMERICA for supplying BORG with 10 special welding machines (see paragraph 3(a)(iv) above).

This adjustment is not added under Item (iv) of Article 8.1(b), but under Item (ii), because it involves tools used in the construction of the imported plant. The buyer supplied them free of charge to the seller solely for use in connection with the production and sale for export of the plant. The value of the tools is the cost of acquisition, which in this instance is represented by the hire charge.

(f) 5 million c.u., payable to AMERICA for the supply to BORG of the 500 cylinders of gas (see paragraph 3(a)(v) above).

This adjustment is also not added under subparagraph (iv) of Article 8.1(b), but under subparagraph (iii), because it involves materials consumed in the production of the plant, supplied free of charge by the buyer of the plant and the value of the materials is not included in the selling price of the plant.

(g) 300 million c.u., representing one quarter of the 1,200 million c.u. payable to VESPUCIO for supplying the steam system for the four plants (see paragraph 3(b)(i) above).

In this case the addition is in accordance with the provisions of Article 8.1(b)(i), because it involves materials, components and parts which are incorporated in the imported plant. The buyer of the plant supplies them free of charge to the seller for use in connection with the production and sale for export of the plant and their value is not included in the amount of 2,000 million c.u. fixed as the selling price of the plant.

(h) 45 million c.u., representing one quarter of the 180 million c.u. payable to VESPUCIO for the provision of plans, drawings and technical documentation for the steam system in the four plants (see paragraph 3(b)(ii) above).

This is another adjustment under Article 8.1(b)(iv). It applies to design work, plans and drawings for use in connection with the construction of the plant and to charges and costs for technical assistance undertaken before importation of the imported plant; these services are supplied indirectly by the buyer free of charge to the seller, and their value is not included in the selling price.

(i) 150 million c.u., representing one quarter of the amount payable to the CARTAGO subsidiary for design work, plans and sketches for the auxiliary equipment common to the four plants (see paragraph 3(c) above).

This assistance is also covered by Article 8.1(b)(iv). The buyer supplies these plans and sketches and pays for the design work undertaken outside the country of importation. The adjustment corresponds to one quarter of the amount paid by the importer to the foreign subsidiary.

(j) 4 million c.u., representing one quarter of the cost of preparing the plans for the furnace system of the four plants, calculated by multiplying 8,000 man-hours by the cost per hour of 2,000 c.u. (see paragraph 3(d) above).

This adjustment under Article 8.1(b)(iv) covers the value of the design work for the furnace system of the imported plant

8. The 12 million c.u. paid by NAVAL to SERVO in respect of graphs and drawings are not added to the selling price, since this service is provided within the country of importation; on the same grounds, the cost of the engineering services furnished by the specialist division of NAVAL itself should not be taken into account when determining customs value, both exclusions being in accordance with the provisions of the Interpretative Note to Article 8.1(b)(iv), subparagraph 7.

9. To summarize (and ignoring for the purposes of this case study the question of transport costs), the transaction value of the imported plant is made up as follows:

- CUSTOMS VALUE OF THE IMPORTED PLANT 3,489 million c.u.

CASE STUDY 2.1

APPLICATION OF ARTICLE 8.1(d) OF THE AGREEMENT

Facts of the transaction

1. Importer M purchases and imports a shipment of lamb carcasses from unrelated exporter X. The shipment is invoiced at an f.o.b. port of exportation price. Under the terms of the contract, M pays, in addition to the invoice price, all costs and charges of transport and insurance to the port of importation and customs duties and taxes, and also remits to X 40% of the net profit realized on the resale of the meat in the country of importation. The contract does not specify the resale price, but it provides that the net profit shall be determined by deducting from the resale price all direct expenses but not administrative overheads.

2. At the time of importation, M has arranged to sell a quantity of the lamb carcasses at one price to R1, a wholesale firm. He has also arranged to sell the remaining carcasses at a higher price to R2, a frozen food chain, after he has cut them into smaller joints and packed them.

3. The country of importation applies the Valuation Agreement on a c.i.f. basis.

Determination of customs value

4. In the circumstances set out above, there is a sale for export and, provided that the other requirements of Article 1 are satisfied, Article 1 can be applied for determining the customs value of the imported goods. An addition must be made to the invoice price, under Article 8.1(d), to take into account that part of the net profit which accrues to the exporter. The actual determination of transaction value is demonstrated in the following example. (N.B. Where the necessary documentation is not available at the time of importation it will be necessary to delay for a reasonable period of time the final determination of the customs value under Article 13 of the Agreement.)

Example

5. In the calculation of the transaction value, the following symbols and figures are adopted:

- P = Invoice price 2,000,000 c.u.
- T = Freight and insurance from the country of exportation to the port or place of importation 200,000 c.u.
- D = Customs duties and importation charges (representing in all 20% of customs value)
- Ti = Internal transport 100,000 c.u.
- C = Marketing expenses 150,000 c.u.
- G = Expenses for cutting and packing the quantity resold to R2 300,000 c.u.
- Pr1 = Resale price to R1 2,700,000 c.u.
- Pr2 = Resale price to R2 1,250,000 c.u.
- B = Net profit of resales
- V = Transaction value

6. Obviously, the net profit B has to be determined on the basis of the amount of customs duties and importation charges D, and this amount, which depends on the customs value of the goods, has to be determined in the light of the net profit. There is thus an interdependence between elements B and V.

7. The calculation of transaction value would be made as follows:

- V = P + T + 40B_100
- V = 2,000,000 + 200,000 + 40B; that is to say 100
- (1) V = 2,200,000 + 0.4 B

The amount of the net profit of the resales is:

- B = (PR1 + PR2) - (P +T +Ti + C + G + D); that is to say
- B = (2,700,000 + 1,250,000) - (2,000,000 + 200,000 + 100,000 + 150,000 + 300,000 + 20V); 100
- B = 1,200,000 - 0.2 V

Replacing this value of B in (1):

- V = 2,200,000 + 0.4 (1,200,000 - 0.2 V) = 2,200,000 + 480,000 - 0.08 V; that is to say 1.08 V = 2,680,000; V = 2,680,000 1.08
- V = 2,481,481 c.u.
- B = 703,704 c.u.

Thus, the transaction value on a c.i.f. basis is 2,481,481 currency units.

CASE STUDY 2.2

TREATMENT OF PROCEEDS UNDER ARTICLE 8.1(d)

1. Article 8.1(d) provides that, in determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods the value of any part of the proceeds of any subsequent sale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

2. This subparagraph is directly connected with Article 1.1(c), which permits the use of transaction value in the valuation of imported merchandise provided that no part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8. Accordingly, the condition in Article 1.1(c) may become inapplicable through an adjustment made under Article 8.

3. Article 8.1(d) sets out the principles for the addition of any such payments and the Agreement contains no Interpretative Note clarifying its scope and application. It must also be noted that there is no mention in the Agreement stipulating that such payments must be a condition of sale; the mere existence of such proceeds requires an adjustment under Article 8.

4. Another important factor that should be taken into account is Article 8.3, which states that additions to the price paid or payable shall be made only on the basis of objective and quantifiable data; if not, transaction value cannot be determined.

5. In applying Article 8.1(d), proceeds of any subsequent resale, disposal or use of the imported goods should not be confused with the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods (see Articles 1 and 8, and the relevant Interpretative Notes thereto).

6. Where an adjustment for proceeds is required and the relevant information is not available at the time of importation, it will be necessary to delay for a reasonable period of time the final determination of customs value under Article 13 of the Agreement.

7. Taking into consideration the foregoing principles, the following illustrates the application of Article 8.1(d) with an assumption that other requirements of Article 1 have been met.

General facts of transaction

8. Corporation C of country X owns a number of subsidiaries in different countries, all of which operate in accordance with corporate policies established by C. Some of these subsidiaries are manufacturing enterprises, others are wholesalers and still others are service-oriented enterprises.

9. Importer I in the country of importation Y, a subsidiary of C, is a wholesaler of men's, women's and children's garments; he buys men's garments from manufacturer M, another subsidiary of corporation C also located in country X, and women's and children's garments from unrelated manufacturers of third countries as well as from local manufacturers.

Situation 1

10. In accordance with C's corporate policy concerning sales between subsidiaries, goods are sold at a price negotiated between the subsidiaries. However, at the end of the year, importer I will pay to manufacturer M 5% of the total annual resale of the men's garments which he buys from him during that year as a further payment for the goods.

11. In this case, the payment in question is a proceed of a subsequent resale of the imported goods which accrues directly to the seller and the amount is to be added to the price paid or payable as an adjustment under the provisions of Article 8.1(d).

Situation 2

12. It has been established that importer I pays to service company A, another subsidiary of corporation C, 1% of his gross profit realized over the annual total sales of men's, women's and children's garments purchased from all sources. Importer I produces evidence that this payment is not related to the resale, use or disposal of the imported goods but is a payment made in accordance with corporate policy to reimburse A for low interest loans and other financial services A provides for all the subsidiaries of corporation C.

13. Service company A is related to the seller of the imported goods and thus the payment could be considered as an indirect payment to the seller. It is, however, payment for a financial service which is unrelated to the imported goods. Therefore, the payment would not be considered as proceeds in the meaning of Article 8.1(d).

Situation 3

14. It has been established that at the end of the financial year, importer I remits to corporation C 75% of his net profit realized over that year.

15. In this case, the remittance by I to corporation C cannot be considered as proceeds since it represents a flow of dividends or other payments from the buyer to the seller which do not relate to the imported goods. Therefore, in accordance with the Interpretative Note to Article 1 (price paid or payable) it is not a part of the customs value.

CASE STUDY 3.1

RESTRICTIONS AND CONDITIONS IN ARTICLE 1*

Facts of the transaction

1. M, a foreign manufacturer of motor vehicles, has concluded a contract with wholesaler D in the country of importation I wherein D will act as his sole distributor.

2. The specific provisions of the sole distribution agreement between manufacturer M and distributor D are as follows:

(a) D's selling right shall not extend to countries outside the distributor's territory, i.e., country of importation I;

(b) D shall fix his retail prices and the discount rate for dealers in his territory;
(c) D shall maintain two to three months vehicle stock and a corresponding stock of spare parts;
(d) D shall spare no effort to import and sell the maximum quantities of motor vehicles from M. In the event of the minimum turnover not being reached, M reserves the right to terminate the agreement. The minimum turnover of different brands and models of vehicles is fixed by M. However, the quantity fixed for each brand and model is flexible and negotiable even though the quantity is not reached. D also reserves the right to terminate the agreement by giving adequate notice to M;
(e) D shall maintain showrooms, employ adequate staff of trained salesmen and establish a chain of dealers with workshops;
(f) D shall carry on advertising for the vehicles within the territory;
(g) D shall provide after-sale servicing to all M's vehicles used in the territory;
(h) M shall not sell vehicles to any firm in D's territory; and
(i) D shall not be given any quantity discount on motor vehicles imported by him.

*/ This case study deals only with restrictions and conditions in Article 1 and not with other issues, such as any relationship between the parties in terms of Article 15.

Specific facts

3. M's selling price to D of the most popular model is 12,000 c.u. per car irrespective of quantity and owing to the fact that M does not normally sell his cars to third parties, there is no evidence that M varies his selling price according to commercial level in respect of sales to country I.

4. R, a car rental agency in country I, wishes to purchase 10 units of the same make of motor car from M. R then enters into negotiations with M for the direct purchase of 10 units because he is not prepared to pay D's minimum tax exclusive price of 21,000 c.u. M indicates readiness to sell 10 of the same model cars to R at 12,600 c.u. each but M is precluded from doing so by the sole distributor agreement between him and D who fears that R, who is not subject to the obligations undertaken by him (D), could resell the cars in country I below D's selling price and so substantially affect his (D) business. At D's insistence, the sale between M and R is to be made subject to the following conditions:

(a) The cars shall be registered for use as rental cars by R; and
(b) they shall not be resold by R within one year of registration.

5. A few tourists who visit M's country purchase from him identical motor cars at a tax free export price of 13,900 c.u. each for export to country I. Such sales to tourists are not prohibited by the sole distributorship agreement.

Determination of customs value

Importations by sole distributor

6. An examination of the sole distribution agreement gives the following results:

(a) D's selling right shall not extend to countries outside the distributor's territory, i.e., country of importation I.

This is a provision which limits the geographical area in which the goods may be resold, a restriction that is permissible under subparagraph 1(a)(ii) of Article 1.

(b) D shall fix his retail prices and the discount rate for dealers in his territory.

This provision is not a restriction or condition within the meaning of Article 1.

(c) D shall maintain two to three months vehicle stock and a corresponding stock of spare parts.

This provision corresponds to a usual business practice which requires the maintenance of an adequate stock for anticipated sales and repairs; it is not a condition of sale that implies that other goods have to be bought, but rather is a condition or consideration relating to the marketing of the imported goods, governed by the provisions of the second paragraph of the Interpretative Note to paragraph 1(b) of Article 1.

(d) D shall spare no effort to import and sell the maximum quantities of motor vehicles from M. In the event of the minimum turnover not being reached, M reserves the right to terminate the agreement. The minimum turnover of different brands and models of vehicles is fixed by M. However, the quantity fixed for each brand and model is flexible and negotiable even though the quantity is not reached. D also reserves the right to terminate the agreement by giving adequate notice to M.

This provision is not a restriction or condition within the meaning of Article 1.

(e) D shall maintain showrooms, employ adequate staff of trained salesmen and establish a chain of dealers with workshops.

This provision corresponds to usual business practices and would be treated as a condition or consideration relating to the marketing of the imported goods.

(f) D shall carry on advertising for the vehicles within the territory.

This provision corresponds to usual business practices and would be treated as a condition or consideration relating to the marketing of the imported goods.

(g) D shall provide after-sale servicing to all M's vehicles used in the territory.

This provision corresponds to usual business practices and would be treated as a condition or consideration relating to the marketing of the imported goods.

(h) M shall not sell vehicles to any firm in D's territory.

This provision is not a restriction or condition within the meaning of Article 1.

(i) D shall not be given any quantity discount on motor vehicles imported by him.

This provision is not a restriction or condition within the meaning of Article 1.

Importations by the car rental agency

7. Before arriving at a conclusion as to what Article is to be used for determining the customs value of the imported cars, it is necessary to examine M's selling procedure to R.

8. By examining the agreement between M and R, it appears that there are two restrictions as to the disposition and use of the goods by the buyer, i.e.:

(i) the cars shall be registered for use as rental cars by R;
(ii) they shall not be resold by R within one year of registration.

9. Since M is prepared to sell the cars to R at 12,600 c.u., if D permits him to do so, the restrictions imposed on R solely for safeguarding D's business do not affect the value of the cars. Consequently the value can be established under the provision of Article 1.

Importations by tourists

10. With respect to importations by tourists of identical cars into country I, account should be taken of the fact that though the transaction is executed in the market of the country of export, the facts of the transaction characterize the price as of "sale for export" to the country

of importation. Customs value for this category should therefore be based on the transaction value, i.e. 13,900 c.u. adjusted as necessary (see Study 1.1 - Treatment of used motor vehicles).

CASE STUDY 4.1

TREATMENT OF RENTED OR LEASED GOODS

Facts of the transaction

1. Firm I of country X, engaged in the catering business, enters into a mid-term catering contract with the national airlines to supply prepared food in special individual packaging ready for serving to passengers.

2. Whereas the previous packaging for such purposes used to be imported by another firm, in view of the duration of the contract and on the basis of preliminary cost effective studies, firm I decides to lease the necessary packing machinery. It therefore concludes a contract with leasing firm A of country Y. On the basis of the specifications given by firm I, the leasing firm A buys the machinery from a local manufacturer B in country Y on its own account and firm I takes the delivery ex-works. The price paid by A to manufacturer B is the price of the goods on the domestic market of country Y.

3. At the time of clearance firm I furnishes the Customs with a copy of the leasing agreement.

4. The terms of the leasing agreement are as follows:

(a) All the costs for delivery of the machinery, its assembly in situ, as well as its dismantling and return to an address to be named by the lessor shall be borne by the lessee.
(b) engineering personnel for assembling and putting the machinery into operation shall be provided by firm B. Costs of these activities shall be borne by the lessee.
(c) the lessee shall insure the machinery for the full period (delivery ex-works up to the return to the lessor).
(d) any fees, duties and taxes payable in connection with the leasing and the importation shall be paid by the lessee.
(e) the period of lease is 36 months, renewable.
(f) the monthly rental payment is 5,300 c.u. In case of extension the rental payment is reduced by 15% per month.

5. In addition to the leasing contract, the lessee provides to the Customs the following information and documents:

- The lessor is a subsidiary of a bank;
- documentary evidence indicating that the lessor includes in the rental payments of contracts of this nature an interest of 9% (a rate which is applicable to medium-term loans in country Y);
- a document showing that monthly rental charges also include the lessor's commission of 1.5% calculated over the total amount payable for the basic contract period;
- a copy of the invoice indicating the price for the machinery paid by the lessor to manufacturer B.

Determination of customs value

6. Since this is the first importation of such machinery into the country of importation X, the use of Articles 2 and 3 is precluded and, on account of the nature of the transaction, Article 5 cannot be applied. The data necessary for determining the computed value is not available. The Customs have to establish a value under Article 7.

7. Although various approaches exist to determine customs value under Article 7, using reasonable means consistent with the principles and general provisions of the Agreement and Article VII of GATT 1994, it has been decided in this case to establish the customs value on the basis of rental payments payable during the full economic life of the machinery. Through consultation between the Customs and the lessee this economic life is estimated to be 60 months.

8. The monthly rental payment is 5,300 c.u. for 36 months and 4,505 c.u. for the remaining 24 months (15% reduction). The interest element of 9% included in those amounts should be deducted insofar as the conditions set out in the Geneva Decision on interest are fulfilled.

9. It has been established that the 1.5% commission on the total amount payable over the basic contract period cannot be considered as a buying commission under the terms of Article 8.1(a)(i). This commission is actually the lessor's mark-up and should not be deducted.

10. Depending upon the national legislation of each Party, the elements listed in Article 8.2 will be included in or excluded from the customs value. Cost of the engineering personnel for assembly of the machinery, fees, duties and taxes payable in connection with leasing and importation are not part of the customs value.

11. For arriving at the customs value, the rental amount, exclusive of interest, can be determined on the basis of the following formulae for which certain symbols are adopted:

Calculation of the rental amount exclusive of interest over the basic contract period

(a) If the rental payment is made in arrears:

$$\frac{R_1 (Q^N - 1)}{Q^N (Q - 1)}$$

Or in figures:

$$\frac{5{,}300 (1.0075^{36} - 1)}{1.0075^{36} (1.0075 - 1)} = \frac{5{,}300 (1.3086 - 1)}{1{,}3086 (1{,}0075 - 1)}$$

$$5{,}300 \times 0.3086 \; 1{,}635.58 = 166{,}896 \; 1.3086 \times 0.0075 \; 0.0098$$

(b) If the rental payment is made in advance:

$$\frac{R_1 (Q^N - 1)}{Q^{N-1} (Q - 1)}$$

Or in figures:

$$\frac{5{,}300 (1.0075^{36} - 1)}{(1.0075^{36} - 1)(1.0075 - 1)} = \frac{5{,}300 (1.3086 - 1)}{1.2989 \times 0.0075}$$

$$5{,}300 \times 0.3086 \; 1{,}635.58 = 167{,}924 \; 1.2989 \times 0.0075 \; 0.00974$$

Calculation of the rental amount exclusive of interest over the full economic life of the machinery.

(a) If the rental payment is made in arrears:

$$\frac{R_2 (Q^N - 1)}{QN (Q - 1)}$$

Or in figures:

$$\frac{4{,}505 (1.0075^{24} - 1)}{1.0075^{24} (1.0075 - 1)} = \frac{4{,}505 (1.1964 - 1)}{1.1964 (1.0075 - 1)}$$

$$\frac{4{,}505 \times 0.1964}{1.1964 \times 0.0075} = \frac{884.782}{0.00897} = 98{,}638$$

(b) If the rental payment is made in advance:

$$\frac{R_2 (Q^N - 1)}{Q^{N-1} (Q - 1)}$$

Or in figures:

$$\frac{4{,}505 (1.0075^{24} - 1)}{(1.0075^{24-1})(1.0075 - 1)} = \frac{4{,}505 (1.1964 - 1)}{1.1875 \times 0.0075}$$

$$\frac{4{,}505 \times 0.1964}{1.1875 \times 0.0075} = \frac{884.782}{0.0089} = 99{,}414$$

12. In the present case, the total rental amount payable over the full economic life of the machinery, calculated as indicated above, would constitute the customs value subject to the national legislation provisions with respect to the elements listed in Article 8.2.

CASE STUDY 5.1

APPLICATION OF ARTICLE 8.1(b)

Facts of the transaction

1. Importer I in country of importation Y presents for customs clearance 10 armoured vehicles, which were the subject of an armouring operation by firm A in country of exportation X. The basic vehicles were purchased by I from manufacturer M, also in country X, at a total price of 17,400,000 c.u. and supplied free of charge to A, without having been used since purchase.

2. At the time of importation, I produces an invoice from A for the armouring operation for an amount of 43,142,000 c.u., and an invoice from manufacturer M for the basic vehicles invoicing I for an amount of 17,400,000 c.u.

Determination of customs value

3. In this case, the armoured vehicles should be valued under the provisions of Articles 1 and 8 taken together. The cost of the basic vehicles should be added, as an adjustment under Article 8.1(b)(i), to the price actually paid or payable for the armouring operation. Because A is providing armouring services, not selling armoured vehicles, the term "sale" as it applies to the transaction between I and A, will be regarded in its widest sense as a sale of goods, in accordance with paragraph (b) of Advisory Opinion 1.1. Thus, ignoring for the purposes of this case the question of transport costs and associated charges, the transaction value of the armoured vehicles would be 60,542,000 c.u.

CASE STUDY 5.2

APPLICATION OF ARTICLE 8.1(b)

Facts of the transaction

1. Firm I, established in country of importation Y, orders three identical racing cars from automobile manufacturer M in country of exportation X. These cars must be manufactured according to certain technical specifications imposed by I; the specifications are as follows:

(a) The carburettors for the cars will be manufactured by firm A in country Q and supplied free of charge to M by I. Their cost per unit is 10,000 c.u.;
(b) the testing of the car engines will be done in factory M by electronic checking equipment manufactured by firm B in country P, which, rented by I from B, will be supplied free of charge to M by I. The equipment will be incorporated into M's production line. The engines that pass the testing procedures will be incorporated into the auto body; however, the equipment will discard the engines that fail the test. The hire charge for the equipment delivered and installed at M's factory is 60,000 c.u.;
(c) the racetrack testing to ensure that the performance of the cars meets the manufacturing specifications will be carried out by M, using 5,000 litres of special fuel produced by company C in country Q. This will be supplied by I to M at a special price equal to 40% of the price invoiced by C to I, which is 10 c.u. per litre;
(d) the bodywork of the cars will be constructed by M according to plans and sketches prepared by firm D in country R; these will be furnished to M free of charge, their cost to I being 12,000 c.u.;
(e) the gearbox of the cars will be manufactured by M according to plans and sketches undertaken by I's technical service department located in county of importation Y and supplied to M free of charge. The cost of production of these plans and sketches is 8,000 c.u.

2. At the time of importation of the three cars, I presents to the Customs Authorities of the country of importation Y a declaration of value based on the transaction value, together with all the commercial documentation and accounts relating to the manufacture of the cars by M and to the contracts for the materials and other goods and services supplied.

Determination of customs value

3. The declared value is based on the invoice price by M for the three cars, 900,000 c.u., to which the following amounts (ignoring for the purpose of this case study the question of transport costs and associated charges related to the goods and services supplied) are added as adjustments:

(a) 30,000 c.u. paid by I to A in respect of the carburettors, as components incorporated in the imported cars; this adjustment is made under Article 8.1(b)(i);
(b) 60,000 c.u. paid by I to B for supplying M with the electronic checking equipment, as tools, dies, moulds and similar items used in the production of the imported goods; this is an adjustment under Article 8.1(b)(ii);
(c) 30,000 c.u. corresponding to the 60% of the price invoiced by C to I for the fuel supplied to M for the racetrack tests, as material consumed in the production of the imported cars,

it being understood that the 40% of the price was already included in the invoice price; this is an adjustment under Article 8.1(b)(iii);

(d) 12,000 c.u. paid by I to D for the plans and sketches of the bodywork of the cars, undertaken in country R and necessary for the production of the imported cars; this adjustment is added under Article 8.1(b)(iv);

4. The Customs Authorities accept the exclusion from the transaction value of the 8,000 c.u., cost of production of the plans and sketches for the gearbox of the cars since this assistance is provided within the country of importation by I's technical service; the exclusion is in accordance with the provisions of Article 8.1(b)(iv).

5. The value ex-factory M, for customs purposes, of the three cars is 1,032,000 c.u., to which would be added the cost of transport and associated charges to the county of importation, if this is provided for in the importing country's national legislation

CASE STUDY 6.1

INSURANCE PREMIUMS

Facts of the transaction

1. Seller S, established in the country of exportation X, is the exporter of motor vehicles manufactured by M, also of country X. Seller S concluded a sales contract with buyer B of country of importation Y. According to one of the conditions of the sale contract, a two-year warranty (spare parts and repair work) is provided for the cars to be purchased by B. The costs for the first year of warranty are included in the price of the cars payable by B.

2. The contract of sale provides that the second year's warranty costs will be paid by buyer B to seller S by way of a separate payment calculated as a certain amount per car. The payment applicable to each shipment of cars will be invoiced following shipment. The amount payable is final regardless of whether there are claims and compensation during the second year's warranty.

3. Seller S negotiates an insurance contract for the second year's warranty with an insurance company N, established in country T. According to the contract, the insurance company will fully compensate buyer B directly for all claims relating to the second year's warranty that is given on the cars. The insurance company will receive the premium from the seller.

4. Claims and compensation during the first year of warranty are to be settled directly between the manufacturer and the buyer, and during the second year between the insurance company and the buyer.

Valuation treatment

5. It should be pointed out that the price actually paid or payable is defined in the Interpretative Note to Article 1 as the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. This definition is further amplified in paragraph 7 of Annex III, which states that the price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

6. In this case, the first year's warranty cost is part of the price actually paid or payable. The second year's warranty cost, although paid for separately, is also part of the price actually paid or payable by the buyer to the seller for the imported cars.

CASE STUDY 7.1

APPLICATION OF THE PRICE ACTUALLY PAID OR PAYABLE

Facts of the transaction

1. An importer purchases a machine at a price of 10,000 c.u.

2. The machine in question, which is highly specialized and incorporates advanced technology, calls for the use of a sophisticated operating method. The seller has therefore prepared a training course to instruct buyers in the operation of the machine. The course is to be held, prior to importation, at the seller's premises in the country of exportation. The charge for the course is 500 c.u.

3. Prior to the customs clearance of the machine, the importer/buyer presents an invoice of the price for the machine.

4. The importer, being uncertain as to whether the amount in respect of the course should or should not be included in the customs declaration, informs Customs of the separate billing for the charge for the training course.

Situation 1

5. According to the contract of sale, it is up to the buyer to decide whether he needs the course or whether he feels capable of operating the machine without attending the course. Payment for the course is due only if the buyer actually attended. By way of information, it is pointed out that, at the time of customs clearance, the buyer has attended the course. Furthermore, the price of the machine can be verified as being 10,000 c.u.

Determination of customs value

6. The Interpretative Note to Article 1 and paragraph 7 of Annex III make it clear that the price actually paid or payable is the total payment made or to be made, directly or indirectly, by the buyer to or for the benefit of the seller for the imported goods. That price includes all payments actually made or to be made by the buyer to the seller as a condition of the sale of the imported goods.

7. The payment for the course is not a condition of sale if it is possible to purchase the machine without paying for the course. The fact that the charge for the course has been billed separately implies that the buyer has attended the course. In this case, the payment for the course is not for the imported goods because it is not a condition of the sale of the machine. In fact, the contract of sale comprises two elements, namely the provision of goods and providing the course. Insofar as the machine may be purchased without paying for the course, these two elements are separable.

8. Thus, the payment for the course is not part of the customs value, under the provisions referred to in paragraph 6 above, because it is not a condition of the sale.

Situation 2

9. The payment for the course is an explicit requirement in the contract of sale and must be made even if the buyer does not attend.

Determination of customs value

10. The payment for the course is a condition of sale; it is due even if the buyer has not actually attended the course and the machine cannot be purchased without paying for the course. In this case, the total payment, which includes the price of the course is, under the provisions referred to in paragraph 6 above, made for the imported goods, because it is made as a condition of the sale. This is so, even though the cost of the course appears on a separate billing.

Situation 3

11. The contract of sale obliges the buyer both to attend and to pay for the course.

Determination of customs value

12. The payment for the course forms part of the customs value of the goods for the same reasons as under Situation 2 above.

CASE STUDY 8.1

APPLICATION OF ARTICLE 8.1

Facts of the transaction

1. ICO sells high fashion men's garments to retailers in the country of importation. All garments are imported from one overseas supplier, XCO. XCO manufactures the garments using paper patterns supplied free of charge by LCO on behalf of ICO. LCO, which is located in a third country, specializes in designing high fashion men's garments. There is no relationship, within the meaning of Article 15.4, between ICO, XCO and LCO.

2. ICO has a licence agreement with LCO under which ICO is granted:

(i) An exclusive licence to distribute garments incorporating LCO's designs in the country;

(ii) the right to use paper patterns, incorporating designs, developed by LCO.

3. The licence agreement also provides that LCO will supply designs and paper patterns to whomever ICO nominates. ICO instructed LCO to supply XCO with multiple copies of the paper patterns (incorporating the designs) necessary to manufacture garments in the various sizes.

4. ICO pays XCO 200 c.u. for each garment. In consideration for the licence granted, ICO pays to LCO a licence fee equal to 10% of ICO's gross sales price of the garments. At the time of importation, all the garments have been sold to retailers for 400 c.u. each. Therefore, it is known at the time of importation that a licence fee of 40 c.u. will be paid to LCO for each garment.

Determination of customs value

5. The importer presents to the Customs of the country of importation a declaration of value based on the transaction value, together with all the documentation relating to both the licence agreement with LCO and the payment made for the rights granted under this licence agreement.

6. All the provisions of Article 1(a) to (d) are satisfied and the customs value is to be determined under the transaction value method.

Price actually paid or payable

7. The price actually paid or payable for each garment under Article 1 is 200 c.u. as this is the total payment made by the buyer to or for the benefit of the seller in respect of each garment.

Adjustments

8. Is it for the Customs Administration to determine the exact nature of the additional payment of 40 c.u. per garment, in order to establish whether or not it forms part of the customs value of the imported garments? If the facts show that the payment referred to as a licence fee relates to an element of Article 8.1(b) (an "assist"), then Article 8.1(b) would apply. Otherwise, Customs should examine whether the payment satisfies the conditions laid down in Article 8.1(c).

9. The paper patterns perform a similar function to a mould or die. The buyer sends the paper patterns free of charge through the licensor LCO and they are used in the production and sale for

exportation of the imported goods. These patterns therefore constitute an assist under Article 8.1(b)(ii) and their value, which also includes the cost of the designs, should be added to the price actually paid or payable for the imported goods.

10. The Interpretative Note to Article 8.1(b)(ii) contains two methods of determining the value of an item. First, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. Second, if the element was produced by the importer or by a person related to him, its value would be the cost of producing it. In this case, ICO is not related to LCO; therefore, the value of the paper patterns would be ICO's cost to acquire the patterns from LCO. ICO acquired the patterns through the licence agreement with LCO. In consideration for the licence, ICO must pay LCO an amount equal to 10% of ICO's gross sales price of the garments. Thus, ICO's cost to acquire the patterns is 10% of the gross sales price (400 c.u.) or 40 c.u. for each garment.

11. Given that the additional payment of 40 c.u. is to be included in the customs value of the imported garments under the terms of Article 8.1(b), it is not necessary to consider its possible addition to the price actually paid or payable under the terms of Article 8.1(c).

Conclusion

12. The transaction value per garment is 240 c.u., that is to say 200 c.u. as the price actually paid or payable and 40 c.u. as the adjustment provided for under Article 8.1(b)(ii) insofar as the licence fee in this case has to be treated, for valuation purposes, as the payment for an assist.

CASE STUDY 8.2

APPLICATION OF ARTICLE 8.1

Facts of the transaction

1. ICO imported multiple copies of a video laser disc which is purchased from XCO. The discs, which incorporated a selection of copyright music video clips, were manufactured by XCO in the country of exportation. ICO obtained the right to use the music video clips incorporated on the discs under a separate licence agreement with LCO in a third country. In accordance with its licence agreement with ICO, LCO compiled a master tape of the selection of music video clips to be incorporated in the discs. ICO then supplied the master tape to XCO free of charge. There is no relationship, within the meaning of Article 15.4, between ICO, XCO and LCO.

2. The master tape formed the basis of XCO's production process. The master tape conveyed images which were reproduced in an identical form on a laser disc stamper. Multiple copies of the disc were made from the stamper. Thus, each disc was an identical reproduction of the master tape and XCO would not have been able to manufacture the discs without the master tape.

3. ICO was required to pay XCO 1,000 c.u. for producing the stamper and 28,000 c.u. for 4,000 copies of the disc. In consideration for the right to use the music video clips and master tape, ICO is required to pay to LCO a licence fee of 5% of the gross sales price of the discs in the country of importation.

Determination of customs value

4. The importer presents to the Customs of the country of importation a declaration of value based on the transaction value, together with all the documentation relating to both the licence agreement with LCO and the payment made for the rights granted under this licence agreement.

5. All the provisions of Article 1(a) to (d) are satisfied and the customs value is to be determined under the transaction value method.

Price actually paid or payable

6. The price actually paid or payable under the Interpretative Note to Article 1 is 29,000 c.u. as this sum is the total payment made or to be made to or for the benefit of the seller for the laser

discs. The 1,000 c.u. paid for the laser disc stamper must form part of the price actually paid or payable because the buyer was required to pay this amount to the seller in order to obtain the imported goods.

Adjustments

7. It is for the Customs Administration to determine the exact nature of the additional payment of 5% of the gross sales price of the discs in the country of importation in order to establish whether or not it forms part of the customs value of the imported discs. If the facts show that the payment referred to as a licence fee relates to an element of Article 8.1(b) (an "assist"), then Article 8.1(b) would apply. Otherwise, Customs should examine whether the payment satisfies the conditions laid down in Article 8.1(c).

8. As the master tape was used in connection with the manufacture of the discs and supplied by the buyer to the seller free of charge, its value will be added to the price actually paid or payable if it falls within the class of goods and services set out in paragraphs 8.1(b)(i) to (iv).

9. As previously stated in paragraph 1 of this case study, LCO compiles music video clips on the master tape, which is furnished to XCO. The compilation is part of the design and development phase for the imported video laser discs. This design and development was undertaken elsewhere than the country of importation; therefore, it is added to the price actually paid or payable for the merchandise pursuant to Article 8.1(b)(iv).

10. The value of the assist is the 5% licence fee as this was the cost to ICO of obtaining the music video clips and master tape.

11. Given that the additional payment of 5% of the gross sales price of the discs in the country of importation is to be included in the customs value of the imported discs under the terms of Article 8.1(b), it is not necessary to consider its possible addition to the price actually paid or payable under the terms of Article 8.1(c).

Conclusion

12. The transaction value of the 4,000 imported discs is the price actually paid or payable (29,000 c.u.), plus the assist (5% of the gross sales price of the discs in the country of importation).

CASE STUDY 9.1

SOLE AGENTS, SOLE DISTRIBUTORS AND SOLE CONCESSIONNAIRES

Facts of the transaction

1. Autoex, a company established in the country of export X, manufactures "Auto" brand high performance motor vehicles. Autoex designates Auto Inc. (Inc), a newly-established company in the country of importation I, to be its sole distributor in country I. The Agreement signed between Autoex and Inc. provided that:

(i) Autoex granted Inc. the exclusive right to sell and distribute "Auto" vehicles in country I;

(ii) Autoex and Inc. shall annually set recommended retail selling prices for vehicles in country I on the basis of market trends and anticipated demand for vehicles;

(iii) Autoex and Inc. will negotiate Inc.'s purchase price for vehicles on the basis of agreed recommended retail selling prices. In addition, Inc. will be entitled to a quantity discount, to be effected on the invoice, of 10% from agreed prices on orders of more than one vehicle;

(iv) Inc. is to conduct its business entirely on its own account. Autoex will not indemnify or reimburse Inc. for any loss suffered in connection with the sale of "Auto" vehicles, including default of customers.

2. Paragraph 1 sets out the total agreement between the parties and that agreement is consistent with commercial practice.

3. Inc. subsequently sells two "Auto" vehicles to PCO, a motor vehicle dealer established in country I. Both cars were manufactured by Autoex and shipped to Inc. for pre-delivery preparation.

4. Inc. is responsible for arranging customs clearance and prior to importation, presents to Customs in country I all the documentation with respect to the transaction with a request for a ruling.

5. The examination of the circumstances surrounding the sale establishes the following:

(a) That both Autoex and Inc. had issued invoices in respect of the motor vehicles.

(i) The first invoice, issued by Autoex to Inc., required the payment of 200,000 c.u. less "discount" of 20,000 c.u., making a total of 180,000 c.u. The terms of sale were f.o.b. (port of export) with payment by letter of credit at sight upon presentation of the bill of lading.
(ii) the second invoice, issued by Inc. to PCO, required the payment of 300,000 c.u. (customs duty and taxes included). The terms of sale were ex-yard from Inc.'s premises in country I. Payment was required 30 days after delivery.

(b) the overseas freight and insurance charges paid by Inc. were 5,000 c.u.

Determination of customs value

6. The determination of customs value in this case depends on the proper characterization of the role and legal status of each of the parties to the transaction.

7. An examination of the agreement between Autoex and Inc. and the conduct of the parties reveals that:

(a) Inc. is an independent legal entity;
(b) Inc. takes title to the goods and assumes the risk at the f.o.b. stage;
(c) Inc. assumes the risk of non-payment by PCO.

8. These facts indicate that there is a sale for export to country I and that Autoex is the seller and Inc. is the buyer of the imported goods.

9. There is nothing in the Agreement between Autoex and Inc. to suggest relationship in terms of Article 15.4, and in particular Article 15.4(e). Similarly, the various elements of the agreement are not conditions or restrictions in terms of Article 1.1.

10. The sale between Autoex and Inc. forms the basis for determining the customs value under Article 1.

CASE STUDY 10.1

APPLICATION OF ARTICLE 1.2

Facts of the transaction

1. ICO of country I purchased and imported two categories of ingredients used in the production of food flavourings from XCO of country X.

2. At the time of clearing the goods, ICO declared to Customs in country I that it was related to XCO as:

(a) XCO held 22% of the shares of ICO; and

(b) officers and directors of XCO were also represented on the Board of Directors of ICO.

3. After importation, Customs in country I decided to conduct a review of the circumstances surrounding the sale of goods between XCO and ICO, pursuant to Article 1.2 of the Agreement, because it had doubts about the acceptability of the price. To this end, Customs forwarded a questionnaire to ICO which sought information regarding the sale of products by XCO to other buyers in country I and, if necessary, justification of any price difference, as well as information relating to XCO's cost of production and profit. At the request of ICO, Customs also forwarded a questionnaire to XCO. From the responses received, facts as set out below were established.

4. ICO purchased many of the ingredients required for the production of food flavourings from XCO. The ingredients sold by XCO to ICO fall into two categories:

(a) Ingredients manufactured by XCO; and
(b) ingredients stocked by XCO which have been acquired from other manufacturers and suppliers. Ingredients in this category are not manufactured or processed by XCO. Some of these ingredients may, however, be packaged for resale by XCO.

5. In terms of Article 15.2 of the Agreement, ingredients in category (a) are not identical or similar goods to the ingredients in category (b).

6. Ingredients in category (a) are also sold to other unrelated buyers in country I. The prices charged by XCO in respect of category (a) ingredients are:

(i) Sold to ICO 92 c.u. f.o.b.
(ii) sold to unrelated buyers 100 c.u. f.o.b.

7. In respect of the ingredients in category (a), Customs found that:

(i) Unrelated buyers purchased the ingredients at the same commercial level and in similar quantities as ICO and used the ingredients for the same purpose. Importations of these ingredients by unrelated buyers were appraised with a transaction value of 100 c.u.; and
(ii) the costs incurred by XCO were the same in relation to sales to ICO and unrelated buyers in country I.

8. Customs also established that there was no seasonal influence on the price of ingredients which might explain the 8% difference in prices set out in paragraph 6. Furthermore, after being asked to do so by Customs, ICO and XCO provided no additional information to explain the difference in prices.

9. Ingredients in category (b) are sold only to ICO in country I and there are no importations of identical or similar goods into country I.

10. In respect of the ingredients in category (b), Customs established that the prices charged to ICO were adequate to recover all XCO's costs, including the costs of acquisition plus the costs of repacking, handling and freight charges, as well as to recover a profit that was representative of the firm's overall profit over a representative period of time.

Determination of customs value

11. ICO and XCO are related persons in terms of paragraphs (a) and (d) of Article 15.4. As provided by Article 1.1(d), read with Article 1.2, the transaction value of sales between XCO and ICO will form the basis for the determination of customs value only where it is established that the price was not influenced by the relationship.

12. Under Article 1.2 of the Agreement, the responsibility for demonstrating that relationship has not influenced price lies with the importer. While the Agreement requires Customs to provide reasonable opportunity to the importer to provide information that would indicate that prices are not influenced by relationship, it does not require the Customs Administration to conduct an exhaustive enquiry for the purpose of justifying the price difference. Thus, any decision in this regard must, to a significant degree, be based on the information provided by the importer.

Ingredients of category (a)

13. The information available in this case shows that the transactions between ICO and XCO are at prices lower than the prices at which the sales are effected to unrelated buyers. When asked to do so, XCO and ICO have failed to explain the different prices.

14. The information obtained by Customs shows that ICO and the unrelated buyers purchase similar quantities of ingredients at the same commercial level and for the same purpose and that XCO's selling costs are the same for sales to ICO and the unrelated buyers. Based on the foregoing and on the nature of industry and goods, there are insufficient grounds to take the view that the price differential is not significant.

15. In respect of ingredients in category (a), therefore, the transaction value method would not be applicable. Recourse to an alternative method for determining the customs value of category (a) ingredients would be necessary. In this regard, the transaction value of either identical or similar goods imported by unrelated buyers may form the basis of determination of customs value.

16. It should, however, be noted that the impact of the specific price differential is unique to the facts as presented in this case. This price differential should not be taken as a standard or benchmark for determining whether a price difference is commercially significant in other cases. The Agreement makes it clear that the significance of any price difference should be considered on the basis of the nature of the goods and industry in the case in question.

Ingredients of category (b)

17. In respect of ingredients in category (b), which are sold only to ICO, the examination of the circumstances of the sale shows that the price is adequate to ensure recovery of all costs plus a profit representative of XCO's overall profit on goods of the same class or kind. In accordance with paragraph 3 of the Interpretative Note to Article 1.2, transaction values in respect of this category of ingredients may be acceptable for customs purposes.

CASE STUDY 11.1

APPLICATION OF ARTICLE 15.4(e) - RELATED PARTY TRANSACTIONS

Facts of the transaction

1. Company B in importing country I has entered into a sales, service and distribution agreement (the agreement) with Company C in exporting country X. Company C is a subsidiary of a large multi-national enterprise that manufactures heavy machinery and spare parts well known to consumers.

2. The agreement provides:

(a) Both Company B's and Company C's primary purpose in entering into the agreement is to develop and promote the sale of products and to provide a high standard of parts availability and mechanical service to ensure the satisfaction of product users;
(b) Company B shall be responsible for developing and promoting the sale of products to customers and prospective customers located within the agreed territory and for servicing the agreed range of products;
(c) the agreement is a personal contract entered into by Company C in reliance on the capability of Company B to provide sales and service to customers. Without the express written consent of Company C, Company B agrees not to appoint others to perform such sales and service responsibilities;
(d) Company C and Company B agree that Company B's effectiveness and ability in achieving the primary purpose for the agreement could be adversely affected by Company B's affiliation with another organization which is a substantial operator (end-user) of products. Company B agrees that during the life of the agreement it will avoid any such affiliation whether by way of capital investment, source of capital, common management, common ownership, or otherwise, except to the extent that Company C may otherwise agree in writing;

(e) Company C relies upon the qualifications and abilities of certain individuals employed by Company B to promote, sell and provide maintenance in country I. Company B agrees that those individuals will continue in the active management of Company B, or will continue to own a substantial financial interest in Company B. No substantial change shall be made in the management positions, ownership or voting control of those individuals without advance notice to and prior approval from Company C;
(f) Company B agrees that, unless Company C otherwise agrees in writing, its inventory of products purchased from Company C under the agreement shall remain unencumbered by security interests of any type in favour of any other creditor.
(g) Company B will maintain, to the satisfaction of Company C, a suitable place or places of business to provide an adequate source of products and mechanical service for the benefit of customers. Company B agrees to establish additional places of business or re-locate existing establishments in order to adequately service customers. The location of additional places of business and the relocation of existing places of business may only be made with the written consent of Company C. All places of business shall be maintained by Company B in a neat and attractive manner and stock adequate quantities of products to the satisfaction of Company C;
(h) Company B will employ an adequate number of qualified personnel to sell and service products to the satisfaction of Company C;
(i) Company B will maintain inventory and sales records in the manner specified by Company C and provide reports regarding inventory, sales and service to Company C at intervals specified by Company C;
(j) within 30 days after the end of the fiscal year of Company C, and at any other time upon Company C's request, Company B will deliver to Company C such information as Company C may reasonably request respecting the ownership, financial condition and operations of Company B, together with any subsidiary and related companies;
(k) unless otherwise agreed by Company C, within 90 days after the close of Company B's fiscal year Company B will deliver to Company C audited financial statements and a statement of the results of operations for such fiscal year;
(l) it is the intention of the parties that the relationship between them shall be that of independent contractors and vendor and vendee; that nothing contained in the agreement or done pursuant thereto shall constitute Company B the agent of Company C for any purpose whatever; and that all the acts and things done or to be done by Company B pursuant to the agreement, unless expressly otherwise provided, shall be at Company B's own cost and expense;
(m) either party may terminate the agreement, with or without cause, by notice of termination to the other party.

3. Other clauses of the agreement set out the manner in which goods are to be sold by Company C to Company B, as well as the terms and conditions of each sale made in accordance with the agreement, including dealer prices, end user prices, passing of title, method of payment and warranty.

4. In accordance with the agreement, imports into country I of goods supplied by Company C fall into the following four categories:

(i) Goods sold by Company C to Company B;
(ii) goods sold by Company C directly to customers (end-users) pursuant to orders solicited by Company B;
(iii) goods sold by Company C to end users without the involvement of Company B or any other dealer; and
(iv) goods sold by Company C to two other dealers similar to the sales to Company B under category (i).

5. An examination of the circumstances related to the two other dealers reveals that Company B has a unique association with Company C. The other dealers:

(a) Are allowed to purchase goods only on their own account;
(b) are not permitted to solicit orders from end-users of the type solicited by Company B under category (ii) (i.e., commission sales);
(c) are not authorized to undertake diagnostic activities; or
(d) do not receive commissions in respect of sales by Company C to other buyers in country I.

6. The terms of the contracts between these two dealers and Company C do not contain the clauses outlined in paragraph 2 above.

7. Customs has also established that Company B and Company C are not related persons in terms of paragraphs (a), (b), (c), (d), (f), (g) and (h) of Article 15.4 of the Agreement.

Issue for determination

8. In respect of the sales between Company C and Company B, the issue for determination is whether they are related persons under Article 15.4(e) because one of them directly or indirectly controls the other.

Analysis

9. The Interpretative Note to Article 15.4(e) provides that "one party shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter". The Technical Committee's Explanatory Note 4.1 endeavours to provide additional guidance on the application of Article 15.4(e) and its Interpretative Note in relation to sole agency, sole concessionaire and sole distributor agreements. The same considerations of determining control arise in this case.

10. Explanatory Note 4.1 observes that all buyer/seller and distribution arrangements allocate rights and obligations that are legally enforceable between the parties. It also emphasizes the importance of distinguishing the rights and obligations normally associated with the international sale and distribution of goods from contractual rights and obligations that would establish a relationship between the parties as envisaged by Article 15.4(e). Explanatory Note 4.1 states that "the wording of the Interpretative Note to Article 15.4(e) must normally be taken to apply to situations which ... involve a position to exercise restraint or direction in respect of essential aspects relating to the management of the activities of the other person". To determine whether Companies B and C are related on the basis of the distribution agreement, it is necessary to critically examine the effect of the provisions of the distribution agreement against this principle, Article 15.4(e) and its Interpretative Note.

11. Many of the clauses contained in the distribution agreement between Companies C and B are typical of those usually encountered in distribution agreements and do not involve direction or restraint by one party over the other. For example, distribution agreements usually contain a termination clause (2(m)); clauses allocating responsibility (2(b)); a "best endeavours" clause (2(h)); and a statement of independence to limit liability (2(l)). However, a number of other clauses in the distribution agreement warrant closer analysis:

(a) Clause 2(d) - distribution agreements generally include provisions intended to prevent the establishment of associations by either party that may result in conflicts of interest. In this case, the parties have identified that any affiliation with end-users by Company B might adversely affect its ability to achieve the primary purpose for the agreement. Company B agrees to avoid any such affiliations "by way of capital investment, sources of capital, common management, common ownership, or otherwise except to the extent that Company C may otherwise agree". Decisions regarding investment, sources of capital, management, and ownership may be essential aspects in the direction of an enterprise. However, the actual extent of this limitation must be evaluated in the context of the primary purpose for the agreement and the prevention of conflicts of interest. This clause restricts Company B's right to affiliate with or obtain capital from "end-users". Company B is free to affiliate with other parties and to obtain capital from other sources without the prior agreement of Company C. In the circumstances, it is reasonable for Company C to have the right to accept or reject any affiliation with an "end-users" proposed by Company B because of its potential adverse impact on Company B's priorities and/or loyalty;
(b) Clause 2(e) - distribution agreements typically contain clauses requiring either party to provide notice to the other party of any significant change in ownership or management. In many cases, such changes may provide grounds for termination of the agreement. However, Clause 2(e) goes significantly further than a simple notification provision as it requires Company C's prior approval before any changes in management positions, ownership and voting control take place. Appointment of the management and decisions

relating to the transfer of ownership and voting control are essential aspects relating to the management of Company B;

(c) Clause 2(g) - requirements to maintain adequate places of business as well as adequate levels of stock and spare parts are commonly included in distribution agreements. In many cases, the location of places of business may be discussed between the supplier and distributor. This clause, however, makes it clear that Company C ultimately has the right to decide on establishment of new places of business and on the re-location of existing places of business. Decisions relating to the location of business activities are essential aspects of the management of Company B;

(d) Clauses 2(j) & (k) - while these clauses do not grant any specific decision-making rights to Company C, they indicate that Company C monitors the financial status of Company B, its subsidiaries and related companies. Access to financial records is typically provided to enable one of the parties to audit and establish the accuracy of payments made to it by the other party (e.g., royalties, commission and proceeds). The precise nature of Company C's access to Company B's financial records is not clear from the information provided and further examination would be necessary to determine the practical extent and effect of this clause.

Conclusion and reasons

12. While all of the aspects of the agreement between Companies B and C are consistent with commercial practice, the agreement goes beyond usual buyer/seller and distribution arrangements. Through the agreement, Company C is in a position to exercise direction or restraint over Company B in respect of a number of essential aspects of its management (i.e., management positions; ownership or voting control; and the location of places of business). Companies B and C would be, therefore, related persons for the purposes of the WTO Customs Valuation Agreement because Company C has the capacity to directly or indirectly control Company B within the terms of Article 15.4(e) of the Agreement.

13. In light of this conclusion, if there are doubts about the acceptability of the price, an examination into whether that relationship has influenced the price in accordance with Article 1.2 and its Interpretative Note should be undertaken by the Customs Administration.

STUDIES

LIST OF STUDIES

1.1 - Treatment of used motor vehicles
- Supplement to Study 1.1

2.1 Treatment of rented or leased goods

STUDY 1.1

TREATMENT OF USED MOTOR VEHICLES

1. The valuation treatment of used motor vehicles under the Agreement raises in itself no particular question of principle, but does give rise to practical problems. It has therefore been considered helpful for Customs Administrations that these problems should be made the subject of the present study, in which various possible solutions will be suggested.

2. The study 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.

3. The criteria for determining whether or not a vehicle should be regarded as "used" are a separate matter. This matter must be left to the discretion of each administration because the widely differing situations which may arise in this field do not lend themselves to harmonization of the practices adopted. The problem can be illustrated by the following potentially difficult situations:

(a) In an importation by a trader the odometer of the imported vehicle reads 250 km, representing the distance travelled from the factory to the port of departure in the country of exportation;
(b) in an importation by a private individual the imported vehicle, purchased new and registered abroad by that individual a couple of weeks previously, has been driven a distance of 1,560 km, from the place of purchase abroad to the place of introduction in the country of importation.

4. The question of whether imported used vehicles should be regarded as having been further used since last sold has also to be treated as indicated in paragraph 3 above. Depending on the approach adopted in this respect, the vehicles concerned would fall either in category I or in category II, as defined below.

5. Basically there are two types of situation which need to be dealt with in the valuation of imported used vehicles. They are as follows, and will be discussed subsequently in the same order:

I. The vehicle is imported pursuant to a purchase without intervening use.
II. The vehicle is imported after additional use since the purchase.
III. The vehicle is imported pursuant to a purchase without intervening use.

6. Given that importation follows upon a sale, the price actually paid or payable in connection with that transaction should serve as the basis for establishing transaction value whenever the requirements and conditions of Article 1 of the Agreement are fulfilled.

7. If the provisions of Article 1 cannot be applied, the customs value must be determined by means of one of the other methods specified by the Agreement, in the prescribed order of application; regarding these methods, attention is drawn to paragraphs 10 to 23 below.

II. The vehicle is imported after additional use since the purchase

Article 1

8. Taking precedence over all other considerations concerning the applicability of the provisions of Article 1 is the question whether the vehicle to be valued, which the Administration considers to have been used since the purchase, can still be regarded for valuation purposes as being the same vehicle as when last sold.

9. If it cannot be so regarded, there is no price actually paid or payable for the vehicle in its condition at the time of valuation; thus, the provisions of Article 1 cannot be applied and the value must be determined in accordance with the first Article applicable, following the order of application prescribed by the Agreement.

Articles 2 and 3

10. The application of the valuation methods envisaged in Articles 2 and 3 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 Article 1 of the Agreement.

11. 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 Article 2 or 3, particularly in the case of importations by traders.

Article 5

12. Failing Article 2 or 3, if the imported used vehicles or identical or similar imported used vehicles are sold in the country of importation in the condition as imported, the provisions of Article 5, paragraph 1, should be applied whenever the requirements of that Article can be met.

13. In cases where Article 5, paragraph 1, fails, but the used vehicles are sold in the country of importation after further processing (for example, repair, reconditioning, fitting of accessories), valuation on the basis of paragraph 2 of that Article should be envisaged if the importer so requests; the deductions needed to take account of the value added by such processing or reconditioning will then have to be made.

14. One would however expect that situations as described under paragraphs 12 and 13 would normally only occur in respect of importations by traders.

Article 6

15. Since used motor vehicles are obviously not manufactured as such, the provisions of Article 6, based on the cost of producing the imported goods, cannot be applied.

Article 7

16. It follows from the foregoing that in many cases the customs value of used motor vehicles will have to be determined under the provisions of Article 7 of the Agreement.

17. When valuing goods using this "fall-back" method, it is important to bear in mind certain broad principles laid down by the Agreement and in particular that:

- For the purposes of Article 7, the value shall be determined using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of the GATT 1994, on the basis of data available in the country of importation;
- certain methods of valuation are expressly excluded by paragraph 2 of Article 7;
- the methods of valuation employed should be those laid down in Articles 1 to 6 inclusive, applied with reasonable flexibility, and should, to the greatest extent possible, be based on previously determined customs values;
- the Agreement recommends consultation between the Customs Administration and the importer to establish the basis for valuation.

18. Although it may not be possible to envisage a standard method of valuation for used motor vehicles, nevertheless, on the basis of the principles set out above and bearing in mind that, if disputed, a value determined under Article 7 must be defensible at law, several approaches remain open. Some of these are indicated in the following paragraphs. In the final analysis, it must be left to each Administration to choose a method compatible with the principles and general provisions of the Agreement and with Article VII of the General Agreement, so that account can be taken of each country's specific circumstances.

19. 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. The tables below exemplify the procedures which could be applied for making adjustments in the case of depreciation. To avoid arbitrariness, some judgement would, of course, have to be exercised for the application of these adjustments, account being taken of the circumstances proper to each case; in particular, in the case of adjustments based on use, it should be borne in mind that the odometer reading cannot always be relied upon.

Time since date of purchase	**Amount to be deducted**
Less than 6 months	a%
12 to 24 months	b%
etc.	c%

or

Use since date of purchase from price paid	**Amount to be deducted**
Less than 5,000 km	x%
5,001 to 15,000 km	y%
15,001 to 30,000 km	z%
etc.	etc.

It should be noted that any improvement made or accessories added after purchase would enhance the value of the vehicle.

20. 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 new 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 form part of the equipment of the reference vehicle. Further adjustment might prove necessary, to take into account any differences in level and quantity between the transactions under comparison.

21. 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 new vehicles.

22. The method envisaged in paragraph 19 could also be applied on the basis of the catalogue price for a new imported vehicle of the same make and model on the market of the country of importation. In such circumstances, where the provisions of Article 5 are applied with reasonable flexibility, further adjustments may have to be made in accordance with subparagraphs (i) to (iv) of Article 5.1(a).

23. Where it is possible to obtain catalogues or specialized periodicals indicating current prices in the used vehicle market of the country of importation, these prices can be used as a basis for valuation. In this case, of course, account should be taken of the vehicle's condition and of all elements affecting its value (for example, abnormal wear, repairs, reconditioning, accessories) as compared with that of the reference vehicle. Furthermore, it is important not to overlook the fact that the guideline prices given in these catalogues may be inclusive of import duties and taxes. However, Article 7, paragraph 2(a), prohibits the application of this method to vehicles produced in the country of importation (insofar as duty may be chargeable on them, should they be reimported). In such cases, reference could perhaps be made to identical or similar vehicles made in other countries, through a flexible interpretation of the terms "identical" and "similar".

24. It has to be noted that one of the major difficulties that can arise in cases as examined in this study is the practical one of ascertaining the facts needed to establish the transaction value, given that purchases made by private individuals often involve not a commercial invoice but simply a receipt, a manuscript bill or a verbal agreement. In these circumstances, the Customs will have to be satisfied as to the veracity of the declared purchase price. This question is part of the wider problem of trade in used or second-hand goods, which offers greater opportunities for fraud, particularly through the use of false invoices. This is primarily a customs enforcement matter, whose treatment will depend on the relevant national provisions.

25. Depending on the national legislation of each Member, the elements listed in Article 8, paragraph 2, of the Agreement will be included in or excluded from the customs value of used motor vehicles. If the transport is non-commercial or if the elements to be deducted or added cannot be determined from transport documents, the necessary adjustments should be based on the actual cost incurred for the conveyance of the imported goods; it is worth noting that these adjustments should be made on the basis of objective and quantifiable data (cf. Article 8, paragraph 3).

SUPPLEMENT TO STUDY 1.1

VALUATION OF USED MOTOR VEHICLES

Question 1

1. Is it possible to establish the customs value under Article 7 of the Agreement according to the price of goods on the domestic market of the exporting country when a buyer of used cars (commercial or private), who resides in the importing country, goes to the domestic market of the exporting country and buys cars to be imported into the importing country?

Answer

2. In accordance with Study 1.1 of the Technical Committee, basically there are two types of situations which need to be dealt with in the valuation of imported used automobiles. They are as follows:

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

From the facts presented in the question, it is assumed that situation (a) would apply*

* With respect to situation (b), guidance may be taken from the treatment of this situation under Articles 1 and 8 as provided by Case Study 5.1, "Application of Article 8.1(b)" and Article 7 as provided in paragraph 19 of Study 1.1, "Treatment of used motor vehicles".

3. Following the view previously expressed by the Technical Committee in Advisory Opinion 14.1, if the importer can demonstrate that the immediate sale under consideration took place with the view to export the goods to the country of importation, there is no need to address Article 7 in this case as Article 1 can apply.

4. In these circumstances, given that importation immediately followed the sale, the price actually paid or payable in connection with that sale should serve as the basis for establishing transaction value under Article 1 if all other requirements and conditions of Article 1 are fulfilled.

Question 2

5. How do you explain the relationship between Article 7.2(c) and Article 1 if the price actually paid or payable is the price which applies in the domestic market of the exporting country? In this situation, the used cars are really being bought on this market directly and personally by the importing buyer and the price is the only indicator that can be taken as a basis for establishing the customs value.

Answer

6. Article 7.2(c) does not prohibit the determination of customs value on the basis of the price actually paid or payable by the buyer. It does, however, prohibit the use of other values derived from sales in the domestic market of the country of export as a basis for determining customs value under Article 7. Examples of the types of activities that are prohibited by Article 7.2(c) would include basing customs value on the prevailing market price in the country of exportation or on the price at which the seller offers goods to other buyers on the domestic market of the country of export. The prohibitions contained in Article 7.2 of the Agreement apply only in respect of customs value determined under Article 7 and they have no application to the determination of transaction value under Articles 1 and 8.

Question 3

7. Could values listed in a foreign catalogue, published by an independent authority indicating prices of new and used cars, with and without tax, on the domestic market of the exporting country, be used as a basis (initial price) for establishing the customs value of a used motor vehicle by applying the procedure in paragraph 19 of the Technical Committee's Study 1.1? Would the exclusion of internal taxes and duties from such prices, making them different from those actually paid on the domestic market in the export country, be the reason why those values could be used as a basis for establishing the customs value of imported used motor vehicles?

Answer

8. Article 7.2(c) prohibits the use of the price of goods on the domestic market of the country of export as a basis for valuation. Study 1.1 of the Technical Committee outlines a procedure which involves using catalogue prices pertaining to the country of importation, from which adjustments would be made for duties, tax and certain other charges (i.e. a flexible application

of the deductive method). In the absence of other data, any reasonable means consistent with the principles of the Agreement may be used in determining the customs value.

STUDY 2.1

TREATMENT OF RENTED OR LEASED GOODS

1. Transaction value, the primary method of valuation under the Agreement, is based on the price actually paid or payable for the goods when sold for export to the country of importation.

2. Advisory Opinion 1. on "the concept of sale in the Agreement" states that hire or leasing transactions by their very nature do not constitute sales, even if the contract includes an option to purchase the goods. Therefore, for such cases, the transaction value method is precluded and it becomes necessary to determine the customs value under other methods, in the order prescribed by the Agreement.

3. Where goods which are identical or similar to the rented or leased goods are sold for export to the country of importation, it would be possible to establish the customs value on the basis of Articles 2 and 3.

4. However, in cases where these two Articles cannot be used, Article 5 must next be considered. Since by their nature rented or leased goods would not themselves be sold in the country of importation, Article 5 would apply only if identical or similar imported goods were sold in the country of importation. If not, it will be necessary to try to establish the customs value under Article 6.

5. Once the possibility of establishing the customs value under Articles 2 to 6 has been exhausted, Article 7 must then be invoked under which various approaches are possible.

6. In the event of the goods being valued under Article 7, the methods laid down in Articles 1 to 6 inclusive, applied with reasonable flexibility, should be used first. In this respect, attention needs to be drawn to the Technical Committee's instruments on application of Article 7 (Advisory Opinions 12.1, 12.2 and 12.3) and the documents issued on practical application of Article 7.

7. If under Article 7 the customs value cannot be determined by flexible application of Articles 1 to 6, it may be established using other reasonable means provided that they are not precluded by Article 7.2 and are consistent with the principles and general provisions of the Agreement and of Article VII of the GATT 1994.

8. For instance, valuation could be based on the use of valid list prices (for new or used goods) for exportation to the country of importation. In the case of goods which have been used, valuation may be based on a valid list price for new goods in the absence of a valid list price for used goods. However, since the goods would have to be valued with reference to their condition at the time of importation, such list prices for new goods must be adjusted to take into account the depreciation and obsolescence of the goods being valued.

9. Another possibility would be recourse to expert advice acceptable to both Customs and importer. The value so determined should be in conformity with the provision of Article 7 of the Agreement.

10. In some cases, rental contracts include an option to buy. This option may be given at the beginning, during or at the end of the basic contract period. In the first case, valuation should be based on the option price. In the last two cases, rental payments provided for in the rental contract plus the residual sum required may provide a basis for the determination of the customs value.

11. In cases where there is no option to buy, valuation under Article 7 could also proceed on the basis of the rental charges paid or payable for the imported goods. To this end, the aggregate rental expectations during the economic life of the goods may serve as a basis. Care needs to be taken with respect to certain cases where the rental charges can be quoted higher in order to secure amortization of the goods within a period shorter than the economic life of the goods.

12. Determination of the economic life of the goods may at times create practical problems, such as in industries where the rate of technology change is rapid. While the past experience of the life of identical and similar goods might be useful, in most cases a solution is likely to be found by consulting with specialized firms in cooperation with the importer. It should also be noted that a distinction will have to be made with regard to economic life of new and used goods, such as using "the whole economic life" for new goods and "the remaining economic life" for used goods.

13. Once the total rental charges have been determined, certain adjustments may be necessary to establish the customs value, in the form of either additions or deductions depending upon the terms of the contract and the principles underlying the Agreement. Where probable additions are concerned, dutiable elements not already included in the rental charges should be taken into account. In this respect, the factors listed in Article 8 could provide some guidance. In respect of deductions, any elements which are not part of the customs value should be deducted.

14. The following example illustrates the determination of customs value on the basis of rental charges payable. (For the purposes of this example, elements mentioned in Article 8 are ignored.) This approach could be applicable regardless of the duration of the contract. In case of re-exportation of the goods before the expiration of the estimated economic life, the refund of customs duties and taxes would be possible if the national legislation allows it.

Facts of the transaction

15. As a result of its expanding business, firm A of country X decides to rent a new machine from rental company B of country Y for a minimum duration of 36 months, renewable. According to the terms of the contract the erection and maintenance costs in the country of importation incurred by the importer are 20,000 c.u. per annum for the first two years of operation and 30,000 c.u. per annum for the following years, payable to the rental firm. The machine is rented at 50,000 c.u. per month inclusive of these costs and of an interest charge of 10%.

16. In view of the specific nature of the machine, none of the valuation methods (Articles 1 to 6), even applied with reasonable flexibility, is appropriate. As a result of consultation between the Customs and the importer, it is decided to base the customs value on the total amount of the rent payable for the whole economic life of the machine. For that purpose, it has been established that the machine can be used for five years.

17. The total amount of the rent payable over five years would, therefore, be taken as a basis for valuation. Once so determined, it is necessary to deduct from this amount the costs for erection and maintenance and the interest charges.

18. The symbols hereafter are used for the facility of calculation:

- R = total rent payable during the full economic life of the goods
- M = costs of erection and maintenance
- I = interest*/
- Customs value = R - (M + I)

* The interest to be deducted will have to be determined on the basis of a formula used for calculating compound interest.

WORLD CUSTOMS ORGANIZATION (WCO)
DECISIONS OF THE COMMITTEE ON CUSTOMS VALUATION

LIST OF DECISIONS

1. French translation of the term "copyrights" in the Interpretative Note to Article 8.1(c) of the Agreement.
2. Meaning of the word "undertaken" used in Article 8.1(b)(iv) of the Agreement.
3. Treatment of interest charges in the Customs value of imported goods.
4. Valuation of carrier media bearing software for data processing equipment.
5. Terms in Article 8.1(b)(iv): Development.

6. Cases where Customs administrations have reasons to doubt the truth or accuracy of the declared value.
7. Minimum values and imports by sole agents, sole distributors and sole concessionaires.

DECISION 1.1

FRENCH TRANSLATION OF THE TERM "COPYRIGHTS" IN THE INTERPRETATIVE NOTE TO ARTICLE 8.1(c) OF THE AGREEMENT

During its First Meeting held on 13 January 1981, the Committee on Customs Valuation agreed that the French translation of the term "copyrights" in the Interpretative Note to Article 8.1(c) of the Agreement, which reads "droit de reproduction" be replaced by the term "droit d'auteur".

DECISION 2.1

MEANING OF THE WORD "UNDERTAKEN" USED IN ARTICLE 8.1(b)(iv) OF THE AGREEMENT

During its Sixth Meeting held on 3 March 1983, the Committee on Customs Valuation agreed that in the context of Article 8.1(b)(iv) of the Agreement the English word "undertaken" is to be understood as meaning "carried out". It noted that the French and Spanish versions of the Agreement were not affected.

DECISION 3.1

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.

DECISION 4.1

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 database 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."

DECISION 5.1

TERMS IN ARTICLE 8.1(b)(iv): DEVELOPMENT

At its 12th Meeting, held on 9-10 May 1985, the Committee on Customs Valuation settled the question relating to the linguistic consistency in the English, French and Spanish texts of the term "development" in Article 8.1(b)(iv) of the Agreement by inserting the following statement in the minutes of the meeting, on the understanding that this would be without prejudice to the rights and obligations under the Agreement and that members of the Committee could revert to the matter should the need arise.

The Parties to the Agreement considered that the terms "development" in English, "travaux d'études" in French and "creación y perfeccionamiento" in Spanish in Article 8.1(b) are understood to exclude "research" in English, "recherche" in French and "investigación" in Spanish, as stated in paragraph 6 of VAL/W/24/Rev. 1 However, one Signatory, Argentina, considered that, as used in Article 8.1(b), the Spanish expression "creación y perfeccionamiento" could not be interpreted as allowing any part of the value to be excluded from the "creación o perfeccionamiento".

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

DECISION 6.1

CASES WHERE CUSTOMS ADMINISTRATIONS HAVE REASONS TO DOUBT THE TRUTH OR ACCURACY OF THE DECLARED VALUE

The Committee on Customs Valuation,

Reaffirming that the transaction value is the primary basis of valuation under the Agreement on Implementation of Article VII of GATT 1994 (hereinafter referred to as the "Agreement");

Recognizing that the Customs Administration may have to address cases where it has reason to doubt the truth or accuracy of the particulars or of documents produced by traders in support of a declared value;

Emphasizing that in so doing the Customs Administration should not prejudice the legitimate commercial interests of traders;

Taking into account Article 17 of the Agreement, paragraph 6 of Annex III to the Agreement, and the relevant decisions of the Technical Committee on Customs Valuation;

Decides as follows:

1. When a declaration has been presented and where the Customs Administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the Customs Administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8. If, after receiving further information, or in the absence of a response, the Customs Administration still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 11, be deemed that the customs value of the imported goods cannot be determined under the provisions of Article 1. Before taking a final decision, the Customs Administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, the Customs Administration shall communicate to the importer in writing its decision and the grounds therefor.

2. It is entirely appropriate in applying the Agreement for one Member to assist another Member on mutually agreed terms.

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

DECISION 7.1

MINIMUM VALUES AND IMPORTS BY SOLE AGENTS, SOLE DISTRIBUTORS AND SOLE CONCESSIONAIRES

I

1. Where a developing country makes a reservation to retain officially established minimum values within the terms of paragraph 2 of Annex III and shows good cause, the Committee shall give the request for the reservation sympathetic consideration.

2. Where a reservation is consented to, the terms and conditions referred to in paragraph 2 of Annex III shall take full account of the development, financial and trade needs of the developing country concerned.

II

3. A number of developing countries have a concern that problems may exist in the valuation of imports by sole agents, sole distributors and sole concessionaires. Under paragraph 1 of Article 20, developing country Members have a period of delay of up to five years prior to the application of the Agreement. In this context, developing country Members availing themselves of this provision could use the period to conduct appropriate studies and to take such other actions as are necessary to facilitate application.

4. In consideration of this, the Committee recommends that the Customs Co-operation Council assist developing country Members, in accordance with the provisions of Annex II, to formulate and conduct studies in areas identified as being of potential concern, including those relating to importations by sole agents, sole distributors and sole concessionaires.

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

ANNEX 3

Andean Community

RESOLUTION No. 1239

Updating Resolution No. 112
- Adoption of the Andean Customs
Value Declaration

THE GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY,

CONSIDERING: Decision No. 571 - Customs Valuation of Imported Goods, Resolution No. 846 - Community Regulations implementing Decision No. 571, Resolution 1112 - Adoption of the Andean Customs Value Declaration, and Resolution No. 1137 - Amended entry into force of Resolution 1112; and

WHEREAS: The Commission of the Andean Community approved Decision No. 571 of 12 December 2003 by which the Customs Valuation Agreement of the World Trade Organization (WTO) was adopted as the subregional regulations for determining the customs value of imported goods;

For the proper implementation of the WTO Customs Valuation Agreement, a document is needed to permit the facts and circumstances of commercial transactions in imported goods to be declared and to serve in determining the customs value and ensuring uniform treatment for imports into Andean Community Customs Territory;

Pursuant to the provision in Article 9 of the First Transitional Provision of Decision No. 571, it is the responsibility of the General Secretariat of the Andean Community to adopt and regulate, by means of a resolution, the operation and format of the Andean Customs Value Declaration;

This body of the Community implemented these regulations by means of Resolution No. 1112 of 5 July 2007, amending the provisions on its entry into force by Resolution No. 1137 of 20 December 2007;

The Twenty-first Meeting of the Group of Experts on Customs Valuation, held in Lima, Peru, from 4 to 8 May 2009, recommended that the regulations on the Andean Customs Value Declaration be updated, together with its format and instructions for completing it; and extended the time-limit for its submission and for electronic transmission of data, considering that, although progress had been made in physical and electronic harmonization of the Andean Customs Value Declaration in member countries, nevertheless, a number of activities required for its implementation remained pending.

The regulations on the Andean Customs Value Declaration still require improvement, together with its format and the instructions for completing it, in order to assist the correct determination of the customs value of goods imported into the subregion, therefore, the entire text of Resolution No. 1112 and amendments thereto need to be superseded in order to ensure that the regulations on using the Andean Customs Value Declaration are uniform;

A time-limit needs to be set for the submission of the Andean Customs Value Declaration and for electronic transmission of data by users in the subregion, therefore, a series of activities needs to be conducted to ensure full application of the Andean Customs Value Declaration in the Andean Community, within a reasonable timeframe, so as to achieve full compliance with the provisions in Decision No. 571 and its implementing regulations;

HEREBY DECIDES

Article 1.- Andean Customs Value Declaration

1. To adopt the "Andean Customs Value Declaration" (hereinafter the "DAV") as the supporting document for the customs declaration or customs declaration of imported goods, in the printed format attached as Annex I to this Resolution.

2. The DAV shall be completed in accordance with the instructions attached as Annex II to this Resolution.

3. The Customs Administration shall grant users every facility to enable them to obtain the instructions mentioned in the preceding paragraph and additional instructions where necessary, provided that they do not modify the provisions in Annex II.

4. For the purposes of electronic exchange of DAV data among the Customs Administrations of member countries, the electronic format approved in the relevant Resolution of the General Secretariat shall be used.

Article 2.- Supporting documents

The combined submission of the DAV and the customs declaration of imported goods shall be accompanied by the following documents to be used in support of the checks to be undertaken by the customs authority:

(a) The corresponding commercial invoice or contract in the case of a sale. If there is no sale, the document showing the commercial transaction;
(b) the transport document;
(c) the document proving insurance of the goods, where applicable;
(d) other supporting documents which, where applicable, prove the facts and the commercial circumstances of the transaction;

Article 3.- Commercial invoice

For the purposes of applying the first method "transaction value of the imported goods" determined in Article 1 of the WTO Customs Valuation Agreement, the commercial invoice shall:

1. Reflect the total payment for the imported goods made or to be made by the buyer to the seller, whether paid directly and/or indirectly.
2. Be an original final document. Accordingly, a pro forma invoice shall not be accepted.
3. Be issued by the seller of the goods.
4. Contain no erasures, additions or alterations.
5. Contain the following information as a minimum:

    (a) Number and date of the shipment;
    (b) name and address of the seller;
    (c) name and address of the buyer;
    (d) description of the goods;
    (e) quantity;
    (f) unit and total prices;
    (g) currency of the commercial transaction;
    (h) place and terms of delivery of the goods, according to the "INCOTERMS" international trade terms established by the International Chamber of Commerce or other agreements.

The commercial invoice may be in the form of an email, in which case it shall meet the requirements indicated above, in accordance with domestic legislation regulating e-trade.

If the commercial invoice is in a language other than Spanish, the customs authority may require the importer to attach the corresponding translation.

Article 4.- Submission of the Andean Customs Value Declaration

The DAV shall be submitted as a document in support of the customs declaration for the goods imported, regardless of whether the first "transaction value of the imported goods" method is used or not.

Article 5.- Exemption from submission

Without prejudice to the provisions in each member country's domestic legislation, exemption from submitting the DAV may be given in the following cases:

(a) Imports not of a commercial nature;
(b) imports of the luggage of passengers, crew, tourists and household effects, except for vehicles;
(c) postal parcels and packages sent through international courier services.

Article 6.- Streamlined Andean Customs Value Declaration

A streamlined DAV may be authorized for goods which are imported regularly, continuously or successively under the same commercial conditions, coming from the same supplier and intended for the same importer, if their diversity, volume and features warrant a streamlined procedure.

Member countries may determine the mechanisms, methods and criteria for a streamlined DAV in their domestic legislation.

Article 7.- Declaration of provisional value

1. An importer may declare a provisional value when, at the time of determining the customs value and applying the first "transaction value of imported goods" method, the value cannot be given definitively for the following reasons:

(a) The agreed price has not been finally determined and depends on a particular situation in the future;
(b) the amounts for the concepts indicated in Article 18.1(a)(i), (c) and (d) of the Community regulations for Decision No. 571 adopted by Resolution No. 846 are not known at the time of import and have to be estimated;

In such cases, the importer shall forward the written contracts showing and proving the situation. The provisional nature of the value shall be recorded in the DAV. Without prejudice to the provisions in preceding paragraphs, member countries may indicate the provisional nature of other factors according to their needs.

2. In any of the situations indicated in the preceding paragraph, final determination of the customs value may be deferred; in such cases, the importer may withdraw the goods from the Customs, paying the import duties and taxes corresponding to the provisional value declared and providing the surety established for this purpose.

3. The surety indicated in the preceding Article shall consist of a percentage to be determined by each member country, applied to the value declared as the provisional taxable base and for the time the importer needs to declare the final value. This time-limit may not exceed twelve (12) months as of the date of acceptance of the customs declaration of the imported goods, and shall only be renewable for a further maximum period of six (6) months and, exceptionally, for a longer period if the terms of the contract so warrant, subject to evaluation and acceptance by the Customs Administration.

4. If the importer is aware of the final value, he shall inform the customs authority within the time-limit estimated for this purpose, which shall correspond to the period of validity of the surety.

The surety shall be returned and no penalty shall be applied if the final value:

(a) Is the same as the provisional value;
(b) is more than the provisional value and the importer has paid the taxes due; or
(c) is less than the provisional value, in which case the importer may request refund of the excess payments made.

5. If the provision in the first subparagraph of the preceding numbered paragraph is not met, the surety shall be enforced. Member countries may specify the penalties to be applied in such cases in their domestic legislation.

6. The provisions in the preceding numbered paragraphs neither prevent nor limit the power of the Customs Administration to exercise its controls.

7. In their domestic legislation, member countries shall regulate the other aspects required for the efficient processing of provisional declarations of value.

Article 8.- Entry into force

This Resolution shall enter into force upon publication in the Official Gazette of the Cartagena Agreement.

The final date for implementing the submission of the DAV approved by this Resolution, as well as the corresponding electronic transmission of data by users, shall be 1 June 2010.

Article 9.- Derogations

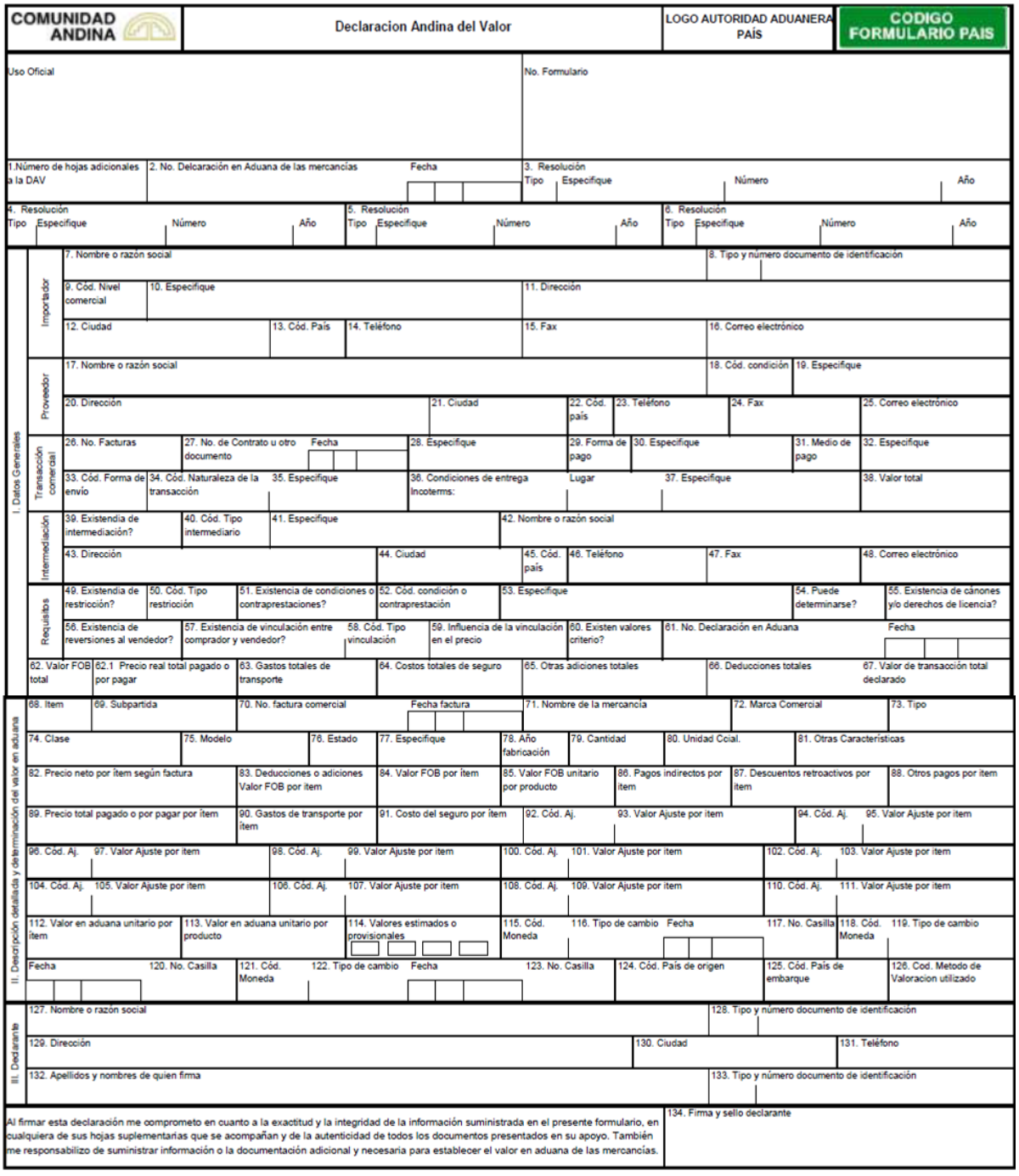
Resolutions Nos. 1112 and 1137 of the General Secretariat of the Andean Community are hereby repealed.

Done in the city of Lima, Peru, on twenty-nine May of the year two thousand and nine.

ANA MARÍA TENENBAUM DE REÁTEGUI

Director-General responsible for the General Secretariat

ANNEX I



COMUNIDAD ANDINA

Declaracion Andina del Valor

LOGO AUTORIDAD ADUANERA PAÍS

CODIGO FORMULARIO PAIS

Uso Oficial

No. Formulario

1.Número de hojas adicionales a la DAV

2. No. Delcaración en Aduana de las mercancías Fecha

3. Resolución Tipo Especifique Número Año

4. Resolución Tipo Especifique Número Año

5. Resolución Tipo Especifique Número Año

6. Resolución Tipo Especifique Número Año

I. Datos Generales

Importador

7. Nombre o razón social

8. Tipo y número documento de identificación

9. Cód. Nivel comercial

10. Especifique

11. Dirección

12. Ciudad

13. Cód. País

14. Teléfono

15. Fax

16. Correo electrónico

Proveedor

17. Nombre o razón social

18. Cód. condición

19. Especifique

20. Dirección

21. Ciudad

22. Cód. país

23. Teléfono

24. Fax

25. Correo electrónico

Transacción comercial

26. No. Facturas

27. No. de Contrato u otro documento Fecha

28. Especifique

29. Forma de pago

30. Especifique

31. Medio de pago

32. Especifique

33. Cód. Forma de envío

34. Cód. Naturaleza de la transacción

35. Especifique

36. Condiciones de entrega Incoterms:

Lugar

37. Especifique

38. Valor total

Intermediación

39. Existendia de intermediación?

40. Cód. Tipo intermediario

41. Especifique

42. Nombre o razón social

43. Dirección

44. Ciudad

45. Cód. país

46. Teléfono

47. Fax

48. Correo electrónico

Requisitos

49. Existendia de restricción?

50. Cód. Tipo restricción

51. Existencia de condiciones o contraprestaciones?

52. Cód. condición o contraprestación

53. Especifique

54. Puede determinarse?

55. Existencia de cánones y/o derechos de licencia?

56. Existencia de reversiones al vendedor?

57. Existencia de vinculación entre comprador y vendedor?

58. Cód. Tipo vinculación

59. Influencia de la vinculación en el precio

60. Existen valores criterio?

61. No. Declaración en Aduana Fecha

62. Valor FOB total

62.1 Precio real total pagado o por pagar

63. Gastos totales de transporte

64. Costos totales de seguro

65. Otras adiciones totales

66. Deducciones totales

67. Valor de transacción total declarado

II. Descripción detallada y determinación del valor en aduana

68. Item

69. Subpartida

70. No. factura comercial Fecha factura

71. Nombre de la mercancía

72. Marca Comercial

73. Tipo

74. Clase

75. Modelo

76. Estado

77. Especifique

78. Año fabricación

79. Cantidad

80. Unidad Comercial.

81. Otras Características

82. Precio neto por ítem según factura

83. Deducciones o adiciones Valor FOB por item

84. Valor FOB por ítem

85. Valor FOB unitario por producto

86. Pagos indirectos por item

87. Descuentos retroactivos por item

88. Otros pagos por item

89. Precio total pagado o por pagar por ítem

90. Gastos de transporte por item

91. Costo del seguro por ítem

92. Cód. Aj.

93. Valor Ajuste por item

94. Cód. Aj.

95. Valor Ajuste por item

96. Cód. Aj.

97. Valor Ajuste por item

98. Cód. Aj.

99. Valor Ajuste por item

100. Cód. Aj.

101. Valor Ajuste por item

102. Cód. Aj.

103. Valor Ajuste por item

104. Cód. Aj.

105. Valor Ajuste por item

106. Cód. Aj.

107. Valor Ajuste por item

108. Cód. Aj.

109. Valor Ajuste por item

110. Cód. Aj.

111. Valor Ajuste por item

112. Valor en aduana unitario por ítem

113. Valor en aduana unitario por producto

114. Valores estimados o provisionales

115. Cód. Moneda

116. Tipo de cambio Fecha

117. No. Casilla

118. Cód. Moneda

119. Tipo de cambio

Fecha

120. No. Casilla

121. Cód. Moneda

122. Tipo de cambio Fecha

123. No. Casilla

124. Cód. País de origen

125. Cód. País de embarque

126. Cod. Metodo de Valoracion utilizado

III. Declarante

127. Nombre o razón social

128. Tipo y número documento de identificación

129. Dirección

130. Ciudad

131. Teléfono

132. Apellidos y nombres de quien firma

133. Tipo y número documento de identificación

Al firmar esta declaración me comprometo en cuanto a la exactitud y la integridad de la información suministrada en el presente formulario, en cualquiera de sus hojas suplementarias que se acompañan y de la autenticidad de todos los documentos presentados en su apoyo. También me responsabilizo de suministrar información o la documentación adicional y necesaria para establecer el valor en aduana de las mercancías.

134. Firma y sello declarante

COMUNIDAD ANDINA	Declaracion Andina del Valor	LOGO AUTORIDAD ADUANERA PAÍS	CODIGO FORMULARIO PAIS

Uso Oficial	No. Formulario

II. Descripción detallada y determinación del valor en aduana

68. Ítem	69. Subpartida	70. No. factura comercial	Fecha factura	71. Nombre de la mercancía	72. Marca Comercial	73. Tipo

74. Clase	75. Modelo	76. Estado	77. Especifique	78. Año fabricación	79. Cantidad	80. Unidad Ccial.	81. Otras Características

82. Precio neto por ítem según factura	83. Deducciones o adiciones Valor FOB por ítem	84. Valor FOB por ítem	85. Valor FOB unitario por producto	86. Pagos indirectos por ítem	87. Descuentos retroactivos por ítem	88. Otros pagos por ítem

89. Precio total pagado o por pagar por ítem	90. Gastos de transporte por ítem	91. Costo del seguro por ítem	92. Cód. Aj.	93. Valor Ajuste por ítem	94. Cód. Aj.	95. Valor Ajuste por ítem

96. Cód. Aj.	97. Valor Ajuste por ítem	98. Cód. Aj.	99. Valor Ajuste por ítem	100. Cód. Aj.	101. Valor Ajuste por ítem	102. Cód. Aj.	103. Valor Ajuste por ítem

104. Cód. Aj.	105. Valor Ajuste por ítem	106. Cód. Aj.	107. Valor Ajuste por ítem	108. Cód. Aj.	109. Valor Ajuste por ítem	110. Cód. Aj.	111. Valor Ajuste por ítem

112. Valor en aduana unitario por ítem	113. Valor en aduana unitario por producto	114. Valores estimados o provisionales	115. Cód. Moneda	116. Tipo de cambio Fecha	117. No. Casilla	118. Cód. Moneda	119. Tipo de cambio

Fecha 120. No. Casilla	121. Cód. Moneda	122. Tipo de cambio Fecha	123. No. Casilla	124. Cód. País de origen	125. Cód. País de embarque	126. Cod. Metodo de Valoracion utilizado

68. Ítem	69. Subpartida	70. No. factura comercial	Fecha factura	71. Nombre de la mercancía	72. Marca Comercial	73. Tipo

74. Clase	75. Modelo	76. Estado	77. Especifique	78. Año fabricación	79. Cantidad	80. Unidad Ccial.	81. Otras Características

82. Precio neto por ítem según factura	83. Deducciones o adiciones Valor FOB por ítem	84. Valor FOB por ítem	85. Valor FOB unitario por producto	86. Pagos indirectos por ítem	87. Descuentos retroactivos por ítem	88. Otros pagos por ítem

89. Precio total pagado o por pagar por ítem	90. Gastos de transporte por ítem	91. Costo del seguro por ítem	92. Cód. Aj.	93. Valor Ajuste por ítem	94. Cód. Aj.	95. Valor Ajuste por ítem

96. Cód. Aj.	97. Valor Ajuste por ítem	98. Cód. Aj.	99. Valor Ajuste por ítem	100. Cód. Aj.	101. Valor Ajuste por ítem	102. Cód. Aj.	103. Valor Ajuste por ítem

104. Cód. Aj.	105. Valor Ajuste por ítem	106. Cód. Aj.	107. Valor Ajuste por ítem	108. Cód. Aj.	109. Valor Ajuste por ítem	110. Cód. Aj.	111. Valor Ajuste por ítem

112. Valor en aduana unitario por ítem	113. Valor en aduana unitario por producto	114. Valores estimados o provisionales	115. Cód. Moneda	116. Tipo de cambio Fecha	117. No. Casilla	118. Cód. Moneda	119. Tipo de cambio

Fecha 120. No. Casilla	121. Cód. Moneda	122. Tipo de cambio Fecha	123. No. Casilla	124. Cód. País de origen	125. Cód. País de embarque	126. Cod. Metodo de Valoracion utilizado

ANNEX II

INSTRUCTIONS FOR COMPLETING THE ANDEAN CUSTOMS VALUE DECLARATION FORM (DAV), GENERAL ASPECTS

Pursuant to Article 9 of Decision No. 571, importers have to submit a declaration of the facts and circumstances concerning the commercial transaction involving the goods to be imported and being valued.

For this purpose, in accordance with Article 8 of the aforementioned Decision, the Andean Customs Value Declaration form (hereinafter the DAV) form adopted in the first Article of this Resolution is to be used and completed in accordance with these instructions.

The DAV is composed of the following:

The cover sheet containing:

I. General information.
II. A detailed description of the goods and determination of the customs value.
III. The declarant.

Additional sheets (which may be one or more) containing:

II. A detailed description of the goods and determination of the customs value.

The DAV is designed for declaring the commercial facts and circumstances surrounding a **single** transaction that results in the importation of products classified in one or more subheadings. If the transaction relates to a sale covered by several commercial invoices in which the seller, the buyer, the currency of the transaction, the terms of delivery and other information recorded in part I are the same, a single DAV may be completed. Otherwise, a form should be completed for each sale.

If the goods can be valued using the transaction value method, parts I and II should be completed, determining the customs value per item, giving information by type of product. If the taxable base is determined using alternative methods, in part I the boxes relating to the description of the goods should be completed and in part II the codes of the countries of origin, shipment and purchase, without filling in the boxes on values.

In any event, the boxes in part III have to be filled in and the form signed.

The goods should be described by item; if information on more than one item has to be recorded, as many additional sheets as necessary should be completed, being sure to indicate in box 1 of the cover sheet the number of additional sheets used. Two dashes (--) should be entered in boxes that are not utilized.

For the purposes of these instructions, "Community regulations" mean the Community regulations implementing Decision No. 571 on the customs valuation of imported goods, adopted by Resolution No. 846.

For the purposes of these instructions, "Agreement" means the Customs Valuation Agreement of the World Trade Organization (WTO).

INSTRUCTIONS FOR COMPLETING THE FORM

No. of form: The number attributed by the Customs Administration

1. No. of additional sheets: Indicate the number of sheets used. Example:

a. If there is only one item, indicate zero on the cover sheet because no additional sheets are required.
b. if there is more than one item, additional sheets have to be completed. Accordingly, on the cover sheet the number of additional sheets used should be indicated; in the space provided on each of these, indicate their order in succession and the total number used. For example, if there are 3 additional sheets, on the cover sheet put 3; on the first additional sheet, put 1 of 3; on the second, 2 of 3; and on the third, 3 of 3.

2. No. of customs declaration of the goods; Indicate the number and date of the customs declaration for the goods being imported to which the DAV corresponds.

3, 4, 5 and 6: Decision: Provide the following information:

Type: Indicate the code corresponding to the decision of the Customs Administration that affects determination of the customs value of the goods or completion of the DAV.

1. Advance decision;
2. Permanent adjustments of value;
3. Streamlined;
4. Other.

Specify: If the code corresponding to "Other" has been entered in the previous box, indicate which decision.

Number and year of the decision: Indicate the number of the decision and the year it was taken.

For example, there is a decision on permanent adjustments of value for the importation in question and it should be recorded as follows:

Type: 02, Specify: - -, Number and year: 15/2007.

I. GENERAL INFORMATION

Contains general information concerning a transaction covered by one or more commercial invoices in the case of a sale or substitute document in other cases.

IMPORTER:

Where the transaction is in the form of a sale, the information to be given refers to the buyer, otherwise to the importer.

7. Name or trade name: Indicate the surnames and first names or the trade name of the buyer, as they appear on the commercial invoice, otherwise those of the importer appearing on the contract or document showing the commercial transaction.

8. Type and number of identity document: Indicate the code for the type of document and the identity number, using the codes in Table 5 of Annex IV.

9. Commercial level code: Enter the code for the buyer's commercial level, according to the definition in Article 2(f) of the Community regulations. This box also needs to be filled in when there is a sale, using the codes below:

1. Wholesaler
2. Retailer
3. Industrial user (manufacturer)
4. End user
5. Other

10. Specify: If the code corresponding to "Other" has been entered in the previous box, give details.

11. Address: Enter the address of the buyer or the importer, as applicable, as they appear on the commercial invoice or the document showing the transaction.

12. City: Indicate the name of the city in the address of the buyer or importer as shown in box 11.

13. Country code: Enter the country code for the country in which the city indicated in box 12 is situated. Use the codes provided for the customs declaration of goods in Table 4 of Annex IV.

14, 15 and 16. Telephone, fax and email: Indicate this information for the buyer or importer of the goods. For the telephone and fax numbers, enter the international dialling code in brackets followed by the local number.

SUPPLIER

The information to be entered in these boxes refers to the supplier of the imported goods, who may be the seller if the transaction corresponds to a sale.

17. Name or trade name: Indicate the surnames and first names or the trade name of the seller, as they appear on the commercial invoice, otherwise those of the supplier appearing on the contract or document showing the commercial transaction.

18. Code function: Indicate the code for the seller's function in the case of a sale, using the codes below:

1. Manufacturer
2. Distributor
3. Dealer
4. Other

If there is no sale, enter two dashes (--).

19. Specify: If the code corresponding to "Other" has been entered in the previous box, give details.

20. Address: Enter the address as it appears on the commercial invoice or the document showing the transaction.

21. City: Indicate the name of the city in the address entered in the previous box as it appears on the commercial invoice or the document showing the transaction.

22. Country code: Enter the country code for the country in which the city indicated in the previous box is situated as it appears on the commercial invoice or the document showing the transaction, using the codes indicated in Table 4 of Annex IV.

23, 24 and 25. Telephone, fax and email: Indicate this information for the seller or supplier of the goods. For the telephone and fax numbers, enter the international dialling code in brackets followed by the local number.

COMMERCIAL TRANSACTION

26. Number of invoices: Record the total number of commercial invoices issued by the seller relating to a single transaction and covering the goods that are the subject of the declaration. Each invoice should be identified by number and date in part II of the form.

27. Number and date of the contract or other document: Indicate the number and date of the sales contract or other type of contract or document covering the transaction.

28. Specify: Indicate which document covers the transaction if it is not the same as the sales contract.

29. Form of payment: Indicate the form of payment of the goods that are the subject of the commercial transaction using the codes below:

1. Advance payment
2. Cash payment
3. Credit payment
4. More than one form of payment (specify)
5. No payment
6. Other (specify)

30. Specify: If the code corresponding to "More than one form of payment" or "Other" has been entered in the previous box, give details.

31. Method of payment: Indicate the method of payment used for the transaction. If "No payment" was indicated in the appropriate box, two dashes should be entered in this box. The information is to be recorded using the codes below:

1. Cash
2. Cheque
3. Simple payment order
4. Clean remittance
5. Documentary remittance
6. Documentary credit
7. Other (specify)

NOTE: Use of the payment methods should conform to the provisions in each member country's domestic legislation.

32. Specify: If the code corresponding to "Other" has been entered in the previous box, give details.

33. Form of consignment: Record the form of consignment of the goods that are the subject of the transaction using the codes below:

1. Partial or split consignments;
2. Entire consignment.

34. Nature of the transaction: The nature of the transaction must correspond to one of the codes in the list below:

1. Sale at a fixed price for export to Andean Community Customs Territory;
2. Sale at a fixed price for export to Andean Customs Territory after the goods have been shipped but prior to importation (successive sales);
3. Sale at a provisional or reviewable price, subject to a future condition, for export to Andean Community Customs Territory;

4. Sale for internal use abroad and subsequent export to Andean Community Customs Territory;
5. Consignment of the goods;
6. Supplied free of charge (gifts, samples, promotional material);
7. Goods supplied to branches directly or indirectly from the parent company;
8. Partial supply of materials and/or machinery under a general construction contract;
9. Goods supplied under an assistance programme promoted or financed wholly or in part by the Andean Community or another international organization;
10. Replacement of goods returned;
11. Replacement of goods not returned (for example under a guarantee);
12. Countertrade (barter, offset trade, voucher, offer to purchase, switch arrangement, merchanting, swap or partial offset);
13. Leasing or hire;
14. Financial leasing;
15. Loan or loan for use;
16. Assembly or processing service;
17. Repair or maintenance free-of-charge;
18. Repair or maintenance against payment;
19. Government aid;
20. Other aid (private or from non-governmental organizations);
21. Operations under intergovernmental joint manufacturing programmes;
22. Other transactions for temporary use;
23. Other transactions.

35. Specify: If the codes 20, 22 or 23 have been entered in the previous box, give details.

36. Terms of delivery: Indicate the terms and place of delivery according to the arrangement between the seller and buyer using the INCOTERMS international trade terms of the International Chamber of Commerce in Paris, using Table 1 of Annex IV. If terms of delivery other than those provided in the INCOTERMS are agreed, enter "Other".

37. Specify: If the word "Other" has been entered in the previous box, give details.

38. Total value: Enter the total value of the commercial transaction according to the commercial invoice or equivalent document, taking into account the currency of the transaction and the terms of delivery.

INTERMEDIATION

39. Any intermediation? Indicate whether any intermediary termed an agent, broker or other is involved in the transaction. Enter "1" if the answer is yes or "2" if it is no.

40. Code type of intermediary. Indicate the type of intermediary if the reply to the previous question is yes, using the codes below:

1. Sales agent
2. Buying agent
3. Broker
4. Other type of intermediation.

41. Specify: If the code corresponding to "Other type of intermediation" has been entered in the previous box, give details.

42. Name or trade name: Enter the first names and surnames or the trade name of the intermediary, as applicable.

43. Address: Indicate the address of the intermediary's domicile.

44. City: Indicate the name of the city corresponding to the intermediary's address.

45. Country code: Enter the country code for the city corresponding to the intermediary's address, using the codes indicated in Table 4 of Annex IV.

46, 47 and 48. Telephone, fax and email: Indicate this information for the intermediary. For the telephone and fax numbers, enter the international dialling code in brackets followed by the local number.

REQUIREMENTS FOR APPLYING THE TRANSACTION VALUE

These boxes concern application of the transaction value method so should only be completed for transactions which correspond to a commercial sale.

49. Any restriction? Indicate whether there are any restrictions on the assignment or use of goods after importation by the buyer, in accordance with Article 10 of the Community regulations. Enter "1" if the answer is yes or "2" if it is no.

50. Code type of restriction. If the answer to the question in the previous box is "yes", indicate the type of restriction using the codes below:

1. Taxes or restrictions required by law or by authorities in Andean Community Customs Territory;
2. Limitation on the geographical area where the goods may be resold;
3. No significant effect on the value of the goods;
4. Affects the value of the goods.

51. Any conditions or considerations? Indicate whether there are any conditions or considerations imposed on the buyer by the seller in relation to the sale or the price of the goods being valued in accordance with the provisions in Article 11 of the Community regulations. Enter "1" if the answer is yes or "2" if it is no.

52. Code condition or consideration: If the answer to the question in the previous box is "yes", indicate the type of condition or consideration using the codes below:

1. The price of the goods depends on the purchase of other goods;
2. The price of the goods depends on the price at which the buyer sells other goods to the seller;
3. The price depends on a particular form of payment unrelated to the imported goods;
4. The price depends on discounts granted according to the quantities bought, form of payment or any other condition of the transaction;
5. Sale of the goods depends on activities related to the marketing of the imported goods (advertising, guarantees, exhibition in premises, at fairs or in shop windows, etc.);
6. Sale depends on making indirect payment for the imported goods to the benefit of the seller (see Article 8.4 of the Community regulations);
7. Sale of the goods depends on the supply of services related to their production (see Articles 2, 18 and 25 of the Community regulations);
8. Sale depends on payments to be made by the buyer for the right to utilize patents, trademarks, copyright, distribution or resale or other rights, related to the imported goods being valued.
9. Other types of condition or consideration.

53. Specify: If the code corresponding to "Other types of condition or consideration" has been entered in the previous box, give details.

54. Can the value of the conditions or considerations be determined? If "Yes" has been entered in box 51, enter "1" if the value of these conditions or considerations can be determined or "2" if it cannot be determined.

55. Any royalties or licence fees? Enter "1" if there is an obligation to pay the right to use patents, trademarks, copyright or other rights, as a condition of sale of the goods being valued. If there is no such obligation, enter "2".

56. Any accruals to the seller? Enter "1" if any part of the proceeds of the subsequent resale, disposal or use of the goods being valued is directly or indirectly paid to the seller abroad by the buyer. Enter "2" if there is no such accrual.

57. Any relationship between buyer and seller: Enter "1" if there is a relationship between the buyer and seller or "2" if there is no such relationship.

58. Code type of relationship: If the reply to the question in the previous box is "Yes", enter the code corresponding to the category of relationship between the buyer and seller according to the codes below:

1. One of the persons is an officer or director of the other's firm;
2. They are legally recognized partners in business (see Article 13.2 of the Community regulations);
3. They are employer-employee;
4. One of the persons directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;
5. One of them directly or indirectly controls the other (see Article 13.3 of the Community regulations);
6. Both of them are directly or indirectly controlled by a third person.
7. Together they directly or indirectly control a third person;
8. They are members of the same family (see Article 13.4 of the Community regulations).

59. Influence of the relationship on the price: If "yes" has been entered in box 57, enter "1" if the relationship has influenced the price of the goods or "2" if it has not. If there is no relationship, enter two dashes (- -).

60. Any test values? Enter "1" if any test value is known or "2" if none is known. This should be completed if the answer in the previous box was in the affirmative, otherwise cross out the box.

61. Number and date of the customs declaration of the goods: Specify the number and date of the customs declaration in support of a test value if the answer in the previous box was in the affirmative.

62. Total f.o.b. value: Enter the total of the sum of f.o.b. values per item.

62.1 Total price actually paid or payable: Enter the total price actually paid or payable per item.

63. Total transport costs: Enter the amount of transport and related costs paid or payable for all the goods declared. This sum should be entered in the corresponding box in the customs declaration of the goods.

64. Total insurance costs: Enter the amount of the insurance paid or payable for all the goods declared. This sum should be entered in the corresponding box in the customs declaration of the goods.

65. Total other additions: Enter the total sum of the additions made under each item, as provided in Article 8 of the Agreement, and the additions corresponding to indirect payments, retroactive discounts and other payments.

66. Total deductions: Enter the total sum of the deductions made from each item.

The total sum of the amounts entered in boxes 65 and 66 (negative) should be entered in the corresponding box of the customs declaration of the goods.

67. Total transaction value declared: Enter the total sum of the amounts entered in boxes 62.1 to 65, minus the value entered in box 66. The total sum should be entered in the corresponding box of the customs declaration for the goods.

II. DETAILED DESCRIPTION OF THE GOODS AND DETERMINATION OF THE CUSTOMS VALUE

The description of the goods should enable them to be distinguished and identified. The calculations provided in part II and the determination of the customs value shall be in the currency stipulated in the domestic legislation of each member country.

68. Item: Indicate the category or number corresponding to the description of the product.

69. Subheading: Indicate the ten(10)-digit tariff subheading for the goods declared.

70. Number and date of the commercial invoice: Indicate the number and date of the commercial invoice issued by the seller for the imported goods being valued.

71. Designation of goods: Indicate the name by which the goods imported are commercially known. Example: fried potatoes, chewing gum, tights, bond paper, engine, truck.

72. Trademark: Indicate the name or sign on the goods at the time of importation distinguishing them from others on the market.

73. Type: Record the category for the goods imported.

74. Class: Record the special features which distinguish the goods from others in the same class.

75. Model: Indicate the name given to the goods according to their special features and which reflect any modification or improvement of the product over a specific period; this is to distinguish them from others bearing the same trademark. May be in the form of a digital or numerical code.

76. Condition: Indicate the condition of the goods being imported according to the following list:

1. New;
2. Used;
3. Obsolescent;
4. Dismounted/new;
5. Dismounted/used;
6. Semi-assembled/new;
7. Semi-assembled/used;
8. Spoiled, damaged or deteriorated;
9. Repaired, refurbished or rebuilt;
10. Remanufactured;
11. Other.

77. Specify: If the code for "Other" has been entered in the previous box, give details.

78. Year of manufacture: If applicable, indicate the year in which the good being imported was manufactured. This date is required in particular in respect of goods for which this information is important, for example, vehicles.

79. Quantity: Indicate the number of goods in the transaction declared, according to the commercial unit.

80. Commercial unit: Indicate the size (metres, yards, litres, gallons, linear metres, inches, etc.) in which the transaction is expressed.

81. Other features: Indicate other features which clarify and identify the goods being valued. For goods for which there is only a minimum description, information complementing that entered in boxes 71 to 78 should be given.

For textile products and clothing, depending on each member country's legislation, the information contained in Annex III may be included for reference purposes.

82. Net price per item on invoice: Enter the net price per item appearing on the commercial invoice using the agreed INCOTERMS and in the currency determined by each member country's legislation; if the transaction is in a foreign currency, it should be converted at the selling rate published by the competent authorities in effect on the date of acceptance of the value declaration for the imported goods.

83. Additions or deductions to determine the f.o.b. value per item: Indicate the additions and/or deductions to be made to the net price per item on the invoice in order to convert it into the f.o.b. price, taking into account the terms of the transaction.

Additions to be made using the INCOTERMS agreed for the transaction:

- **EXW:** Total f.o.b. value per item US$ = Net price per item + clearance costs for export per item + transport costs to the place of shipment per item + handling and stevedoring charges per item + other charges in the country of export per item.
- **FAS** or **FCA:** Total f.o.b. value per item = Net price per item + handling and stevedoring charges per item + other charges in the country of export per item.
- **CFR**, **CPT**, **DAF** or **DES:** Total f.o.b. value per item = Net price per item - Transport costs from the place of shipment to the country of import per item.
- **CIF** or **CIP:** Total f.o.b. value per item = Net price per item - Transport costs from the place of shipment to the country of import per item - Cost of insurance from the place of shipment to the country of import per item.
- **DEQ:** Total f.o.b. value per item = Net price per item - Transport costs from the place of shipment to the country of import per item - Unloading costs in the port of the country of import per item.
- **DDU:** Total f.o.b. value per item = Net price per item- Transport costs from the place of shipment to the country of importation per item - Cost of insurance from the place of shipment to the country of importation per item - Transport costs in the country of importation - Other charges in the country of importation per item.
- **DDP:** Total f.o.b. value per item = Net price per item - Transport costs from the place of shipment to the country of importation per item - Cost of insurance from the place of shipment to the country of importation per item - Transport costs in the country of importation - Other charges in the country of importation per item - Duties and taxes payable on the import of goods per item.

84. F.o.b. value per item: Indicate the f.o.b. value per item, using the commercial unit entered in box 80. This figure should be entered even if the transaction corresponds to terms of delivery other than f.o.b.

85. F.o.b. value per unit by product: Enter the result of dividing the f.o.b. value per item and the amount entered in box 79.

86. Indirect payments per item: Enter in this box the amount of the indirect payment mentioned in Article 8.4 of the Community regulations.

87. Retroactive discounts per item or others not accepted per item: Enter in this box the amount of the retroactive discounts mentioned in Article 9.4 of the Community regulations or others not accepted for valuation purposes.

88. Other payments per item: Enter advance payments or other payments per item which compose the price actually paid or payable and not included in the commercial invoice or not entered in other boxes.

89. Total price actually paid or payable per item: Enter the total of the amounts in boxes 82, 86, 87 and 88.

90. Transport costs from the place of shipment to the place of importation: Enter the cost per item incurred for carriage, transport-related costs and, in general, all costs incurred for

transporting the goods from the place of shipment to the place of importation, provided that these are not included in the price actually paid or payable.

If any of these elements is provided to the buyer free of charge using the buyer's own means or services or was not duly incurred, the procedure laid down in Article 6 of Decision No. 571 and Article 28.3 of the Community regulations shall be followed.

91. Insurance cost per item: Enter the cost of transport insurance per item, provided that it is not included in the price actually paid or payable. If insurance is free of charge for the buyer or was not duly incurred, the procedure laid down in Article 6 of Decision No. 571 and Article 28.3 of the Community Regulations shall be followed.

If the goods are insured in part, the parts not covered by an insurance policy may be determined in accordance with the preceding paragraph. The total of both parts shall be entered in this box.

92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102 and 103. Other additions per item: Enter the code and the amount per item for the adjustment of additions to the price actually paid or payable for the imported goods, in accordance with Table 2 in Annex IV and the supporting documents for the elements to be added.

104, 105, 106, 107, 108, 109, 110 and 111. Other deductions: Enter the code and the amount per item for adjustment of deductions to the price actually paid or payable for the imported goods, in accordance with Table 2 in Annex IV and the supporting documents for the elements to be deducted. Deductions will only be allowed if the amount is actually included in the price paid or payable entered in box 89

112. Customs value per item: Enter the total of the amounts in the boxes (89, 90, 91, 93, 95, 97, 99, 101 and 103), **minus** the total in the boxes (105, 107, 109 and 111).

113. Customs value per unit by product: Enter the total obtained by dividing the customs value per item among the quantity entered in box 79,

114. Estimated or provisional values: Indicate the numbers of the boxes in which estimated or provisional values have been entered.

115, 118, 121. Code for the currency used in the transaction: Indicate the code for the currency in which the transaction of the goods or any of the customs valuation elements for the goods took place, using Table 3 in Annex IV.

116, 119, 122. Rate of exchange: Enter the exchange rate fixed by the competent authority in each member country on the date determined in domestic legislation, to be used as the basis for calculating the currency conversion, where applicable Also indicate the date of this exchange rate.

117, 120, 123. Box no.: Indicate the number of the box corresponding to the amount of the adjustment for which the exchange rate is used if the transaction took place in a currency other than that selected for declaring customs value for each member country.

124. Code country of origin: Code for the country where the imported goods were manufactured, exploited, extracted or grown or other features which make the country the origin of the goods, in accordance with Table 4 in Annex IV.

125. Code country of shipment: Code for the country where the goods were loaded with the country of importation as the final destination, in accordance with Table 4 in Annex IV. A country where the mode of transport makes a stop or where the goods are transhipped is not considered to be the country of shipment.

126. Valuation method used: Enter the code corresponding to the valuation method used to determine the customs value declared for the imported goods, in accordance with Table 6 in Annex IV.

III. DECLARANT

Enter data on the importer or buyer and, where the domestic legislation of the member country so requires, on their legal representative or the person authorized to act on their behalf. The provisions in Articles 11, 12 and 13 of Decision No. 571 shall be taken into account for this purpose.

127. Name or trade name: Indicate the trade name of the person acting as the legal representative or the person authorized to act on behalf of the importer.

128. Type and no. of identity document: Indicate the type and number of the declarant's identity document, using the codes listed in Table 5 in Annex IV

129. Address: Indicate the address of the legal representative or the person authorized to act on behalf of the importer.

130. City: Enter the name of the city where the legal representative or the person authorized to act on behalf of the importer has his/her domicile.

131. Telephone: Indicate the telephone number together with the national and local dialling codes.

132. Surnames and first names of the signatory of the declaration.

133. Type and number of the identity document of the person signing the declaration: Indicate the code corresponding to the type of identity document and its number, using the codes in Table 5 in Annex IV.

134. Signature and stamp: The DAV must be signed by the declarant and stamped if so required by the member country's legislation.

ANNEX III

MINIMUM DESCRIPTIONS FOR IMPORTS IN THE TEXTILE AND CLOTHING SECTORS

(Chapter 50 to 63 of the Harmonized System)

MINIMUM DESCRIPTION OF THE GOODS

I. FIBRES

1. Composition: % of fibres according to type;
2. Level of preparation of the fibre: raw, carded, combed, staple fibres;
3. Colour: unbleached, bleached, coloured;
4. Form of presentation: bulk, bobbins, rolls, bales;
5. Weight per commercial unit: net kilogrammes.

II. YARNS

1. Description of the yarn: coated, sewing thread, yarn for weaving, gimped, loop-wale, chenille, metallized, etc.;
2. Composition: % of fibres according to type;
3. Decitex and number of filaments per tow: for example, 30 dtex/number of filaments per tow, etc.;
4. Type of yarn: Single, multiple (folded), cabled, etc.;
5. Level of processing and type of finishing: unbleached, coloured, bleached, yarns of different colours, printed, mercerized, dressed, etc.;
6. Weight per commercial unit: net kilogrammes;
7. Presentation: conical bobbins, hanks, skeins, reels, spools, etc..

Note: In addition to the foregoing requirements, the following must also be taken into account:

1. For silk yarn, clarify whether it is silk or silk waste (noil silk);
2. For yarns in Chapter 54, specify the type of finishing: textured, high tenacity.

III. FABRICS

1. Description of the fabric: warp and weft, crocheted, netting, embroidered, woven pile, etc.;
2. Composition: % of fibres according to type;
3. Level of processing and type of finishing: unbleached, bleached, yarns of various colours, sanforized, waterproofed, etc.;
4. Weight per m^2: grammes per m^2;
5. Width of the fabric: example: 1.50 m., 2.20 m. 0.80 m. etc.

Note: In addition to the foregoing requirements, the following must also be taken into account:

1. For carpets in Chapter 57 and fabrics in Chapter 58 and heading 60.01, the composition of the ground fabric, the pile and looped surface should be separated, as applicable;

2. For single carpets and tapestries in heading 58.05, their dimensions must be specified;

3. For fabrics in Chapter 59, the composition must indicate the type of material used for waterproofing or coating, and the combined weight.

IV. MADE-UP ARTICLES - A. CLOTHING

1. Description of the clothing: trousers, bag, shirt, suit, blouse, etc.;
2. Trade name: example: Adidas, Lacoste;
3. Composition of the fabric used: % of fibres according to type;
4. Type(s) of fabric(s): crocheted or other;
5. Size and gender: men's, women's, unisex, etc.;

6. Commercial unit; in units.

Note: In addition to the foregoing requirements, the following must also be taken into account:

- For clothing with lining, the composition of the lining must be indicated separately.

V. OTHER MADE-UP ARTICLES

1. Description of the made-up article: bed linen, blankets, etc.;
2. Composition of the fabric used: % of fibres according to type;
3. Commercial unit: in units.

ANNEX IV

Table 1: Terms of delivery

CODE	MODE	DEFINITION
EXW	Ex works (… named place of delivery)	The seller makes the goods available to the buyer at the seller's works or in another place agreed without clearing them for export or loading them on to a collecting vehicle.
FCA	Free carrier (… named place of delivery)	The seller delivers goods, cleared for export, to the buyer-designated carrier at a named place. This term may be used for any means of transport.
FAS	Free alongside ship (… named port of shipment)	The seller places the goods alongside the ship at the named port of shipment. May only to be used for maritime or inland waterway transport.
FOB	Free on board (… named port of shipment)	The seller hands over the goods when they are actually on board the vessel in the named port of shipment. May only be used for maritime or inland waterway transport.
CFR	Cost and freight (… named port of destination)	The seller hands over the goods when they are actually on board the vessel in the port of shipment. The seller must pay the costs and freight. May only be used for maritime or inland waterway transport.
CIF	Cost, insurance and freight (… named port of destination)	The seller pays the costs and freight needed for release of the goods in the named port of destination. The seller must also procure maritime insurance for the buyer's risk of loss or damage during transport.
CPT	Carriage paid to (… named place of destination)	The seller hands over the goods to the carrier designated by it; it must also pay the transport costs. May be used for any mode of transport, including multimodal transport.
CIP	Carriage and insurance paid (… named place of destination)	The seller hands over the goods to the carrier designated by it, but must also pay the costs of carriage needed for release of the goods in the named destination. The seller must also procure insurance against the risk to the buyer of loss or damage of the goods during transport. May be used irrespective of the mode of transport, including multimodal transport.
DAF	Delivered at frontier (…named place of delivery)	The seller hands over the goods when they are made available to the buyer on the mode of transport used and not unloaded, at the named frontier post and place, but before passing through the frontier Customs in the neighbouring country; the goods must be cleared for export but not for import. May be used irrespective of the mode of transport when the goods have to be delivered at a land frontier Where delivery has to be made at the port of destination, on board a ship or on the quay (wharf), the terms DES or DEQ should be used.
DES	Delivered ex ship (… named port of destination)	The seller hands over the goods to the buyer on board the ship, not cleared by the Customs for import, in the named port of destination. The seller must pay the costs and risks incurred for release of the goods at the port of destination agreed prior to unloading. May only be used when the goods have to be handed over on board a vessel at the port of destination, after being carried by sea, by inland waterway or by multimodal transport.
DEQ	Delivered ex quay (…. named port of destination)	The seller hands over the goods when they are made available to the buyer, without being cleared by the Customs for import, on the quay (wharf) in the named port of destination. The seller has to bear the costs and risks incurred for release of the goods in the named port of destination and for unloading the goods on to the quay (wharf). May only be used when the goods are handed over, after carriage by sea, by inland waterway or by multimodal transport, at the name port of destination.
DDU	Delivered duty unpaid (… named place of destination)	The seller hands over the goods to the buyer, not cleared by the Customs for import and not unloaded from the means of transport, upon arrival in the named place of destination. The seller has to bear all the costs and risks incurred associated with supplying the goods to this place, other than any "duty" payable upon import into the country of destination. The buyer is responsible for paying such "duty", together with any other costs and risks incurred for not delivering the goods for import in time. May be used irrespective of the mode of transport, but when delivery is to take place in the port of destination on board the vessel or on the quay (wharf), the terms DES or DEQ should be used.
DDP	Delivered duty paid (… named place of destination)	The seller hands over the goods to the buyer, cleared for import and not unloaded from the means of transport, upon arrival in the named place of destination. The seller has to bear all the costs and risks incurred in supplying the goods to this place, including, where applicable, any "duty" (term which includes liability and risks in completing customs formalities, and payment of the formalities, customs duties, taxes and other charges) payable upon import into the country of destination. May be used irrespective of the mode of transport, but when delivery is in the port of destination on board the vessel or on the quay (wharf), the terms DES or DEQ should be used.

Source: INCOTERMS 2000.

Table 2: Codes for unit additions and/or deductions

UNIT ADDITION CODES (Article 18 Community regulations)

1. Commissions and brokerage, except buying commissions;
2. The cost of containers or packaging which are treated as being one for customs purposes with the goods in question;
3. Services: materials, components, parts and similar items incorporated in the imported goods;
4. Services: tools, dies, moulds and similar items used in the production of the imported goods;
5. Services: materials consumed in the production of the imported goods;
6. Services: engineering, development, artwork, design work, and plans and sketches undertaken outside Community Customs Territory and necessary for the production of the imported goods;
7. Royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the said goods, to the extent that such royalties and fees are not included in the price actually paid or payable;
8. The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

UNIT DEDUCTIONS (Article 31 Community Regulations)

9. Cost of construction, erection, installation, assembly, maintenance and technical assistance undertaken after importation of the imported goods, such as industrial plant, machinery or industrial equipment;
10. Import duties and taxes or other charges payable in Community Customs Territory for import or sale of the goods in question;
11. Transport, carriage and insurance incurred after the goods have arrived at the place of importation into Community Customs Territory, as well as the cost of temporary storage of the goods for reasons of carriage after arrival at the place of importation;
12. Unloading and handling charges at the place of importation into Community Customs Territory, and the charges paid for ships' berthing in ports in this Territory;
13. The interest included in the commercial invoice, paid under a financing arrangement entered into by the buyer and relating to the purchase of the imported goods, provided that the circumstances indicated in Decision No. 3.1 of the WTO Committee on Customs Valuation apply. If any of these circumstances do not apply, it shall be considered that the amount attributed to interest forms part of the transaction value;
14. Other charges.

Table 3: Currencies

CODE	NAME	CODE	NAME
AED	United Arab Emirates dirham	CLF (funds code)	Unidades de fomento chilenas
AFN	Afghan afghani	CLP	Chilean peso
ALL	Albanian lek	CNY	Chinese yuan renminbi
AMD	Armenian dram	COP	Colombian peso
ANG	Netherlands Antillean guilder	COU	Unidad de valor real colombiana (UVR) (added to the COP)
AOA	Angolan kwanza	CRC	Costa Rican colon
ARS	Argentine peso	CSD	Serbian dinar (It was replaced by RSD on 25 October 2006)
AUD	Australian dollar	CUP	Cuban peso
AWG	Aruban florin	CVE	Cape Verde escudo
AZM	Azerbaijani manat	CYP	Cypriot pound
BAM	Bosnia and Herzegovina convertible mark	CZK	Czech koruna
BBD	Barbados dollar	DJF	Djiboutian franc
BDT	Bangladeshi taka	DKK	Danish krone
BGN	Bulgarian lev	DOP	Dominican peso
BHD	Bahraini dinar	DZD	Algerian dinar
BIF	Burundian franc	EEK	Estonian kroon
BMD	Bermudian dollar	EGP	Egyptian pound
BND	Brunei dollar	ERN	Eritrean nafka
BOB	Bolivian boliviano	ETB	Ethiopian birr
BOV	Bolivian mvdol (funds code)	EUR	Euro
BRL	Brazilian real	FJD	Fiji dollar
BSD	Bahamian dollar	FKP	Falkland Islands pound
BTN	Bhutanese ngultrum	GBP	Pound sterling (British pound)
BWP	Botswana pula	GEL	Georgian lari
BYR	Belarusian ruble	GHC	Ghanaian cedi
BZD	Belize dollar	GIP	Gibraltar pound
CAD	Canadian dollar	GMD	Gambian dalasi
CDF	Congolese franc	GNF	Guinean franc
CHF	Swiss franc	GTQ	Guatemalan quetzal
GYD	Guyanese dollar	LTL	Lithuanian litas
HKD	Hong Kong dollar	LVL	Latvian lats
HNL	Honduran lempira	LYD	Libyan dinar
HRK	Croatian kuna	MAD	Moroccan dirham
HTG	Haitian gourde	MDL	Moldovan leu
HUF	Hungarian forint	MGA	Malagasy ariary (Madagascar)
IDR	Indonesian rupiah	MKD	Macedonian denar
ILS	Israeli new shekel	MMK	Myanmar kyat
INR	Indian rupee	MNT	Mongolian tugrik
IQD	Iraqi dinar	MOP	Macanese pataca
IRR	Iranian rial	MRO	Mauritanian ouguiya
ISK	Icelandic krona	MTL	Maltese pound
JMD	Jamaican dollar	MUR	Mauritian rupee
JOD	Jordanian dinar	MVR	Maldivian rufiyaa
JPY	Japanese yen	MWK	Malawian kwacha
KES	Kenyan shilling	MXN	Mexican peso
KGS	Kyrgystani som	MXV	Mexican Unidad de Inversión (UDI) (funds code)
KHR	Cambodian riel	MYR	Malaysian ringgit
KMF	Comoro franc	MZM	Mozambican metical
KPW	North Korean won	NAD	Namibian dollar
KRW	South Korean won	NGN	Nigerian naira
KWD	Kuwaiti dinar	NIO	Nicaraguan cordoba
KYD	Cayman Islands dollar	NOK	Norwegian krone
KZT	Kazakhstani tenge	NPR	Nepalese rupee
LAK	Lao kip	NZD	New Zealand dollar
LBP	Lebanese pound	OMR	Omani rial
LKR	Sri Lankan rupee	PAB	Panamanian balboa
LRD	Liberian dollar	PEN	Peruvian nuevo sol
LSL	Lesotho loti	PGK	Papua New Guinea kina
PHP	Philippine peso	TWD	Taiwan dollar
PKR	Pakistani rupee	TZS	Tanzanian shilling
PLN	Polish zloty	UAH	Ukrainian hryvnia
PYG	Paraguayan guarani	UGX	Ugandan shilling
QAR	Qatari riyal	USD	United States dollar
RON	Romanian leu (since 1 July 2005)	USN	United States dollar (Next day) (funds code)
RUB	Russian rouble	USS	United States dollar (Same day) (funds code)
RWF	Rwandan franc	UYU	Uruguayan peso
SAR	Saudi riyal	UZS	Uzbekistan som
SBD	Solomon Islands dollar	VEB	Venezuelan bolivar

CODE	NAME	CODE	NAME
SCR	Seychelles rupee	VEF	Venezuelan bolivar
SDD	Sudanese pound	VND	Vietnamese dong
SEK	Swedish krona	VUV	Vanuatu vatu
SGD	Singapore dollar	WST	Samoan tala
SHP	Saint Helena pound	XAF	CFA franc
SKK	Slovakian koruna	XAG	Silver (one troy ounce)
SLL	Sierra Leonean leone	XAU	Gold (one troy ounce)
SOS	Somali shilling	XBA	European Composite Unit (EURCO) (Bond market unit)
SRD	Surinamese dollar (as of 1 January 2004)	XBB	European Monetary Unit E.M.U.-6) (Bond market unit)
STD	São Tomé and Principe dobra	XBC	European Unit of Account 9 (E.U.A.-9) (Bond market unit)
SYP	Syrian pound	XBD	European Unit of Account 17 (E.U.A.-17) (Bond market unit)
SZL	Swazi lilangeni (Swaziland)	XCD	East Caribbean dollar
THB	Thai baht	XDR	Special Drawing Rights (IMF)
TJS	Tajikistani	XFO	Gold franc (Special settlement currency)
TMM	Turkmenistani manat	XFU	UIC franc (Special settlement currency)
TND	Tunisian dinar	XOF	CFA franc
TOP	Tongan pa'anga	XPD	Palladium (one troy ounce)
TRY	New Turkish lira	XPF	CFP franc
TTD	Trinidad and Tobago dollar	XPT	Platinum (one troy ounce)
XTS	Code reserved for testing purposes	ZAR	South African rand
XXX	No currency	ZMK	Zambian kwacha
YER	Yemeni rial	ZWD	Zimbabwe dollar

Source: ISO 4217, Currency and fund codes.

Table 4: Country

CODE	NAME	CODE	NAME	CODE	NAME
AD	Andorra	CD	Congo, Democratic Republic of	GB	United Kingdom
AE	United Arab Emirates	CF	Central African Republic	GD	Grenada
AF	Afghanistan	CG	Congo	GE	Georgia
AG	Antigua and Barbuda	CH	Switzerland	GF	French Guiana
AI	Anguilla	CI	Côte d'Ivoire		
AL	Albania	CK	Cook Islands	GH	Ghana
AM	Armenia	CL	Chile	GI	Gibraltar
AN	Netherlands Antilles	CM	Cameroon	GL	Greenland
AO	Angola	CN	China	GM	Gambia
AQ	Antarctica	CO	Colombia	GN	Guinea
AR	Argentina	CR	Costa Rica	GP	Guadeloupe
AS	American Samoa	CS	Serbia and Montenegro	GQ	Equatorial Guinea
AT	Austria	CU	Cuba	GR	Greece
AU	Australia	CV	Cape Verde	GS	South Georgia and the South Sandwich Islands
AW	Aruba	CX	Christmas Island	GT	Guatemala
AZ	Azerbaijan	CY	Cyprus	GU	Guam
BA	Bosnia and Herzegovina	CZ	Czech Republic	GW	Guinea-Bissau
BB	Barbados	DE	Germany	GY	Guyana
BD	Bangladesh	DJ	Djibouti	HK	Hong Kong
BE	Belgium	DK	Denmark	HM	Heard Island and McDonald Islands
BF	Burkina Faso	DM	Dominica	HN	Honduras
BG	Bulgaria	DO	Dominican Republic	HR	Croatia
BH	Bahrain	DZ	Algeria	HT	Haiti
BI	Burundi	EC	Ecuador	HU	Hungary
BJ	Benin	EE	Estonia	ID	Indonesia
BM	Bermuda	EG	Egypt	IE	Ireland
BN	Brunei Darussalam	EH	Western Sahara	IL	Israel
BO	Bolivia	ER	Eritrea	IN	India
BR	Brazil	ES	Spain	IO	British Indian Ocean Territory
BS	Bahamas	ET	Ethiopia	IQ	Iraq
BT	Bhutan	FI	Finland	IR	Iran, Islamic Republic of
BV	Bouvet Island	FJ	Fiji	IS	Iceland
BW	Botswana	FK	Falkland Islands (Malvinas)	IT	Italy
BY	Belarus	FM	Federated States of Micronesia	JM	Jamaica
BZ	Belize	FO	Faroe Islands	JO	Jordan
CA	Canada	FR	France	JP	Japan
CC	Cocos (Keeling) Islands	GA	Gabon	KE	Kenya
KG	Kyrgyzstan	MT	Malta	RE	Reunion
KH	Cambodia	MU	Mauritius	RO	Romania
KI	Kiribati	MV	Maldives	RU	Russia, Federation of
KM	Comoros	MW	Malawi	RW	Rwanda
KN	Saint Kitts and Nevis	MX	Mexico	SA	Saudi Arabia
KP	Korea, Democratic Republic of	MY	Malaysia	SB	Solomon Islands
KR	Korea, Republic of	MZ	Mozambique	SC	Seychelles
KW	Kuwait	NA	Namibia	SD	Sudan
KY	Cayman Islands	NC	New Caledonia	SE	Sweden
KZ	Kazakhstan	NE	Niger	SG	Singapore
LA	Laos, People's Democratic Republic of	NF	Norfolk Island	SH	Saint Helena
LB	Lebanon	NG	Nigeria	SI	Slovenia
LC	Saint Lucia	NI	Nicaragua	SJ	Svalbard and Jan Mayen Islands
LI	Liechtenstein	NL	Netherlands	SK	Slovakia
LK	Sri Lanka	NO	Norway	SL	Sierra Leone
LR	Liberia	NP	Nepal	SM	San Marino
LS	Lesotho	NR	Nauru	SN	Senegal
LT	Lithuania	NU	Niue	SO	Somalia

CODE	NAME	CODE	NAME	CODE	NAME
LU	Luxembourg	NZ	New Zealand	SR	Surinam
LV	Latvia	OM	Oman	ST	São Tomé and Principe
LY	Libya	PA	Panama	SV	El Salvador
MA	Morocco	PE	Peru	SY	Syrian Arab Republic
MC	Monaco	PF	French Polynesia	SZ	Swaziland
MD	Moldova, Republic of	PG	Papua New Guinea	TC	Turks and Caicos Islands
MG	Madagascar	PH	Philippines	TD	Chad
MH	Marshall Islands	PK	Pakistan	TF	French Southern Territories
MK	Macedonia	PL	Poland	TG	Togo
ML	Malí	PM	Saint Pierre and Miquelon	TK	Tokelau
MM	Myanmar	PN	Pitcairn	TL	East Timor
MN	Mongolia	PR	Puerto Rico	TM	Turkmenistan
MO	Macao	PS	Palestine, State of	TN	Tunisia
MP	Northern Mariana Islands	PT	Portugal	TO	Tonga
MQ	Martinique	PW	Palau	TT	Trinidad and Tobago
MR	Mauritania	PY	Paraguay	TV	Tuvalu
MS	Montserrat	QA	Qatar	TW	Taiwan, Province of China
TZ	Tanzania, United Republic of	VC	Saint Vincent and the Grenadines	YE	Yemen
UA	Ukraine	VE	Venezuela	YT	Mayotte
UG	Uganda	VG	Virgin Islands, British	ZA	South Africa
UM	United States Minor Outlying Islands	VI	Vírgin Islands, U.S.	ZM	Zambia
US	United States	VN	Viet Nam	ZW	Zimbabwe
UY	Uruguay	VU	Vanuatu		
UZ	Uzbekistan	WF	Wallis and Futuna		
VA	Holy See	WS	Samoa		

Source: ISO 3166-1 Codes for countries and their subdivisions, Part 1, Country codes.

Table 5

Types of identity documents

CODE	NAME	INCLUDES
1	Single Taxpayer's Registration	Tax identification number (BO, CO) Single Taxpayer's Registration (EC, PE)
2	National Identity Document	Identity card (EC, CO) Identification document (BO) National identification registration (BO) Single national registration (BO) National identity document (PE)
3	Passport	
4	Public bodies	
5	Foreigner's identity card	Foreigner's identification document
6	International organizations	
7	Armed and police forces	Police/Military identification document (PE)

Table 6

Methods for determining customs value

CODE	NAME
1	First method: transaction value of the imported goods
2	Second method: transaction value of identical goods
3	Third method: transaction value of similar goods
4	Fourth method: deductive value
5	Fifth method: computed value
6	Sixth method: "fall-back"

ANNEX 4

Andean Community

RESOLUTION No. 1456

Special customs valuation cases

THE GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY,

CONSIDERING: The First Final Provision of Decision No. 571 on customs valuation of imported goods, its implementing regulations approved by Resolution No. 846 and Resolution No. 961 on Procedure for Special Cases of Customs Valuation;

WHEREAS: The First Final Provision of Decision No. 571 provides for the creation of an Ad Hoc group of government experts on customs valuation within the Andean Committee on Customs Matters for the purpose of recommending the procedures to be followed in special cases of customs valuation;

Paragraph 2 of Article 46 of the Community regulations approved by Resolution No. 846 provides that "The General Secretariat, by means of a Resolution, shall determine the special cases subsequently arising as a result of the practices of the Customs Administrations …";

Resolution No. 961 adopted the Procedure for Special Cases of Customs Valuation;

At the Thirteenth Meeting of the Group of Experts on Customs Valuation, held by means of a videoconference on 14 December 2011, the representatives of member countries supported the draft Resolution prepared by the General Secretariat, which updates the procedures to be followed in certain special cases of customs valuation;

HEREBY DECIDES: CHAPTER I

General provisions

Article 1.- Purpose

The purpose of this Resolution is to lay down the criteria for determining customs value in certain special cases in which it is not possible to apply the principal transaction value method or the secondary methods, not even taking into account the flexibility afforded by the "fall-back" method, either because of the special nature of the goods to be valued or the circumstances of the import operations, or because there has been a change of regime or customs destination.

In cases not covered by this present Resolution or by the legislation of each member country, the criteria set out in Article 17 shall be followed.

Article 2.- Additions and deductions in order to determine the customs value

In order to determine the customs value of imported goods, the additions and/or deductions provided in Article 6 of Decision No. 571 and Articles 18 and 31 of the Community regulations approved by Resolution No. 846 shall be made to the basic price resulting from application of the criteria contained in this Resolution.

Article 3.- Taxation

This Resolution does not cover the tax treatment of imported goods, which is governed by each member country's domestic legislation.

Article 4.- Internal regulation of the criteria for determining customs value

In order to implement the criteria for determining customs value established in the Articles in this Resolution more effectively, their order of application may be regulated by the domestic legislation of each member country.

CHAPTER II

Special cases of valuation

Article 5.- Used or obsolescent goods

The customs value of goods which, subsequent to their purchase but before importation, have been used or become obsolescent, shall be determined on the basis of one of the following criteria:

(a) The reference price determined for identical or similar used or obsolescent goods imported, without any depreciation or application of obsolescence, as applicable;
(b) the reference price determined for identical or similar new goods, to which depreciation or obsolescence shall be applied, as applicable;
(c) the price in f.o.b. terms paid for such goods in the state in which they were purchased, to which the corresponding depreciation or obsolescence shall be applied;
(d) the price estimated by an expert unrelated to the buyer or seller, with the cost being borne by the importer.

For subparagraphs (b) and (c), the percentages for depreciation or obsolescence and the type of goods to which depreciation or obsolescence may be applied shall be determined in the legislation of each member country. Depreciation and obsolescence shall not be applied simultaneously.

Article 6. Repaired, refurbished, remanufactured, transformed or rebuilt goods

The customs value of goods which, subsequent to their purchase but before importation, have been repaired, refurbished, remanufactured, transformed or rebuilt, shall be determined on the basis of one of the following criteria

(a) The reference price determined for the imported goods when repaired, refurbished, remanufactured, transformed or rebuilt without adding the value of the repair, refurbishment, remanufacturing, transformation or rebuilding;
(b) the agreed price in f.o.b. terms as bought, adding the cost of the repair, refurbishment, remanufacturing, transformation or rebuilding. This value shall include the cost of the materials incorporated, labour, containers or packaging where applicable, and payment to the person who carried out the work;
(c) the price estimated by an expert unrelated to the buyer or seller, with the cost being borne by the importer.

Article 7.- Spoiled, damaged or deteriorated goods

The customs value of goods which, subsequent to their purchase but before importation, are found to be partly spoiled, damaged or deteriorated, with a residual value, shall be determined on the basis of the price actually paid or payable for the said goods at the time of purchase or, in its absence, on the basis of a reference price for identical or similar goods, reduced pro rata to the spoiling, damage or deterioration, whose value may be determined using one of the following criteria:

(a) An estimate by an expert unrelated to the buyer or seller, with the cost being borne by the importer;
(b) the cost budgeted for the repairs or restoration; and
(c) the compensation paid by the insurance company, where applicable.

The customs value of goods completely spoiled, damaged or deteriorated shall be determined on the basis of the price estimated by an expert unrelated to the buyer or seller, the cost being borne by the importer or, where applicable, the price estimated by the insurance company.

Article 8.- Goods imported in bulk whose quantity or weight varies in the course of transport

The customs value of goods imported in bulk whose quantity has increased or decreased in comparison with that agreed shall be determined on the basis of the unit price agreed between the buyer and seller. The basic price shall be calculated by multiplying the unit price agreed in the contract by the quantity of the goods actually delivered.

The percentage of variation and the goods for which this procedure shall be admissible shall be determined in the domestic legislation of member countries.

Article 9.- Imported goods of no commercial value

The customs value of imported goods of no commercial value such as: presents, donations, publicity or promotional items and samples shall be determined using one of the following criteria:

(a) The value recorded in the supporting documents for the transaction;
(b) the reference prices for identical or similar goods;
(c) the amount insured, as indicated on the insurance document;
(d) the price estimated by an expert unrelated to the buyer or seller, with the cost being borne by the importer.

Article 10.- Goods imported to replace other goods

The customs value of goods imported to replace other goods that have been spoiled, are defective or in general did not comply with the terms of the contract, shall be determined on the basis of one of the following criteria:

(a) The price on the original invoice, if the replacement goods are not invoiced or invoiced as free-of-charge;
(b) the price on the original invoice with an addition to or reduction of the value agreed and invoiced for the new replacement goods (where permitted by the legislation of each member country), provided that there has been a change in comparison with the goods originally imported.

Article 11.- Goods reimported after outward processing

The customs value of goods reimported after having undergone outward processing shall be determined taking into account the total value of the goods as reimported, including the value added abroad, transport costs, insurance costs and other handling costs for the shipment and return of the goods.

The value added abroad includes the price paid or payable for the processing, preparation and repair of the goods, without or without a warranty, including the cost of the materials, labour, containers or packaging, other costs incurred abroad and payment to the person who carried out the work abroad.

Article 12.- Goods imported under the temporary admission regime

The customs value of goods imported under the temporary admission regime shall be determined on the basis of one of the following criteria:

(a) The value recorded in the supporting documents for the transaction;
(b) the reference price for identical or similar goods;
(c) the amount insured, as indicated on the insurance document;

(d) the price estimated by an expert unrelated to the buyer or seller, with the cost being borne by the importer.

If the goods entered under the temporary admission regime are subject to the import for consumption regime, the customs value shall be that determined at the time of submission and acceptance of the temporary admission regime declaration for the said goods.

Article 13.- Goods imported under a rental or financial leasing arrangement with or without a purchase option

The customs value of goods imported under a rental or financial leasing arrangement, with or without a purchase option, shall be determined on the basis of one of the following criteria:

1. The reference price determined for identical or similar goods;
2. the terms of the leasing contract, in accordance with the following types of contract:

(a) Without a purchase option

The customs value shall be determined on the basis of the present value of the rental paid or payable throughout the service life of the goods, using the following formulas for this purpose and taking into account:

i. With leasing fees payable in advance:

$$Vc = \frac{A\left[(1+r)^{t} - 1\right]}{r(1+r)^{t-1}}$$

ii. With leasing fees payable in instalments:

$$Vc = \frac{A\left[(1+r)^{t} - 1\right]}{r(1+r)^{t-1}}$$

In which:

Vc Is the actual value calculated;
A Is the amount of the leasing fee (annual, twice-yearly, quarterly, two-monthly or monthly, as applicable);
r Is the interest rate specified in the contract or, if not, the Libor (annual, twice-yearly, quarterly, two-monthly or monthly, according to the period indicated in A);
t Is the service life of the goods, which may be expressed in years or fractions of a year, in consonance with the payments in A and r.

If the service life is not known, the duration of identical or similar goods to those imported may be used or specialized firms may be consulted, with the collaboration of the importer. The service life of new or used goods shall be distinguished, using, for example, the terms "total service life" for the former and "remaining service life" for the latter.

(b) With a purchase option

The purchase option shall be exercised according to the terms of the leasing contract. Depending on the time of purchase, the customs value shall be determined:

i. When the contract takes effect. The price of this option shall be the basis.

ii. In the course of or upon expiry of the contract. The updated value of the rental fees paid or payable throughout the service life shall be the basis, using for this purpose the formulas and considerations set out in 2(a) of this Article, adding the residual value required.

In determining the customs value according to the foregoing formulas, in addition to the additions and deductions presented in Article 2, the following deductions, *inter alia*, shall be made:

(a) The cost of keeping and repairing the goods;
(b) the cost of exploitation borne by the importer;
(c) the importer's usual profit.

Article 14.- Antiquities, works of art or collectors' pieces

The customs value of antiquities, works of art, collectors' pieces or any goods in the making of which inventiveness or creativity predominated shall be determined on the basis of one of the following criteria:

(a) Information obtained from specialized publications;
(b) the values recorded in the documents relating to the transaction;
(c) the price determined by an expert unrelated to the buyer or seller, with the cost being borne by the importer.

Article 15.- Determination of the customs value of waste from goods entering under a processing regime

The customs value of waste generated by a transformation process, goods entering industrial facilities or for inward processing shall be determined on the basis of one of the following criteria:

(a) The selling price of the waste or other identical or similar waste on the domestic market, taking into account the percentage of foreign raw materials and inputs in the production process and with the deductions indicated in Article 5 of the WTO Customs Valuation Agreement, where applicable;
(b) the price determined by an expert unrelated to the buyer or seller, with the cost being borne by the importer.

Article 16.- Valuation of cinematographic films

The customs value of imported cinematographic films shall be determined on the basis of the value of the physical medium and of the licence paid for the right to show, project and distribute the film, purchased under a contract, to be applied pro rata to the number of copies of the films imported in each case.

For digitally recorded cinematographic films incorporated into a physical medium, the customs value shall be determined in accordance with the provisions in the domestic legislation of member countries.

Article 17.- Criteria for other unregulated special cases

In order to determine the customs value in special cases not regulated by this Resolution, by the instruments issued by the WTO's Committee on Customs Valuation or the WCO's Technical Committee on Customs Valuation, attached to the Community regulations approved by Resolution No. 845, or by member countries' legislation, the price determined on the basis of one of the following criteria, *inter alia,* shall be taken into account:

1. The reference price;
2. The resale price in the country of importation, deducting the costs and charges incurred for import and marketing;
3. The value recorded on the insurance documents for the goods;
4. The value recorded in the contracts or other documents relating to the goods;

5. The value recorded on the Export Declaration, confirmed by the customs authority in the exporting country;
6. The price determined by an expert unrelated to the buyer or seller, with the cost being borne by the importer;
7. The domestic market price of the goods in the exporting country and applicable in the importing country, provided that domestic taxes paid in the said country are deducted.

To determine the customs value in accordance with the provisions in this Article, Article 7.2 of the WTO Customs Valuation Agreement shall be taken into account

Article 18.- This Resolution repeals Resolution No. 961 and shall enter into force sixty days after its publication in the Official Gazette of the Cartagena Agreement.

Done in the city of Lima, Peru, on the twenty-eighth day of February in the year two thousand and twelve.

ADALID CONTRERAS BASPINEIRO
Secretary General A.i.

ANNEX 5

Andean Community

RESOLUTION No. 1486

Incorporating the WCO's Technical Committee on Customs Valuation's implementing instruments in Resolution No. 846

THE GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY,

CONSIDERING: Articles 1 and 22 of Decision No. 571 on Customs Valuation of Imported Goods; Article 65 of Resolution No. 846 implementing Decision No, 571; and WHEREAS:

Article 1 of Decision No. 571 provides that, for the purposes of customs valuation, the member countries of the Andean Community shall be governed by the provisions in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, attached to the said Decision;

Article 22 of Decision No, 571 indicates that, when interpreting and applying the valuation rules contained in the WTO Customs Valuation Agreement, as set out in the aforesaid Decision and its implementing regulations, the Decisions of the Committee on Customs Valuation of the World Trade Organization (WTO), together with the Advisory Opinions, Commentaries, Explanatory Notes, Case Studies and Studies of the Technical Committee on Customs Valuation of the World Customs Organization (WCO), shall be taken into account;

Paragraph 1 of Article 65 of Resolution No. 846 provides that the instruments implementing the valuation rules referred to in Article 22 of the aforementioned Decision No. 571 form part of the said Resolution in the form of an Annex;

Paragraph 2 of the said Article 65 provides that the General Secretariat of the Andean Community, following a study by the Working Group of Government Experts on Customs Valuation of the Andean Committee on Customs Matters, shall be responsible for updating the aforementioned Annex incorporating, by means of Resolutions, the various instruments that may be adopted by the issuing bodies, and for their timely disclosure;

At the Thirty First Meeting of the Group of Experts on Customs Valuation, held in Lima, Peru, from 11 to 15 June 2012, the representatives of member countries expressed a favourable opinion on the draft Resolution prepared by the General Secretariat, which incorporates the implementing instruments of the WCO's Technical Committee on Customs Valuation;

HEREBY DECIDES:

Article 1.- The implementing instruments of the Technical Committee on Customs Valuation of the World Customs Organization (WCO) indicated below are hereby incorporated into the Appendix to the Annex to Resolution No, 846 "Community regulations implementing Decision No. 571 - Customs Valuation of Imported Goods":

ADVISORY OPINION

22.1 Valuation of imported technical documents relating to design and development of an industrial plant.

COMMENTARIES

22.1 Meaning of the expression "sold for export to the country of importation" in a series of sales.

23.1 Examination of the expression "circumstances surrounding the sale" under Article 1.2(a) in relation to the use of transfer pricing studies

24.1 Determination of the Value of an Assist under Article 8.1(b) of the Agreement

25.1 Third party royalties and licence fees - General commentary

CASE STUDIES

12.1 Application of Article 1 of the Valuation Agreement for goods sold for export at prices below their cost of production.

13.1 Application of Decision 6.1 of the Committee on Customs Valuation.

13.2 Application of Decision 6.1 of the Committee on Customs Valuation.

Article 2.- The full text of the implementing instruments of the WCO's Technical Committee on Customs Valuation mentioned in the preceding Article are incorporated as an Annex to this Resolution.

Article 3.- This Resolution shall enter into force upon publication in the Official Gazette of the Cartagena Agreement.

Done in the city of Lima, Peru, on the seventeenth day of July in the year two thousand and twelve.

ADALID CONTRERAS BASPINEIRO
Secretary General a.i.

ANNEX ADVISORY OPINIONS

ADVISORY OPINION 22.1

Valuation of imported technical documents relating to design and development of an industrial plant

1. Importer I in country P enters into a service contract with Engineering Firm E in country X for the construction of an industrial plant in country P. As a means of providing services needed to construct the industrial plant, the engineering designs and development plans are produced by E in paper form ("the documents") and sent to I. In consideration for these services, I pays the contract price to E.

How should the customs value of the documents be determined under the Agreement?

2. The Technical Committee on Customs Valuation expressed the following views:

The documents in question, which are tangible, should be regarded as "goods" for which determination of the customs value is required. No goods are imported other than the documents.

In this case, the documents have not been sold for export to the country of importation. Accordingly, Article 1 of the Agreement cannot be applied.

Based on the facts provided, Articles 2, 3, 5 and 6 are also not applicable. Consequently, the customs value of the imported goods should be determined under the provisions of Article 7 of the Agreement.

The contract price which I pays to E is for the services performed for the construction of the industrial plant under the service contract and not in consideration for the imported documents. Therefore, that payment should not be taken into consideration when determining the customs value of the documents.

Consequently, the customs value of the documents in question could be determined in consultation with the importer by flexible application of Article 7 of the Agreement (see Advisory Opinion 12.1). For instance, the customs value of the documents could be determined on the basis of the cost directly incurred in transcribing the engineering designs and development plans onto the paper and printing of such documents.

COMMENTARIES

COMMENTARY 22.1

Meaning of the expression "sold for export to the country of importation" in a series of sales

1. Introduction

1. A series of sales consists of two or more successive contracts for sales of goods. A basic issue in a series of sales is which sale should be used to determine the transaction value under Articles 1 and 8 of the Agreement. Advisory Opinion 14.1 - Meaning of the expression "sold for export to the country of importation" - does not clarify the meaning of this phrase as applied to a series of sales situation. The purpose of this document is to clarify this issue.

2. As provided in the General Introductory Commentary of the Agreement, the primary basis for customs value is transaction value. Transaction value is defined in Article 1 as "the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8". Price actually paid or payable is defined in the Interpretative Note to Article 1 as "the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods".

3. In a series of sales, it is necessary to establish which of the sales should be taken into account in order to identify the price actually paid or payable for the goods when sold for export to the country of importation. Any series of sales will include a last sale occurring in the commercial chain prior to the introduction of the goods into the country of importation (the last sale) and a first (or earlier) sale in the commercial chain.* In the example below, there are two successive contracts for sales of the imported goods, one between importer A and distributor B (the last sale) and another between distributor B and manufacturer C (the first sale).

* In a series of sales, it is common to refer to the various sales as the last sale and the first (or earlier) sale whether or not these terms are consistent with the chronological order of the sales contracts.

2. Example illustrating a series of sales situation

4. A is a retail store located in the country of importation I, B is a pen distributor located in country Z, and C is a pen manufacturer located in country X. There is no relationship between A, B, or C within the meaning of Article 15.4.

5. On July 10, 2004, retailer A contracts with distributor B for the purchase/sale of certain pens. Pursuant to the A-B sales contract:

- A agrees to purchase 1,000 pens from B for 10,000 currency units (c.u.);
- B will provide A with 400 pens of style xx and 600 pens of style yy;
- Each pen will display A's name and address;
- B can obtain the pens from any pen manufacturer in country X;
- The pens will be shipped directly from the manufacturer to A;
- Title will pass from B to A when the pens are boarded on the ship in country X;
- Payment is due within 30 days of shipment;
- A agrees to pay B 20% of the resale price for each pen A sells prior to October 1, 2004.

6. On 12 July 2004, B contracts with manufacturer C for the purchase/sale of certain pens. Pursuant to the B-C sales contract:

- B agrees to purchase 1,000 pens from C for 8,000 c.u.;
- C will provide B with 400 pens of style xx and 600 pens of style yy;
- Each pen will display A's name and address;
- C will ship the pens directly to A;
- Title passes from C to B when the pens leave C's factory;
- Payment is due within 30 days of shipment.

7. On 10 August 2004, C ships the pens to A. On 20 August, the pens arrive in country I and A files a customs entry. On 1 September, A pays B 10,000 c.u. On 5 September, B pays C 8,000 c.u. Prior to 1 October, A sells 400 pens at 15 c.u. each. On 5 October, A pays B 1,200 c.u. (20% of A's resale price for pens sold prior to 1 October).

8. In this example, the last sale is the one between A and B and the first sale is the one between B and C.

3. Questions

9. Assuming transaction value is the appropriate basis for determining the customs value of the imported pens, and that A is able to produce all the documentation pertaining to both the A-B and B-C sales (contracts, purchase orders, invoices, payment records):

(1) Is the price actually paid or payable for the imported goods when sold for export to country I 10,000 c.u. (the price A pays B in the last sale) or 8,000 c.u. (the price B pays C in the first sale)?

(2) Should the 1,200 c.u. payment from A to B be added to the price actually paid or payable as "proceeds of a subsequent resale of the imported goods that accrues directly or indirectly to the seller" pursuant to Article 8.1(d)?

4. Analysis

Guidance derived from the provisions of the Agreement

10. The Agreement does not define or otherwise directly address the meaning of the expression "sold for export to the country of importation". However, it is easy to identify the sale for export to the country of importation that is used to determine transaction value under Article 1 when the import transaction involves only one sale. In that situation, there is only one buyer, usually located in the country of importation, and one seller, usually located in another country.

11. Article 1 does not refer to import transactions involving a series of sales and consequently does not provide criteria in that respect. Therefore, guidance must be sought from the purpose and the overall text of the Agreement, including an examination of its provisions. In addition, certain practical considerations are relevant.

12. As set forth below, there are various indications in the General Introductory Commentary, Article 1 and other provisions of the Agreement that it was envisaged that Article 1 would normally be based on sales to buyers in the country of importation.

13. There is explicit language in Article 1 that reflects the intended scope of Article 1. Pursuant to Article 1.1(a)(i), the customs value of imported goods shall be the transaction value provided that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which are imposed or required by law or by the public authorities in the country of importation. The emphasized text is a good indication that the underlying assumption of Article 1.1(a)(i) was that the buyer of the goods sold for export to the country of importation would normally be located in the country of importation.*

* This assumption would not apply if there was no buyer in the country of importation.

14. The intended scope of Article 1 is also reflected in the provisions regarding the adjustments to the price actually paid or payable. The General Introductory Commentary makes it clear that the proper determination of transaction value depends on the application of Article 1 in conjunction with Article 8. Paragraph 1 of the General Introductory Commentary provides that "the primary basis for customs value under the Agreement is 'transaction value' as defined in Article 1". It further states that "Article 1 is to be read together with Article 8, which provides, *inter alia*, 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.

15. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money".* If the specified amounts are not already included in the price actually paid or payable, Article 8 requires their addition. In others words, the transaction value method is intended to take account of the substance of the entire commercial import transaction preceding import of the goods, including the economic inputs and related transactions which arise therefrom.

* These goods or services are often referred to as assists.

16. Therefore, as mandated by the General Introductory Commentary, it is essential to apply transaction value in a series of sales situation in a manner that takes into account the substance of the entire commercial import transaction and permits the proper application of Article 8.

17. In many cases, it would not be possible to make the Article 8 adjustments if transaction value was determined based on the first sale. For example, under Article 8.1(a) and (c), selling commissions or royalties and licence fees, are only to be included in the customs value where they are incurred or paid by the buyer. Similarly, under Article 8.1(b), the buyer must supply the assist. In a series of sales, a buyer who is located in the country of importation would rarely be the buyer in the first sale.

18. Moreover, in a series of sales, the buyer in the first sale is not necessarily the party who pays the royalties or provides the assists. Therefore, the application of the first sale may preclude the addition of certain selling commissions, royalties and assists that otherwise would be included in the transaction value. Similarly, under Article 8.1(d), only proceeds that accrue directly or indirectly to the seller may be added to the price actually paid or payable. Proceeds paid by the buyer in the country of importation would not necessarily revert to the seller in the first sale.

19. The example is illustrative. If the transaction value is determined on the basis of the first sale between B and C, C is considered the seller of the imported goods and the proceeds of the subsequent resale from A to B would not be proceeds that accrue directly to the seller. In the absence of evidence that the proceeds accrued indirectly to the seller, such proceeds could not be added pursuant to Article 8.1(d). However, if the transaction value is determined on the basis of the last sale between A and B, B is considered the seller and the proceeds paid to B would fall squarely within the provisions of Article 8.1(d). Under the latter interpretation, the transaction value takes into account the substance of the entire commercial transaction. In contrast, application of the first sale results in a transaction value that does not fully reflect the substance of the entire transaction.

20. In sum, a transaction value based on the first sale may not fully reflect the substance of the inputs resulting from, or forming part of the entire commercial chain as envisioned by the General Introductory Commentary, and Articles 1 and 8. In contrast, a transaction value based on the last sale will more fully reflect the substance of the entire transaction as envisioned.

21. Certain provisions of the Agreement use the terms "buyer" and "importer" interchangeably. For example, while Article 8.1(a)(i) stipulates that buying commissions incurred by the buyer are not to be added to the price actually paid or payable, the Interpretative Note to that Article defines the term "buying commissions" as "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." Also, while Article 8.1(b) stipulates that the value of certain elements supplied by the buyer is to be added to the price actually paid or payable, paragraph 2 of the Interpretative Note to paragraph 1(b)(ii) of Article 8 explains the value of the element in relation to the importer. Furthermore, paragraph 4 of that Interpretative Note provides an illustrative case where an importer is the buyer who supplies the producer with a mould to be used in the production of the imported goods.

22. The Interpretative Note to Article 6 states that "as a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation". This concept is also reflected in Article 7: "If the customs value of the imported goods cannot be determined under the provisions of Articles 1 to 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement … and on the basis of data available in the country of importation." With respect to the determination of transaction value under Article 1, it is the last sale, rather than the first sale, that will normally satisfy this general rule. As noted, the last sale normally involves a buyer located in the country of importation and information about this sale will usually be more readily available in the country of importation than information about the first sale.

23. As provided in paragraph 2 of the Interpretative Note to Article 7, the methods of valuation to be employed under Article 7 should be those laid down in Articles 1 through 6 but with a reasonable flexibility. However, Article 7 indicates that this flexibility does not extend to allow the use of certain prices, including "the price of goods on the domestic market of the country of exportation" (see Article 7.2). This gives a clear indication of the intended scope of Article 1, namely, that a sale that is prohibited under a flexible application of Article 1 cannot possibly be considered as valid under the normal application of Article 1. In a series of sales situation, the first sale often involves a sale between a producer and a local distributor in the same country. Clearly, these sales cannot be used to determine the customs value under Article 7. It follows that such sales should also not be used to determine the value under Article 1.

24. There are also other indications in the Agreement that it was not envisaged that the determination of transaction value would diverge, depending on whether the import transaction involved a single sale or a series of sales. For example, in the General Introductory Commentary, the Members recognize the need for a uniform system of valuation. In a series of sales, determining transaction value based on the last sale addresses this need for uniformity. In a single sale situation, the price actually paid or payable will normally be represented by the price paid by

the buyer in the country of importation. If, in a series of sales situation, transaction value is based on the last sale, the result will generally be the same; namely, a transaction value based on the price paid by the buyer in the country of importation. On the other hand, if transaction value is based on the first sale, then the price actually paid or payable will generally be represented by the price paid by a buyer outside the country of importation and the result is a different transaction value.

25. It should also be noted that the Agreement allows Members to apply different treatments in certain cases. In this regard, Article 8.2 specifies that, in framing its legislation, each Member shall provide for the inclusion in or the exclusion from the customs value of certain transportation costs. Article 9 specifies that the currency 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. Since Article 1 provides no such choice, the logical conclusion is that the authors envisaged that the resulting transaction value would be the same whether the importation involves a single sale or a series of sales (i.e., transaction value would normally be determined based on the price paid by the buyer in the country of importation). Otherwise, they would have either specified how transaction value should be determined in a series of sales situation or provided an explicit choice to Members.

Practical considerations

26. In practice, the Customs Administration may face difficulties in verifying information, including accounting records, related to the first sale when such information is held by the foreign intermediary or seller. This could include, for example, information and accounting records pertaining to the total payment made by the foreign intermediary to the seller and the Article 8 adjustments. Such difficulties are alleviated when the last sale is applied.

5. *Conclusion*

27. The Technical Committee is of the view that the underlying assumption of Article 1 is that normally the buyer would be located in the country of importation and that the price actually paid or payable would be based on the price paid by this buyer. The Technical Committee concludes that in a series of sales situation, the price actually paid or payable for the imported goods when sold for export to the country of importation is the price paid in the last sale occurring prior to the introduction of the goods into the country of importation, instead of the first (or earlier) sale. This is consistent with the purpose and overall text of the Agreement.

28. In the example, consistent with the conclusion, the sale between A and B represents such a sale. Therefore, the price actually paid or payable for the imported goods when sold for export to country I is 10,000 c.u. (the price A pays B in the last sale).

29. Accordingly, the 1,200 c.u. payment from A to B represents proceeds of a subsequent resale of the imported goods that accrues directly or indirectly to the seller under Article 8.1(d) that must be added to the price actually paid or payable in determining transaction value.

COMMENTARY 23.1

Examination of the expression "circumstances surrounding the sale" under Article 1.2(a) in relation to the use of transfer pricing studies

1. This Commentary seeks to provide guidance on the use of a transfer pricing study, prepared in accordance with the OECD Transfer Pricing Guidelines, and provided by importers as a basis for examining "the circumstances surrounding the sale" under Article 1.2(a) of the Agreement.

2. Under Article 1 of the Agreement, a transaction value is acceptable as the customs value when the buyer and the seller are not related, or if related, provided that the relationship did not influence the price.

3. Where the buyer and seller are related, Article 1.2 of the Agreement provides different means of establishing the acceptability of the transaction value:

1. The circumstances surrounding the sale shall be examined to determine whether the relationship influenced the price (Article 1.2(a));
2. The importer has an opportunity to demonstrate that the price closely approximates to one of three test values (Article 1.2(b));

4. The Interpretative Note to Article 1.2 of the Agreement provides that:

> "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 has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer."

5. In light of this, where the Customs Administration has doubts about the acceptability of the price, the Administration will examine the circumstances surrounding the sale, based on information provided by the importer.

6. The Interpretative Note to Article 1.2 states that where the Customs Administration is unable to accept the transaction value without further enquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary. The Note also sets forth illustrative examples of how to determine if the relationship between the buyer and the seller does not influence the price.

7. The question which then arises is whether a transfer pricing study prepared for tax purposes, and provided by the importer, can be utilized by the Customs Administration as a basis for examining the circumstances surrounding the sale.

8. On one hand, a transfer pricing study submitted by an importer may be a good source of information, if it contains relevant information about the circumstances surrounding the sale. On the other hand, a transfer pricing study might not be relevant or adequate in examining the circumstances surrounding the sale because of the substantial and significant differences which exist between the methods in the Agreement to determine the value of the imported goods and those of the OECD Transfer Pricing Guidelines.

9. Accordingly, the use of a transfer pricing study as a possible basis for examining the circumstances of the sale should be considered on a case-by-case basis. As a conclusion, any relevant information and documents provided by an importer may be utilized for examining the circumstances of the sale. A transfer pricing study could be one source of such information.

COMMENTARY 24.1

Determination of the Value of an Assist under Article 8.1(b) of the Agreement

Meaning of a "given cost" in the Interpretative Note to Article 8.1(b)(ii) of the Agreement

1. Article 8.1(b) of the Agreement provides that, in determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable, certain goods and services which are supplied directly or indirectly by the importer/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.

2. Under Article 8.1(b)(ii), the value of assists, such as, tools, dies, moulds and similar items, used in the production of imported goods is to be added to the price actually paid or payable for the imported goods in determining the customs value.

3. Sometimes, the assists supplied by the importer/buyer to an exporter/seller free of charge or at a reduced cost, may be produced by using other goods or services that the importer/buyer has also supplied free of charge or at a reduced cost to the sellers of these assists.

4. The question is whether the value of the assists supplied for production of the imported goods includes the cost of other goods or services as part of the "given cost."

5. For determining the value of assists, paragraph 2 of the Interpretative Note to Article 8.1(b)(ii) provides that:

1. If the importer/buyer acquires the element from a seller not related to the importer/buyer at a given cost, the value of the element is that cost; or,

2. if the element was produced by the importer/buyer or by a person related to the importer/buyer, its value would be the cost of producing it.

6. Consequently, where the assists are produced by the importer, or by a person related to the importer, their value would be calculated by including all elements used to produce them. In the same way, it is understood that the term "given cost", referenced in the above-mentioned Interpretative Note, does not only include the price paid to the seller for the assists of the imported goods but also the cost of other goods or services supplied by the importer/buyer to that seller to produce the assists.

7. In view of the above, the term "given cost" in the Interpretative Note to Article 8.1(b)(ii) would include all the costs incurred by the importer in respect of acquiring the assist.

COMMENTARY 25.1

Third party royalties and licence fees - General commentary

1. The purpose of this document is to provide guidance regarding the interpretation and application of Article 8.1(c) of the Agreement in cases where a royalty or licence fee is paid to a third-party licensor unrelated to the seller.

2. Under Article 8.1(c), royalties and licence fees are to be added to the price actually paid or payable for the imported goods where they are related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalty or licence fees are not included in the price actually paid or payable.

3. A common issue occurring in international trade is where the royalty or licence fee is paid to a third party, that is, a party other than the seller of the imported goods. Typically, in these scenarios, the buyer/importer enters into a sales contract with the seller/manufacturer and also enters into a royalty or licence agreement with a third party licensor. In some cases, a royalty or licence agreement also exists between the licensor and seller/manufacturer.

4. For the purpose of making a determination under Article 8.1(c), it is important to examine all the relevant documents, including the royalty or licence agreement and sales agreement. The royalty or licence agreement allows the owner of intellectual property rights (the "licensor") to earn revenue from an invention or creative work by charging a user (the "licensee") a fee or royalty to use the licensed product. The royalty or licence agreement will generally specify what rights are being granted to the licensee; the terms agreed between the licensor and licensee such as the length of the agreement, prohibited uses, rights to transfer and sublicense, warranties, termination of the licence contract, support and maintenance services, quality control provisions, etc.; and details regarding the payment of the royalty and licence fee. By licensing an intellectual property right, the licensor assigns a limited right to use its intellectual property, such as trademarks, but retains its ultimate ownership right. The sales agreement will specify terms and conditions relating to the sale for export of the merchandise being imported. The information contained in these agreements, and other relevant documents, may be indicative of whether the payment of the royalty or licence fee should be included in the customs value under Article 8.1(c).

5. Where a royalty or licence fee is paid to a third party, it is considered unlikely that the fee would be included in the price actually paid or payable under Article 8.1(c). For the purposes of this Commentary, it is assumed that the royalty or licence fees have not been included in the price actually paid or payable. The analysis therefore focuses on the two main questions that stem from Article 8.1(c):

1. Is the royalty or licence fee related to the goods being valued?; and
2. Is the royalty or licence fee paid as a condition of sale of the goods being valued?

- Determining whether a royalty or licence fee is related to the goods being valued.

6. The most common circumstances in which a royalty or licence fee may be considered to relate to the goods being valued is when the imported goods incorporate the intellectual property and/or are manufactured using the intellectual property covered by the licence. For example, if the imported goods incorporate the trademark for which the royalty or licence fee is paid, this would indicate that the fee relates to the imported goods.

- Determining whether a royalty or licence fee is paid as a condition of sale of the goods being valued.

7. A key consideration for determining whether the buyer must pay the royalty or licence fee as a condition of sale is whether the buyer is unable to purchase the imported goods without paying the royalty or licence fee. When the royalty or licence fee is paid to a third party related to the seller of the imported goods, it is more likely that the fee is paid as a condition of sale than when it is paid to a third party unrelated to the seller. There can be various situations where payment of royalties or licence fees is considered a condition of sale even when they are paid to a third party. However, each situation must be analysed based on all the facts surrounding the sale and importation of the goods, including the contractual and legal obligations contained in relevant documents, such as the sales agreement and the royalty or licence agreement.

8. The clearest indication that the buyer could not purchase the imported goods without paying the royalty or licence fee is where the sales documentation for the imported goods includes an explicit statement that the buyer must pay the royalty or licence fee as a condition of sale. Such a reference would be determinative in deciding whether a royalty or licence fee was paid as a condition of sale.

The Technical Committee recognizes however, that the sales documentation may not include such an explicit provision, particularly when the royalty or licence fee is paid to a party unrelated to a seller. In this case, it may be necessary to consider other factors in order to determine whether payment of the royalty or licence fee is made as a condition of sale.

9. The Technical Committee is of the view that whether the buyer is unable to purchase the imported goods without paying the royalty or licence fee depends on a review of all the facts surrounding the sale and importation of the goods, including linkages between the sales and licence agreements and other pertinent information. The following are factors that could be taken into account in determining whether payment of the royalty or licence fee is a condition of sale:

1. There is a reference to the royalty or licence fee in the sales agreement or related documents;
2. there is a reference to the sale of the goods in the royalty or licence agreement;
3. according to the terms of the sales agreement or the royalty or licence agreement, the sales agreement can be terminated as a consequence of breaching the royalty or licence agreement because the buyer does not pay the royalty or licence fee to the licensor. This would indicate a linkage between the royalty or licence fee payment and the sale of the goods being valued;
4. there is a term in the royalty or licence agreement that indicates if the royalties or licence fees are not paid, the manufacturer is forbidden to manufacture and sell the goods incorporating the licensor's intellectual property to the importer;
5. The royalty or licence agreement contains terms that permit the licensor to manage the production or sale between the manufacturer and importer (sale for export to the country of importation) that go beyond quality control.

10. Each case must be considered individually having regard to the relevant circumstances.

CASE STUDIES

CASE STUDY 12.1

Application of Article 1 of the Valuation Agreement for goods sold for export at prices below their cost of production.

Facts of the transaction

1. Importer A in Country B buys high quality components to be consumed within its manufacturing processes from Exporter S in Country T. Exporter S is a subsidiary of a multinational conglomerate selling to a specific industrial sector. There is no relationship between buyer and seller. All negotiations were concluded by Exporter S advising Importer A that agreed price levels can only be maintained while current stocks last. Exporter S has no position within Country B and sees this sale as an opportunity to break into this market. Successful market penetration would have considerable long-term benefits for the company and would serve as a platform for the introduction of the more profitable-related companies from within their group. Price levels were influenced by this opportunity.

2. Global economic circumstances have forced Exporter S to sell stock items at prices that are on average 30% below its cost of production in order to generate cash flow. The components ordered by Importer A fall into this category. However, because of the marketing opportunity Exporter S has agreed to sell at prices 40% below its cost of production.

Question

3. Under the Valuation Agreement how should the customs value be calculated?

Determination of customs value

4. The primary basis for the customs value of imported goods is the transaction value, that is the price actually paid or payable for the goods adjusted in accordance with Article 8, subject to certain requirements (Article 1). 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 (Interpretative Note to Article 1).

5. The facts as presented indicate that a sale for export has been agreed between Exporter S and Importer A.

6. Within the case under consideration there are no indications that would provide grounds for rejection of the transaction value under Article 1, subject of course to the provisions of Article 17 of the Agreement. There are no restrictions recorded. There are no conditions or considerations for which a value cannot be determined with respect to the goods being valued. Exporter S and Importer A have agreed upon a price for the sale. That price is conditional only on the availability of stock. Likewise, there are no proceeds from subsequent sales that accrue to the seller. Neither is there any relationship provided for in Article 15.4 based on the given facts.

7. It follows therefore that there are no grounds under the provisions provided within Article 1 of the Valuation Agreement to reject the transaction value and move to another Article in order to determine the customs value.

8. Advisory Opinion 2.1 concludes that the mere fact that a price is lower than prevailing market prices for identical goods is not sufficient grounds for rejection of the transaction value under Article 1. Similarly, the mere fact that the price in this case is below the seller's cost of production and does not return a profit to the seller, is not sufficient grounds for rejection of the transaction value under Article 1.

Conclusion

9. Based on the information provided, the customs value should be calculated on the basis of the transaction value using the price Importer A pays Exporter S adjusted in accordance with Article 8.

CASE STUDY 13.1

Application of Decision 6.1 of the Committee on Customs Valuation.

Facts of the transaction

1. Company ICO, in country I, imported 2,000 (two thousand) units of consumer goods from exporting country X. ICO presented the following information in the import declaration:

(i) The seller of the merchandise is company XCO, domiciled in country of exportation X;
(ii) the manufacturer of the imported goods is company MCO, domiciled in country M;
(iii) the declared value was calculated using the transaction value specified in Article 1 of the Agreement;
(iv) no adjustments were made to the price under Article 8.1 of the Agreement;
(v) in accordance with the provisions of Article 15.4, there is no relationship between ICO, XCO or MCO;
(vi) according to the commercial invoice, the unit price of the imported goods was 9.30 c.u. (f.o.b. value);
(vii) payment was made in cash.

2. After release of the goods, the customs risk analysis system selected ICO for an import audit.

3. Prior to the audit and as part of the process of constructing a profile of the importer, the Customs Administration analysed all imports of identical goods and obtained the following information:

(i) Nine other buyers imported identical goods at or about the same time as the goods being valued;
(ii) the customs values of the identical goods were determined under the transaction value method;
(iii) the unit prices of the identical goods varied from 69.09 c.u. to 85.00 c.u. (f.o.b.);
(iv) the quantity of goods imported in each transaction was almost the same (between 1,800 and 2,300 units) as in the transaction between ICO and XCO (2,000 units);
(v) he payments for the imports of identical goods were also made in cash, except in the case where the goods cost 85.00 c.u. (f.o.b.).

4. The Customs Administration conducted enquiries of the other importers and obtained the price lists of several suppliers in country of exportation X. The unit prices of the identical goods in these lists varied from 80.00 c.u. to 140.00 c.u. (f.o.b.), according to the quantity sold. The origin of all imported goods was country M, although the main suppliers of these goods to import country I were domiciled in country of exportation X.

5. The Customs administration of country I had not signed a mutual assistance agreement with the Customs Administrations of countries X or M. The Customs Administration wrote to supplier XCO and manufacturer MCO asking for information on the price of the goods. No answer was received.

6. The Customs Administration searched for suppliers on the Internet and found many offers for the sale of identical goods, whose retail sale prices for export were between 123.99 c.u. and 148.00 c.u..

7. The Customs Administration notified ICO, in writing, that it had reasons to doubt the truth of the declared transaction value based on the facts set out above, but primarily based on the low value. The Administration asked the importer to present any further evidence, i.e., commercial correspondence and/or any other document confirming that the invoice price was the total price actually paid or payable for the imported goods.

8. ICO replied that:

(i) All the particulars of the transaction had been detailed in the commercial invoice supplied;
(ii) there was no special trade condition such as those referred to in Article 1 of the Agreement applying to the transaction;
(iii) the transaction was based upon an ordinary offer by XCO;
(iv) there was no written contract of sale and no commercial correspondence;
(v) the sale was settled by telephone.

9. The Customs Administration decided to carry out an audit on the premises of Company ICO. At its first visit, the Customs Administration obtained the following information:

(i) There was no commercial correspondence with XCO;
(ii) ICO had sold all the goods to company BCO in country I at a unit price of 281.00 c.u.;
(iii) the accounting records were neither in order nor up to date and could not substantiate the amount paid for the imported merchandise at issue.

10. The Customs Administration granted a reasonable period to enable Company ICO to update its accounting records and put them in order. When the records were provided, the audit did not find any further evidence concerning the price actually paid or payable for the goods, adjusted in accordance with the provisions of Article 8. The only information presented was that which had previously been provided to Customs.

11. The audit revealed that a credit card payment had been made by one of the employees of Company ICO to a third person, during business travel to country X, which was registered in the accounting records as an administrative cost. The importer had provided no acceptable explanation as to the nature of this payment. Therefore, doubts were raised as to the low profit earned, considering that the resale price of the goods was much higher than the price declared at importation, and as to the amount of the administrative costs registered.

12. The audit report concluded that:

(i) The importer did not provide any further evidence that would demonstrate that the declared value represented the total price actually paid or payable for the imported goods, adjusted as necessary in accordance with Article 8;
(ii) the audit did not disclose any new information and did not dispel Customs' doubts as to the truth or accuracy of the transaction value declared.

Determination of customs value

13. The primary basis for customs value is the transaction value, that is, the price actually paid or payable for the goods when sold for export to the country of importation, adjusted in accordance with the provisions of Article 8.

14. The price actually paid or payable should not be subject to any condition or consideration that could prevent the value from being determined on the basis of the provisions of Article 1.

15. This price may be represented by the invoice price, adjusted in accordance with the provisions of the Valuation Agreement and, in this respect, the commercial invoice could constitute sufficient proof of the truth or accuracy of the declared value subject, of course, to Article 17 of the Agreement.

16. In accordance with Decision 6.1 of the Committee on Customs Valuation, where the Customs Administration has reason to doubt the truth or accuracy of a declared value, it may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8.

17. In this case, due to the fact that the declared value was substantially lower than the declared values of identical goods imported by nine other buyers at or about the same time, the Customs Administration had reason to doubt the truth or accuracy of the declared value as

reflected in the commercial invoice. Therefore, in accordance with Decision 6.1, the Customs Administration properly asked the importer to provide further evidence to confirm that the declared value was the total price actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8.

18. In such cases, both parties should seek to strengthen the spirit of cooperation and dialogue encouraged by the Agreement with a view to finding solutions which harm neither the legitimate interests of the importer nor those of the Customs Administration.

19. In determining Customs value under the Agreement, Customs Administrations should not be required to rely on documents which are incomplete in respect of relevant information, particularly if there are doubts concerning other charges and payments which may form part of the transaction value.

20. Specifically, Decision 6.1 provides that if, after receiving further information, or in the absence of a response, the Customs Administration still has reasonable doubts about the truth or accuracy of the declared value, it may, taking in account the appeals provisions of Article 11, be deemed that the customs value of the imported good cannot be determined under the provision of Article 1. However, before taking a final decision, the Customs Administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond.

21. In this case, taking into account the facts that: (i) the importer provided no evidence other than the commercial invoice to substantiate that the declared value represented the price actually paid or payable for the imported merchandise, adjusted in accordance with Article 8; and (ii) the accounting records reviewed during the audit revealed a questionable expense, the Customs Administration accordingly concluded that it still had reasonable doubts about the truth or accuracy of the declared value and notified the importer of its grounds for such conclusion.

Conclusion

22. So, in accordance with Decision 6.1, the Customs Administration may properly conclude that the customs value of the imported goods cannot be determined under the provisions of Article 1. The Customs Administration shall communicate to the importer, in writing, its decision and the grounds therefore.

23. In this case, the customs value was established under the provisions of Article 2 of the Agreement.

CASE STUDY 13.2

Application of Decision 6.1 of the Committee on Customs Valuation

Facts of the transaction

1. The Customs Administration of country Y received a complaint alleging that spiral nails of country X origin were being imported and cleared on extremely low values ranging from 340 c.u./MT to 440 c.u./MT, while the price of raw material, i.e. steel wire rod used in the manufacturing of spiral nails in the international market, ranged from 600 c.u./MT to 675 c.u./MT and the price of the wire rod in the local market was around 670 c.u./MT.

2. The complainant further stated that the actual import price of spiral nails was 1,250 c.u./MT. The complainant also furnished a copy of a Goods Declaration which showed that spiral nails were assessed at 750 c.u./MT against the declared value of 350 c.u./MT.

3. The Customs Administration of country Y carried out a study and checked the data available on this case. The international market price of raw material (steel wire rod) was verified by examining the data reported in a reputed specialized journal published in London during the corresponding period and by the record of the physical import of steel wire rod into the country Y at 675 c.u./MT. The country of exportation/production of spiral nails and steel wire rod was the same, however, the producers/exporters of spiral nails and steel wire rod were different.

4. The Customs Administration found that there was a case in which Customs assessed the value of imported spiral nails at 750 c.u. /MT. This represented the computed value based on available information. (The declared value of 350 c.u. /MT was determined not to represent the transaction value and was rejected by Customs).

5. Five additional cases of importations of spiral nails were identified. The provisional values determined for purposes of Article 13 were 551 c.u. /MT, 551 c.u./MT, 539 c.u. /MT, 541.3 c.u. /MT and 565.7 c.u. /MT. These cases were forwarded to the Directorate-General of Customs Valuation and Post-Clearance Audit. That department performs the specialized function of deciding cases involving valuation disputes that cannot be resolved by the field offices.

6. The Customs Administration held several meetings on these cases to give the importers an opportunity to demonstrate that their declared values represented the transaction value.

7. The importers were asked to provide pro forma invoices, commercial invoices, copies of contracts, evidence of payment and all other documents relevant to the transaction, which could confirm that the declared price was indeed the price actually paid or payable. However, the importers provided only pro forma invoices and commercial invoices issued by exporters. While the importers stated that they did not use Letters of Credit as a means of payment, they were unable to provide any evidence of payments for the goods. The importers also stated that there were no written sales contracts of the goods and that the goods were imported based on oral agreements with the exporters.

8. The Customs Administration examined the accounting records of the importers during the course of consultations but found that they did not support the price actually paid or payable because the importers had not maintained detailed accounting records and financial books. The Customs Administration could not find any evidence of payment for the goods nor any information or evidence about possible additions to the price, for example, assists.

Determination of customs value

Transaction value method

9. The primary basis for customs value is the transaction value, that is, the price actually paid or payable for the goods when sold for export to the country of importation, adjusted in accordance with the provisions of Article 8.

10. The price actually paid or payable should not be subject to any condition or consideration that could prevent the value from being determined on the basis of the provisions of Article 1.

11. This price may be represented by the invoice price, adjusted in accordance with the provisions of the Agreement and in this respect the commercial invoice could constitute sufficient proof of the truth or accuracy of the declared value subject to Article 17. This article provides that nothing in the Agreement shall be construed as restricting or calling into question the right of Customs Administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented to Customs for valuation purposes.

12. In accordance with Decision 6.1 of the Committee on Customs Valuation, where the Customs Administration has reason to doubt the truth or accuracy of a declared value, it may ask the importers to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8.

13. In this case, due to the fact that the declared value of the spiral nails was substantially lower than the prices on the international market of raw materials used in the manufacture of spiral nails, the Customs Administration had reason to doubt the truth or accuracy of the declared value as reflected in the commercial invoices. Therefore, in accordance with Decision 6.1, the Customs Administration asked the importers to provide further evidence to confirm that the declared value was the price actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8. The importers were given several opportunities to provide additional information, but they could not provide the contract or any evidence of payment. In addition, the accounting records reviewed during the consultation revealed that they did not support the price actually paid or payable. The Customs Administration still had reasonable doubts about the truth or accuracy of the declared value.

14. The Technical Committee previously considered how Decision 6.1 of the Committee on Customs Valuation should be applied, including the appropriate procedures to be followed in Case Study 13.1, "Application of Decision 6.1 of the Committee on Customs Valuation". Decision 6.1 provides that if, after receiving further information or in the absence of a response, the Customs Administration still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 11, be deemed that the customs value of the imported goods cannot be determined under the provisions of Article 1. Before taking a final decision, the Customs Administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars of documents produced and the importer shall be given a reasonable opportunity to respond.

15. In this case, taking into account the facts that: (i) the declared value of the spiral nails was substantially lower than the prices on the international market of raw materials used in the manufacture of spiral nails; (ii) the importers provided no evidence, including no evidence of payment, other than the commercial invoices and pro forma invoices to substantiate that the declared value represented the price actually paid or payable for the imported goods, adjusted in accordance with Article 8; and (iii) the importers had not maintained or provided detailed accounting records and financial books, the Customs Administration still had reasonable doubts and concluded that the customs value of the imported goods cannot be determined under the provisions of Article 1. Before taking a final decision, the Customs Administration communicated its grounds for doubting the truth or accuracy of the submitted documents, both in writing and orally during several meetings. The Customs Administration also provided the importers with opportunities to respond.

16. In the light of the foregoing, the declared value was rejected taking into account Article 17, Decision 6.1, and Case Study 13.1. When a final decision was made, the Customs Administration communicated to the importers in writing its decision and the grounds thereof. After rejection of the transaction value under Article 1, attempts were made to determine the customs value by proceeding sequentially starting with Article 2.

Identical/similar goods method

17. The Customs Administration next considered the application of Articles 2 and 3. Although there was one case in which the Customs Administration determined the value of identical or similar spiral nails at 750 c.u./MT, this value could not be used for purposes of applying Articles 2 and 3 because it was a computed value rather than transaction value of identical or similar goods. The Interpretative Notes to Articles 2 and 3 make it clear that only those cases should be selected for identical or similar goods purposes where the declared values have already been determined under Article 1.

18. There were five other cases of imported spiral nails, for which the Customs Administration provisionally assessed the value under Article 13. These provisional values could not be used as the basis of valuation under the identical/similar goods method because Article 13 relates only to the release of imported goods upon deposit of a sufficient guarantee when it becomes necessary to delay the final determination of the customs value.

19. Since there had not been any available transaction values of identical or similar goods in this case, the customs value of the imported goods could not be determined under the provisions of Articles 2 and 3 and the next method of valuation had to be considered in accordance with the Agreement.

Deductive value method

20. After exhausting the provisions of Articles 1, 2 and 3, the deductive value method under Article 5 was applied.

Conclusion

21. In accordance with Decision 6.1, the customs value could not be determined under Article 1.

ANNEX 6

ORGANIC CODE OF PRODUCTION, TRADE AND INVESTMENT

REGULATION: Law with no number **STATUS:** In force **PUBLISHED:** Supplement to Official Journal No. 351 **DATE:** 29 December 2010

ORGANIC CODE OF PRODUCTION, TRADE AND INVESTMENT. Law 00,
Supplement to Official Journal No. 351 of 29 December 2010

THE NATIONAL ASSEMBLY

Of. No. SAN-010-2038 Quito, 22 Dec 2010 Engineer Hugo Del Pozo
DIRECTOR OF THE OFFICIAL JOURNAL In his office

Mr President:

The National Assembly, in exercise of the powers conferred on it by the Constitution of the Republic of Ecuador and the Organic Law on Legislative Responsibilities, discussed and approved the Draft ORGANIC CODE OF PRODUCTION, TRADE AND INVESTMENT.

At its meeting held on 16 December 2010, the plenary session of the National Assembly addressed the partial objection submitted by the Constitutional President of the Republic and took a decision thereon.

Accordingly, and as provided in Article 138 of the Constitution of the Republic of Ecuador and Article 64 of the Organic Law on Legislative Responsibilities, attached herewith is the authentic and certified copy of the draft Law approved, together with the certification of the dates on which it was considered, for publication in the Official Journal.

Yours faithfully,

(signed) Dr Francisco Vergara O., Secretary General.

THE NATIONAL ASSEMBLY
CERTIFICATION

In my capacity as Secretary-General of the National Assembly, I hereby CERTIFY that the Draft Law - Organic Code of Production, Trade and Investment, was discussed and approved on the following dates:

FIRST DEBATE: 04-Nov-2010
SECOND DEBATE: 16-Nov-2010
PARTIAL OBJECTION: 16-Dec-2010

Quito, 21 December 2010
(signed) Dr. Francisco Vergara O., Secretary-General.

**THE NATIONAL ASSEMBLY
IN PLENARY SESSION**

Whereas:

Paragraphs 2, 15, 16, 17, 26 and 27 of Article 66 of the Constitution of the Republic lay down personal constitutional guarantees which require regulations for their exercise;

Pursuant to paragraph 2 of Article 133 of the Constitution of the Republic, organic laws shall govern the exercise of constitutional rights and guarantees such as those indicated in the preceding paragraph;

Article 275 of the Constitution of the Republic determines that all the systems composing the development structure (economic, political, socio-cultural and environmental) underpin the achievement of the *good way of living* and all State agencies and government action shall serve citizens living in Ecuador;

Paragraph 2 of Article 276 of the Constitution of the Republic determines that the development structure shall have as one of its objectives to build a fair, democratic, productive, mutually supportive and sustainable economic system based on the egalitarian distribution of the benefits of development and the means of production, and on the generation of decent stable employment;

Paragraph 5 of Article 281 of the Constitution of the Republic determines the State's responsibilities for achieving food sovereignty, which include establishing preferential mechanisms for the financing of small and medium-sized producers, facilitating for them the acquisition of means of production;

Article 283 of the Constitution provides that the economic system shall be socially oriented and mutually supportive; it recognizes the human being as a subject and as an end; it tends towards a dynamic balanced relationship among society, State and the market, in harmony with nature; and its objective is to ensure the production and reproduction of the material and immaterial conditions that can bring about the *good way of living.*

Article 284 of the Constitution of the Republic determines economic policy objectives, which include encouraging national production, systemic productivity and competitiveness, the accumulation of scientific and technological knowledge, strategic insertion into the world economy and complementary productive activities within regional integration;

Paragraphs 1, 2 and 3 of Article 285 of the Constitution of the Republic specify as fiscal policy objectives: (1) the financing of services, investment and public goods; (2) the redistribution of revenues through appropriate transfers, taxes and subsidies; (3) the creation of incentives for investment in different sectors of the economy and for the production of goods and services that are socially desirable and environmentally acceptable;

Article 304 of the Constitution of the Republic determines the objectives of trade policy, which include developing, strengthening and giving impetus to domestic markets on the basis of the strategic objective set out in the National Development Plan;

Article 306 of the Constitution of the Republic provides that the State shall promote environmentally responsible exports, giving preference to those creating more employment and value added, and in particular the exports of small and medium-sized producers and the artisan sector;

Article 319 of the Magna Carta recognizes different forms of organizing production in the economy, including community, cooperative, public and private business, associative, family, domestic, autonomous and mixed-economy businesses, and accordingly shall encourage production that meets domestic demand and ensures Ecuador's active participation in the global economy;

Article 320 of our Constitution provides that production, in any form, shall be governed by principles and standards of quality, sustainability, systemic productivity, high esteem for work, and economic and social efficiency;

In Article 334, paragraph 1, the Constitution provides that the State shall promote equitable access to inputs, preventing the concentration or hoarding of production inputs and resources, promoting their distribution and eliminating privileges or inequality in access to these inputs;

Article 335 of the Constitution of the Republic determines that the State shall regulate, monitor and intervene, as necessary, in commerce and trade; and shall punish exploitation, usury, hoarding, deceit, and the speculative practices of middlemen for goods and services, as well as any form of damage to economic rights and public and community assets. It also determines that the State shall set up a pricing policy aimed at protecting domestic production; shall establish mechanisms of sanction to prevent private monopolistic or oligopolistic practices; or abuse of a dominant market position and other practices of unfair competition;

Article 336 of the Fundamental Charter obliges the State to encourage and safeguard fair trade as a means of access to quality goods and services, minimizing the distortions of middlemen and promoting sustainability, thereby ensuring transparency and efficiency in markets, encouraging competition in equal conditions and opportunities;

Article 304, paragraph 6, of the Fundamental Charter determines that trade policy shall have as one of its objectives to prevent monopolies and oligopolies, particularly in the private sector, and other practices that might affect market functioning.

In exercise of the attributions conferred by Executive Decree No. 103, published in the Supplement to Official Journal No, 26 of 22 February 2007, the National Planning Secretariat has drawn up and implemented the National Plan for Good Living, which considers that, in view of the indicators on migration, unemployment and poverty, an economic revolution is needed to bring about a recovery in production and job creation, transforming the country into a society of owners and producers that transcends the current system of social exclusion; accordingly, the means of production need to be democratized as a "necessary condition for fostering equality and cohesion from the perspective of integrated territorial development that promotes a social and mutually supportive economic system".

Objective number 11 in the National Plan for Good Living, published in the Supplement to Official Journal No. 144 of 5 March 2010, is "To establish a mutually supportive and sustainable socio-economic system"; and,

In accordance with the attributions and functions given to the National Assembly, and in exercise of its constitutional powers, issues the following

ORGANIC CODE OF PRODUCTION, TRADE AND INVESTMENT

PRELIMINARY TITLE Objective and scope

Article 1.- Scope - All natural or legal persons and other associative forms engaged in production in any part of Ecuadorian territory shall be governed by these regulations.

The scope of these regulations shall cover production as a whole, including approval of production factors, transformation of production, distribution and marketing, consumption, utilization of positive externalities and policies to discourage negative externalities. It shall also foster domestic production at all levels of development and actors in the mutually supportive people's economy, together with the production of goods and services by the various forms of organization of production in the economy, as recognized in the Constitution of the Republic. Likewise, it shall be governed by principles which enable strategic international links to be forged through trade policy, including the necessary implementing instruments and others which facilitate foreign trade, through a modern transparent and efficient customs regime.

Article 2.- Production.- The process by which human activity transforms inputs into lawful, socially necessary and environmentally sustainable goods and services, including business and other activities which create value added.

Article 3.- Purpose.- The purpose of this Code is to regulate the production process at the stages of production, distribution, exchange, trade, consumption, management of externalities, and productive investment designed to achieve Good Living. These regulations also seek to create and strengthen rules which enhance, encourage and promote higher value added production, lay down the conditions needed to raise productivity and promote transformation of the production matrix, facilitating the implementation of instruments to develop production so as to create decent jobs and balanced, equitable, eco-efficient, sustainable and nature-friendly development.

Article 4.- Objectives.- The following are the main objectives of this legislation:

a. Transform the Production Matrix so as to achieve higher value added and promote services, on the basis of knowledge and innovation, in an environmentally sustainable and eco-efficient manner;
b. democratize access to production factors, with particular emphasis on micro, small and medium-sized enterprises, as well actors in the mutually supportive peoples' economy;
c. encourage socially and environmentally responsible domestic production and trade, and sustainable consumption of goods and services, as well as their marketing, and the use of environmentally clean technologies and alternative sources of energy;
d. create decent and quality jobs and employment that help to enhance the value of all forms of work and comply with labour legislation;
e. create an integrated system of innovation and entrepreneurship so that science and technology reinforce the change in the production matrix; and contribute to building a society of owners, producers and entrepreneurs;
f. guarantee the exercise of the peoples' rights to have access to, use and benefit from high quality goods and services on fair terms and in harmony with nature;
g. encourage and regulate all forms of private investment in socially desirable and environmentally acceptable production activities and services;
h. regulate productive investment in strategic sectors of the economy in accordance with the National Development Plan;
i. promote technical and vocational training based on the skills of the work force and citizens so that the results of the transformation benefit all;
j. reinforce government control so as to ensure that production activities are not affected by practices that affect the operation of markets;
k. promote development of production in the country by focusing on systemic competitiveness with an integrated vision that includes regional development and is coordinated with macroeconomic goals, the basic principles and models for development of society; action by producers and companies, and the legal and institutional environment;
l. foster the development of production in areas that are less economically developed;
m. establish the fundamental principles and instruments for international coordination of Ecuador's trade policy;
n. encourage strategic import substitution;
o. promote and diversify exports;
p. facilitate foreign trade operations;
q. promote activities in the mutually supportive and community-based people's economy, together with integration and promotion of the resulting production strategically throughout the world, in accordance with the Constitution and the law;
r. incorporate as a cross-cutting component in all production policies the focus on gender and on economic inclusion of production by peoples and nationalities;
s. foster mechanisms that enable fair trade and a transparent market; and
t. promote and support industrial and scientific research, together with innovation and the transfer of technology.

BOOK I DEVELOPMENT OF PRODUCTION, COMPETITION MECHANISMS AND BODIES

TITLE I - Development of production and its institutional structure
Chapter I - The role of the State in developing production

Article 5.- Role of the State.- The State shall foster the development of production and transformation of the production matrix by determining policies and defining and implementing instruments and incentives to move beyond the specialization model that depends on primary products and offers little value added.

In order to transform the production matrix, the State shall encourage investment in production by boosting:

a. The systemic competitiveness of the economy by providing public assets such as education, health, infrastructure, and ensuring the supply of the necessary basic services in order to foster the aptitude for production in the regions and the human skills of Ecuadorians. The State shall set as a national objective the achievement of satisfactory productivity by all actors in the economy, companies, undertakings and managers of the mutually supportive people's economy by reinforcing the institutional structure and efficiency in the supply of services by various production-related institutions;
b. the establishment and implementation of a regulatory framework to ensure that no economic actor may abuse its market power, to be set out in the relevant law;
c. the development of production in sectors with strong positive externalities so as to raise the overall level of productivity and skills with a view to innovation throughout the economy by strengthening the institutional structure established in this Code;
d. the creation of an ecosystem for innovation, entrepreneurship and association by linking and coordinating government, private and mutually supportive people's initiatives for innovation and transfer of technology in production, and linking research and production. It shall also strengthen government research institutes and investment in upgrading human skills through fellowship programmes and the financing of graduate and postgraduate studies;
e. the implementation of a trade policy that serves the development of all those involved in production in Ecuador, particularly actors in the mutually supportive people's economy and micro, small and medium-sized enterprises, and that guarantees food and energy sovereignty, economies of scale and fair trade, together with strategic integration in the world;
f. increased access to financing for all those involved in production by means of appropriate incentives and regulation of the private, public and mutually supportive people's financial system, together with encouragement and development of the public bank intended to serve development of the country's production;
g. improved productivity of those involved in the mutually supportive people's economy and that of micro, small and medium-sized enterprises, so that they participate in the domestic market and, ultimately, achieve economies of scale and levels of production quality that enable them to offer products on the international market;
h. the development of logistics and infrastructure to foster the transformation of production so that the State will create the conditions to promote efficient maritime, air and land transport, with an integrated focus and a multimodal approach;
i. sustainable production by implementing clean production technologies and practices; and
j. government policy on regionally based production so as to eliminate regional imbalances in the development process.

Chapter II - The institutional structure for developing production

Article 6.- Sectoral Council.- The Executive shall be responsible for defining policies to develop production and boost investment through the Sectoral Council for Production, which shall be set up and operate in accordance with the implementing regulations for this Code, its guidelines being included within the National Planning System.

The Council shall have a Technical Secretariat under the responsibility of the Ministry chairing it and its functions shall be determined in this Code and in its implementing regulations. This Secretariat shall be given the necessary technical facilities to develop public policies and policies to boost production and investment, *inter alia,* those for the production sector.

Article 7.- Intersectoral participation.- Intersectoral participation in developing such policies is guaranteed through the Advisory Council on the Development of Production and Foreign Trade, which is a strictly advisory body that must be convened institutionally by the person chairing the Sectoral Council for Production in the manner determined in the regulations.

This Advisory Council shall be composed, *inter alia,* of representatives of the private, semi-public, mutually supportive people's production sector, workers and decentralized autonomous governments. It shall have broad and wide-ranging membership that reflects the various sectors, regions and scales of production. It shall not receive government resources for its operation, although the Technical Secretariat of the Sectoral Council for Production shall provide logistical support for its operation and for participation by its members.

The Advisory Council may propose or suggest technical guidelines for drawing up policies to be adopted by the agencies responsible for production development, investment and foreign trade policies. The integration and operation of this Advisory Council shall be governed by the implementing regulations for this Code and, if not covered by these regulations, by a resolution of the Sectoral Council for Production.

TITLE II - Promotion of decent jobs in production

Article 8.- Decent wages.- A decent monthly wage is one that covers as a minimum the basic needs of a worker and his/her family, and corresponds to the cost of basic family needs divided by the number of dependents in the household. The cost of basic family needs and the number of dependents in the household shall be determined annually by Ecuador's governing body for statistics and national official censuses and shall serve as the basis for determining the decent wage established by the Ministry of Labour Relations.

Article 9.- Components of the decent wage.- The following components shall be taken into account solely and exclusively for calculation purposes in order to determine whether a worker is receiving a decent monthly wage:

a. The monthly salary or wage;
b. the thirteenth monthly remuneration divided by twelve, the period for calculation and payment shall be that laid down in Article 111 of the Labour Code;
c. the fourteenth monthly remuneration divided by twelve, the period for calculation shall be that laid down in Article 113 of the Labour Code;
d. the variable commissions paid to employees by employers in accordance with lawful and customary business practices;
e. the amount of the employee's share of the company's profits in accordance with the Law, divided by twelve;
f. the additional benefits received by employees in cash under collective contracts, which do not constitute legal obligations, and regular voluntary contributions paid by employers to employees in cash; and
g. reserve funds;
h. if the employee has worked for a period of less than one year, the calculation shall be pro-rated to the period worked.

The aforementioned formula for calculation under no circumstances means monthly payment of the thirteenth or fourteenth remuneration or of the employee's share of profits in accordance with the Law, which shall continue to be paid to employees in full on the dates fixed by law.

Article 10.- Economic compensation for a decent wage.- As of the fiscal year 2011, employers indicated in the paragraph below who did not pay their employees an amount equal to or more than the decent monthly wage shall calculate compulsory additional economic compensation to be paid in order to make up the decent wage, solely for those employees who received a wage lower than that indicated in Article 9 during the year.

The economic compensation indicated in the preceding paragraph shall be mandatory for those employers which:

a. Are corporations or natural persons obliged to keep accounts;
b. at the end of the fiscal period made profits during the financial year; and
c. made an advance payment on income tax lower than profits during the fiscal year.

Economic compensation shall be paid up to 31 December of the corresponding fiscal year and may be distributed until March of the following year, once annually, among employees who did not receive a decent wage during the preceding fiscal year. Employers shall set aside a percentage of up to 100% of profits for the financial year, if necessary.

If the amount indicated in the preceding paragraph fails to cover the total amount of decent wages for all employees with the right to economic compensation, it shall be distributed among the employees pro rata to the difference between the components for calculating the decent wage and the decent wage indicated in Article 8 of this Code.

Such compensation is additional and shall not be an integral part of remuneration; it shall not constitute taxable income for the purposes of the social security scheme or for the employee's income tax and shall be of a strictly temporary nature until a decent wage is paid.

TITLE III - Creation of an integral innovation, technical training and entrepreneurship scheme

Article 11.- Innovation, training and entrepreneurship scheme - Each year the Sectoral Council for Production shall develop a technical training plan to serve as a compulsory input for planning and prioritizing the innovation, training and entrepreneurship scheme, in accordance with the Agenda for the Transformation of Production and the National Development Plan.

This scheme shall combine the work of various public and private institutions at different stages of development and their various instruments, in a single deconcentrated and decentralized virtual window in order to disseminate training for the purpose of creating entrepreneurial skills, financing instruments, risk capital, a development bank for financing business, and a national guarantee fund; technical assistance and coordination with decentralized autonomous governments, non-profit-making organizations, companies, universities, incubators, *inter alia*.

Article 12.- Risk capital.- By means of appropriate legal and financial mechanisms, the State may contribute towards the formation of risk capital. The temporary nature of the State's investment shall be agreed in advance, both in terms of the time-frame and the form, giving priority to disinvestment by the State in companies which it owns in part or exclusively, in favour of employees and workers in such companies, as well as in favour of the community in which the undertaking operates, according to the time-limits specified for each project.

BOOK II - DEVELOPMENT OF PRODUCTIVE INVESTMENT AND OF ITS INSTRUMENTS

TITLE I - Fostering, promoting and regulating investment in production
Chapter I - Investment in production

Article 13.- Definitions.- The following definitions shall apply for the purposes of these regulations:

a. Productive investment.- Irrespective of the form of ownership, means the flow of resources intended to produce goods and services, to expand production capacity and to create jobs in the domestic economy;
b. new investment.- For the purpose of applying the incentives provided for new investment, it means the flow of resources intended to increase the pool of capital in the economy through effective investment in production so as to expand future production capacity, increase the production of goods and services, or create new jobs, in the terms provided in the regulations. A mere change in ownership of production assets already operating or loans given to purchase such assets does not imply new investment for the purposes of this Code;
c. foreign investment.- Investment which is owned or controlled by foreign natural or legal persons domiciled abroad or which involves capital that has not been generated in Ecuador;
d. domestic investment.- Investment owned or controlled by Ecuadorian natural or legal persons or by foreigners resident in Ecuador, unless it can be shown that the capital has not been generated in Ecuador; and
e. domestic investor.- The Ecuadorian natural or legal person owning or controlling an investment made in Ecuadorian territory. This concept includes natural or legal persons or entities of Ecuadorian cooperative, associative or community sectors that own or control an investment made in Ecuadorian territory. Ecuadorian natural persons having dual nationality or foreigners resident in Ecuador shall be considered domestic investors for the purposes of this Code.

Any investment made by an Ecuadorian or foreign company whose shares, equity, ownership or control belong to an Ecuadorian natural person or company shall not be considered foreign investment.

Article 14.- Application.- New investment shall not require any type of authorization other than the authorizations specifically indicated in the law and those imposed by the relevant regional legal structure; the requirements laid down in these regulations shall be met in order to benefit from the incentives provided.

The benefits of this Code shall not apply to any investment by foreign natural or legal persons domiciled in tax havens. The regulations shall govern the terms for application of the incentives to all sectors requesting them.

The benefits and guarantees recognized in this Code shall apply without prejudice to the provisions in the Constitution of the Republic and other legislation, as well as those in international agreements duly ratified by Ecuador.

Article 15.- Competent body.- The Sectoral Council for Production shall be the highest government authority governing investment.

Article 16.- Forms of investment.- The forms of investment and the exceptions thereto shall be determined in the regulations implementing this Code.

Chapter II - General principles

Article 17.- Non-discriminatory treatment.- Ecuadorian and foreign investors, corporations, companies or entities in the cooperative sector and in the mutually supportive people's economy sector in which they participate, together with their lawful investment in Ecuador, with the limitations prescribed in the Constitution of the Republic, shall be treated equally in respect of the management, operation, expansion and transfer of their investment and shall not be the subject of arbitrary or discriminatory measures. Foreign investment and investors shall enjoy full protection and security so that they are given the same protection as Ecuadorians within Ecuadorian territory.

The State, at all levels of government, in exercise of its full governing powers, may grant different treatment in terms of incentives in favour of productive and new investment, depending on the sectors, geographical location or other parameters to be met, in the terms provided in this Code and its implementing regulations.

Foreign investment shall serve as a direct complement in strategic sectors of the economy which require investment and financing in order to achieve the objectives of the National Development Plan and subject to the legislation applicable. Foreign investors may participate directly in other sectors of the economy without the need for additional authorization other than that applicable to domestic investors.

Government agencies shall give priority to attracting foreign direct investment according to the needs and priorities defined in the National Development Plan, the Programme for the Transformation of Production, and in the various development plans of decentralized autonomous governments. Moreover, investment in other sectors of the economy shall also enjoy the benefits of government policy to promote production, in the terms of these regulations.

Article 18.- Property rights.- Investors' property shall be protected in the terms provided in the Constitution and other relevant legislation. The Constitution prohibits all forms of confiscation. Accordingly, the confiscation of domestic or foreign investment shall not be decreed or carried out.

The State may, exceptionally and in accordance with the Constitution, decide to expropriate real estate for the sole purpose of carrying out social development plans, sustainable management of the environment and collective well-being, subject to valuation and payment of fair and adequate compensation in accordance with the law.

Chapter III - Rights of investors

Article 19.- Rights of investors.- The following investors' rights are recognized:

- freedom to produce and market lawful, socially desirable and environmentally sustainable goods and services and to fix prices freely, except for those goods and services whose production and marketing are regulated by Law;
- access to administrative procedures and controls established by the State to prevent any private speculative practice or monopoly or oligopoly or the abuse of a dominant market position or other unfair trade practices;
- freedom to import or export goods and services, except for those determined by the restrictions in effect or under the provisions of international agreements to which Ecuador is party;
- free transfer abroad, in foreign currency, of regular earnings or profits derived from registered foreign investment, subject to compliance with the requirements concerning participation by employees, any tax obligations applicable or other pertinent legal obligations, as determined by legislation, where applicable;
- free transfer of the resources earned from the total or partial sale of companies in which the registered foreign investment was made, or from the sale of shares, equity or rights acquired as a result of the investment made, subject to compliance with any tax or other obligations, as determined by legislation;
- freedom to acquire, transfer or sell shares, equity or ownership rights in investments to third parties, in Ecuador or abroad, subject to compliance with the formalities determined in the law;
- free access to the Ecuadorian financial system and the stock exchange for the purpose of obtaining short-, medium- and long-term financial resources;
- free access to mechanisms for promotion, technical assistance, cooperation, technology and other equivalent mechanisms; and
- access to other general benefits and incentives provided in this Code, other legislation and regulations applicable.

Article 20.- Tax regime.- For tax purposes, domestic and foreign investment shall be subject to the same tax regime, with the exceptions determined in this Code.

Article 21.- Mandatory rules.- Ecuadorian and foreign investors and their investments shall in general be subject to observance of and strict compliance with Ecuador's laws and, especially, those in force concerning labour, the environment, tax and social security.

TITLE II - Development of production in the mutually supportive and community-based people's economy

Article 22.- Specific measures.- The Sectoral Council for Production shall determine policies to boost the mutually supportive and community-based people's economy, as well as democratic access to production factors, without prejudice to the competence of decentralized autonomous governments and the special institutional structure created for the integral development of this sector, in accordance with the relevant regulations in the Law.

Furthermore, in order to promote and strengthen the mutually supportive and community-based people's economy, the Sectoral Council for Production shall carry out the following action:

a. Draw up programmes and projects to develop and improve domestic, regional, provincial and local production within the framework of the Intercultural and Plurinational State, guaranteeing the rights of persons, communities and nature;
b. support and strengthen the community-based social model of production, for which it shall draw up programmes and projects with government financing for the purpose of: recovery, support and transfer of technology, research, training and marketing mechanisms, and government procurement, *inter alia*;
c. promote equal opportunities by granting benefits, incentives and means of production;
d. promote food security through preferential financing mechanisms for micro, small, medium-sized and large enterprises belonging to communities, indigenous, Afro-Ecuadorian and Montubian peoples and nationalities;
e. finance production projects for communities, indigenous, Afro-Ecuadorian and Montubian peoples and nationalities to boost agricultural, livestock, small-scale, fisheries, mining and industrial production, tourism, and other projects in this sector.

At the end of each economic year, the ministries responsible or the State secretariats with competence for promoting the mutually supportive and community-based people's economy shall submit to the ministry chairing the Sectoral Council for Production reports on the resources invested in programmes to generate capacity, innovation, entrepreneurship and technology, improve productivity, create associations, boost and promote the supply of exports, marketing, *inter alia,* in order to reinforce this sector of the economy.

TITLE III - Incentives for the development of production
Chapter I - General rules on economic development incentives and encouragement

Article 23.- Incentives.- The tax incentives recognized herein are incorporated as amendments to the applicable tax legislation, as provided in the amending provisions at the end of this Code.

Article 24.- Classification of incentives.- Three categories of fiscal incentive are provided in this Code:

1. General incentives: Applicable to investment made in any part of Ecuador and consisting of the following:

a. Gradual reduction of three percentage points in income tax;
b. incentives provided for special economic development zones, provided that they comply with the criteria for their establishment;
c. additional deductions when calculating income tax, as mechanisms to encourage productivity, innovation and eco-efficient production;
d. benefits for opening up companies' registered capital to their employees;
e. tax payment facilities for foreign trade;
f. deduction of the additional compensation for payment of a decent wage when calculating income tax;
g. exemption from the tax on the export of foreign currency for foreign financing transactions;

h. exemption from advance payment of income tax for five year for any new investment; and
i. revised calculation for advance payment of income tax.

2. Sectoral and equitable regional development incentives: For those sectors which contribute to changing the energy matrix, strategic import substitution, boosting exports, and rural development throughout Ecuador, and the development of the urban zones specified in the second amending provision (2.2), total exemption from income tax for five years for new investment in these sectors.

3. Incentives for depressed areas: Such investment may not only be eligible for the aforementioned general and sectoral incentives, but priority shall also be given to new investment in the form of a tax benefit consisting of an additional deduction of 100% of the cost of employing new labour, for five years.

Article 25.- Content of investment contracts.- At the initiative of an investor, investment contracts may be drawn up in the form of a public deed specifying the treatment to be given to investment under this Code and its implementing regulations.

Investment contracts may accord stability of tax incentives throughout the period of the contract, in accordance with the prerogatives in this Code. Likewise, the mechanisms for monitoring and regulating compliance with the investment criteria specified for each project shall be defined. The Sectoral Council for Production shall determine the criteria to be met for investment seeking to avail itself of this regime.

Article 26.- Validity.- Investment contracts shall remain valid for a period of up to fifteen (15) years as of the date of signature and their validity shall not restrict the control and regulatory powers of the State through its competent bodies.

At the request of an investor and provided that the Sectoral Council for Production considers it appropriate, depending on the type of investment made, investment contracts may be extended once only for up to the same period originally granted.

Article 27.- Settlement of disputes.- Investment contracts with foreign investors may contain arbitral clauses for the settlement of any disputes between the State and investors. Efforts shall be made to settle amicably any disputes between the Ecuadorian State and a foreign investor that have totally exhausted administrative channels through direct dialogue for a period of 60 days. If no direct settlement between the parties can be reached, there shall be mandatory mediation within three (3) months following the formal date of initiation of direct negotiations.

If the dispute persists after mediation, it may be submitted to national or international arbitration in accordance with the treaties in force to which Ecuador is party. The decisions of this Arbitral Tribunal shall be final, the legislation applicable shall be that of Ecuador and rulings shall be definitive and binding on the parties.

If the parties have not reached an amicable agreement and have not submitted the dispute to arbitral jurisdiction for settlement after six months have elapsed since administrative channels were exhausted, the dispute shall be brought before Ecuador's ordinary courts. Tax matters shall not be submitted for arbitration.

Article 28.- Application of incentives.- The Technical Secretariat of the Sectoral Council for Production shall coordinate with the competent control bodies the proper application of the benefits accorded for each investment project and investors may not be required to meet requirements other than those determined in this legislation.

Article 29.- Monitoring.- The Technical Secretariat of the Sectoral Council for Production shall be responsible for monitoring compliance with the legal or contractual commitments made by investors.

Each quarter the Internal Revenue Service shall forward to the Technical Secretariat a list of new firms that have applied for incentives so that it may draw up an electronic list containing this information.

The Technical Secretariat, together with the Internal Revenue Service, may carry out controls to verify compliance with the eligibility criteria for the incentive relating to the investment made. The implementing regulations shall determine the parameters for conducting such monitoring.

If the beneficiary fails to comply with requirements, the Technical Secretariat shall forward to the Sectoral Council for Production a detailed report on the seriousness of the non-compliance identified and not remedied, recommending the adoption of the relevant sanctions, depending on the seriousness of the non-compliance.

Article 30.- Special ineligibility.- The following may not be eligible for the incentives determined in these regulations: the President and Vice-President of the Republic, Ministers and Secretaries of State, and public servants belonging to the body responsible for production policy, either directly or through a third person, including those firms in which they have a direct or indirect share of the capital; those who at any stage of the procedure for obtaining the incentives are directly or indirectly related or have any degree of responsibility for the procedure and, because of their activities or functions, may reasonably be assumed to be in possession of confidential information on such procedures; also spouses of the aforementioned senior officers, officials or employees; and those who have not complied with their tax, labour, environmental or social security obligations.

Chapter II - Violations and sanctions on investors

Article 31.- Violations.- The following constitute possible grounds for violation by investors benefiting from the incentives provided in these regulations:

- Failure by investors to provide the funds or acquisitions to which they have committed themselves within the period specified for this purpose in the relevant investment project;
- withdrawal of all or part of the investment, provided that this implies non-compliance with legal or contractual commitments;
- failure by investors to fulfil the minimum investment terms authorized within the period specified for this purpose in the relevant investment project;
- transfer of the investment, without fulfilling the legal requirements and criteria;
- wilful non-compliance ascertained by the competent authority in relation to Ecuador's labour, tax, social security or environmental legislation or other rules governing investment;
- proven fraud concerning the documents or information provided and used as a basis for obtaining investment incentives;
- preventing or impeding checks by government officials with responsibility for the sector or use of any means to mislead government entities or their officials with a view to benefiting from the incentives provided by this Code;
- bribery or attempted bribery of government officials responsible for the control and supervision of the benefits provided by this Code, as declared by the courts, without prejudice to any criminal proceedings; and
- taking advantage of the incentives by those who are prohibited therefrom by law.

Article 32.- Annulment.- Without prejudice to any civil or criminal proceedings applicable, any of the grounds determined in the preceding Article shall lead to annulment of the benefits granted. The annulment determined in this chapter shall be decided by means of a reasoned resolution by the Technical Secretariat of the Sectoral Council for Production. The investor affected may lodge an administrative appeal with the plenary session of this Council, following the procedure determined in the Statutes of the Executive's Legal and Administrative Regime.

Article 33.- If the grounds for annulment were one of those indicated in subparagraphs (e), (f), (g), (h), or (i) of Article 31, refund of the incentives received shall also be decided, together with payment of any taxes due plus the interest that should have been paid if the tax incentives given by these regulations had not been received, during the period of non-compliance, except in duly accredited cases of unforeseeable circumstances or *force majeure* accepted by the Sectoral Council for Production. The foregoing shall be without prejudice to the exercise of the decision-making authority of the Tax Administration in accordance with the law.

TITLE IV - Special economic development zones
Chapter I - Purpose and establishment of special economic development zones

Article 34.- The central Government may authorize the establishment of special economic development zones (ZEDEs), as customs destinations, in clearly defined areas in Ecuador, in order to receive new investment, with the incentives provided in this law, which shall be conditional upon compliance with the specific objectives set out in these regulations, in accordance with the parameters to be set by means of regulations and those provided in national land management plans.

Article 35.- Location.- The ZEDEs shall be established in clearly defined geographical areas in Ecuador, taking into account aspects such as: protection of the environment, the regional structure, the potential of each locality, highway infrastructure, basic services, links to other parts of Ecuador, *inter alia,* previously determined by the body responsible for development of production and in coordination with the body in charge of national planning, and shall be subject to special treatment as regards foreign trade, tax and finance.

Article 36.-Types.- The following types of ZEDEs may be set up:

a. In order to engage in the transfer and unbundling of technology and innovation. Any type of undertaking or technological development, electronic innovation, biodiversity, sustainable environmental or energy-related improvement project may be carried out in such zones;
b. in order to conduct industrial diversification operations, which may consist of any type of innovative industrial undertaking, focusing mainly on the export of goods, using skilled labour. Any type of inward processing may be carried out in such zones, for example, processing, manufacturing (including: mounting, assembly and adaptation to other goods) and repair (including restoration or conditioning) of any type of goods for the purpose of export and strategic import substitution in particular; and
c. in order provide logistics services such as: storage of freight for the purposes of consolidation and deconsolidation, sorting, labelling, packing, repacking, refrigeration, management of inventories, handling in dry ports or inland freight terminals, coordination of national or international distribution of goods, as well as maintenance and repair of ships, aircraft and land freight transport vehicles. Such zones shall preferably be established within or close to ports or airports or in border areas. Storage or collection of goods alone may not be authorized within this type of zone.

Logistics services shall be designed to reinforce the physical facilities in ports, airports and border posts that serve to boost the net positive volume of foreign trade and local supply within the parameters allowed, in response to the requirements laid down in the implementing regulations for this Code.

Goods included in these processes shall serve to diversify the supply of exports, although authorization shall be given for their import for consumption in Ecuador in the percentages determined in the implementing regulations for this Code. These limits shall not apply to products obtained in processes for the transfer of technology and technological innovation.

Natural or legal persons setting up in special zones may only operate in one of the aforementioned forms, or they may diversify their operations in the same territory by operating in several of the aforementioned forms if they prove that the various activities facilitate production chains in the economic sector operating in the authorized zone and that the ZEDE's statutes authorize it to operate in the form consonant with the activity it is intended to establish.

Article 37.- Customs control.- Persons and means of transport entering or leaving a ZEDE, together with its limits, the access and exit points to and from a ZEDE, shall be subject to customs control. This customs control may be conducted prior to entry, while the goods are in the ZEDE or after they have left. The procedures for such controls determined by the Customs Administration shall not constitute obstacles to the flow of the production processes for the activities carried out in ZEDEs, and shall facilitate the entry and exit of goods to or from such zones.

Article 38.- Administrative act of establishment.- ZEDEs shall be established by means of an authorization from the Sectoral Council for Production, taking into account the potential economic growth of the areas in which the ZEDEs are installed, the objectives, plans and strategies in the National Development Plan, the Agenda for the Transformation of Production, and other regional plans, based on the requirements and formalities to be determined in the implementing regulations for this Code.

Authorizations shall be granted for a period of twenty (20) years, and are renewable subject to the evaluation procedure determined in the implementing regulations; they may only be annulled prior to their term if it is proven that any of the violations leading to withdrawal of the authorization have been committed.

Article 39.- Public governance.- The following shall be the responsibilities of the Sectoral Council for Production in relation to the establishment of ZEDEs:

a. Determining the general policies for the operation and supervision of ZEDEs;
b. authorizing the creation of ZEDEs that meet the legal requirements prescribed;
c. approving and authorizing managers and operators of ZEDEs;
d. responding to questions put concerning application of this Code in relation to ZEDEs;
e. applying the penalties provided in these regulations to management firms and operators which fail to comply with the provisions laid down for their operations;
f. determining general and specific requirements, including those on origin and national value added, to allow a product processed or manufactured (including its mounting, assembly and adaptation to other goods) or repaired (including its restoration or conditioning) within a ZEDE to be imported, with or without full or partial payment of tariffs. In order to establish such a procedure, the customs value of the goods to be imported shall be taken into account, deducting the national value added and/or the value of the national or imported goods incorporated during the production process for the goods to be imported, and compliance with the rules of origin for domestic products for export shall be relevant, inter alia. This procedure shall be used exclusively for calculating the tariff. The procedure determined by the Internal Revenue Service shall be followed for the purpose of assessing and paying the value added tax;
g. in coordination with the agency responsible for the environment, ensuring that the management of ZEDEs has no serious environmental impact on the region; and
h. other responsibilities determined in the implementing regulations for this Code.

In order to carry out the supervision and operational control of the functioning of ZEDEs and compliance with their objectives, the Ministry responsible for industrial promotion shall set up an operational technical unit to be the authority responsible for applying the policies determined by the Sectoral Council for Production in relation to ZEDEs.

Article 40.- Application for a ZEDE.- Any interested party may apply to establish a ZEDE at the instigation of public sector institutions or of decentralized autonomous governments. Public, private or joint investment may be used to develop such zones. Likewise, management companies and operators setting up in such zones may be natural or legal persons: private, public or joint ventures, Ecuadorian or foreign.

In order to evaluate the desirability of authorizing the establishment of a ZEDE, a general description of the project shall be required, and shall cover the criteria laid down in the implementing regulations for this Code.

A ZEDE may not be established in areas that form part of the National Protected Areas Scheme or of the State's Forest Domain or have been declared protected woodland or vegetation or are fragile ecosystems.

The authorization to operate a ZEDE may list in detail the incentives to be applied in each particular case, both for managers and operators.

Chapter II - Managers and operators of Special Economic Development Zones

Article. 41.- Managers of ZEDEs.- Ecuadorian or foreign private, public or public-private legal persons which so request may become managers of ZEDEs provided that they receive authorization to engage in one of the activities indicated in Article 36 of this Code. Their functions shall be to develop, manage and exercise operational control of the ZEDE in accordance with the obligations laid down in the implementing regulations for this Code and those determined by the Sectoral Council for Production.

The responsibilities and control procedures to be fulfilled by managers shall be determined by the Sectoral Council for Production and the implementing regulations for this Code.

Article 42.- Operators of ZEDEs.- Operators are the Ecuadorian or foreign private, public or public-private natural or legal persons proposed by the management company of the ZEDE and approved by the Sectoral Council for Production and which may engage in the activities authorized in these delimited zones in Ecuador.

Operators of ZEDEs may only engage in the activities for which they have been authorized in the relevant text, according to the terms of this Code, its implementing regulations, the applicable customs legislation and the regulations issued by the Sectoral Council for Production.

They shall also ensure that their activities comply with national and international labour and environmental regulations, with environmental licensing procedures where applicable, and with the transfer of technology and training of Ecuadorian personnel.

Article 43.- Prohibited linkage.- Managers may not hold public office.

Article 44.- Support services.- Any Ecuadorian or foreign natural or legal person wishing to become established in a ZEDE in order to provide support services for operators installed in the authorized zone shall submit an application to the relevant management company, which shall approve or reject the application following a favourable opinion given by the Operational Technical Unit responsible for supervising and controlling ZEDEs.

Firms wishing to provide support services for operators in a ZEDE shall comply with all the safety and control regulations prescribed by this Code, its implementing regulations, and the guidelines issued by the Sectoral Council for Production. Institutions in the Ecuadorian or foreign private financial sector shall obtain an authorization from the Supervisory Authority for Banks, which shall specify the requirements to be met by such firms.

Article 45.- Liability.- Operators and managers of ZEDEs shall be jointly liable for the entry, ownership, maintenance and final destination of any goods introduced into or processed in authorized zones, and shall be legally responsible for their proper use and destination. The joint liability established only applies to customs tax obligations not met and the monetary penalties imposed for the violations committed recognized in this Code and its implementing regulations.

Article 46.- Customs treatment and foreign trade.- As ZEDEs are a special legal structure, they shall receive the treatment of the customs destination granted to them by the legal customs regime, except as regards the payment of tariffs on foreign goods entering the said zones for the purpose of authorized procedures, in the case of both managers and operators. The procedures for the entry of goods into the ZEDEs and their exit, as well as the use of waste, shortfalls or surpluses, their possible inward clearance, re-export or destruction of deteriorated goods, shall be governed by the implementing regulations for this Code.

For the purposes of customs operations, the implementing regulations for this Code shall determine the criteria according to which the entry of goods into a ZEDE is deemed to be an export and, in turn, whether entry of goods from an authorized zone into national customs territory is deemed to be an import.

Article 47.- Admission to another regime.- Capital goods that have entered the country under a suspensive customs regime with relief from foreign trade taxes may complete the regime

by re-exporting the goods to a ZEDE, provided that an operator has requested their entry for use in authorized activities.

Article 48.- Valuation of capital goods.- For the purposes of their inward clearance, capital goods of foreign origin used in an authorized zone shall be valued taking into account their state at the time when the declaration for consumption is processed.

Chapter III - Violations and penalties in Special Economic Development Zones

Article 49.- Violations.- Violations caused by non-compliance with the provisions on ZEDEs shall be qualified as either minor or serious The penalties provided in this connection shall be applied by the Operational Technical Unit for control of ZEDEs or by the Sectoral Council for Production, according to their competence, and taking into consideration the seriousness and the consequences of the action or omission in question, without prejudice to any civil or criminal proceedings that may ensue.

Article 50.- Minor violations.- The following are minor violations punished by a warning in writing or a fine:

- Non-compliance by the manager with commitments contained in the authorization, and which do not constitute serious violations;
- where an operator fails to inform the management company of the arrival, use or exit of all goods and inputs to be manufactured, transformed, processed, marketed or consumed, as well as the use of labour and the sale of foreign currency in Ecuador, within the time-limits specified in the regulations;
- failure to submit the rules of procedure for the operation of each ZEDE within the time-limits specified;
- where managers fail to furnish the following information online to the Internal Revenue Service, Ecuador's Customs Service and the ZEDE, using efficient informatics means.

    1. The arrival of goods in the ZEDE and their exit, identifying their origin and destination;
    2. tables showing the incorporation of raw materials to be converted into semi-finished or finished products in the ZEDEs;
    3. partial processing operations in accordance with the legislation;
    4. authorized changes of regime;
    5. lists of their operators;
    6. duty-free transactions completed; and
    7. sales within the ZEDE, identifying the buyers;

- non-compliance with the procedures established for the entry of goods into the ZEDE and their exit;
- non-compliance with the timelines for the work's progress, equipment and investment, which shall be completed within the time-limits proposed in the documents used as a basis for qualifying as a ZEDE operator or for granting authorization as a manager; and
- non-compliance with any other regulations not specified as a serious violation.

Article 51.- Serious violations.- Any conduct which gives grounds for presuming an act that inexcusably lacks due diligence and care, and any involving a repeated minor violation.

The following are serious violations punished by suspension, annulment of the status of operator or withdrawal of an authorization, as applicable:

a. Non-compliance with any of the objectives indicated in the ZEDE authorization as set out in this Code;
b. non-compliance with the provision on absence of a relationship for managers and operators;
c. where the manager fails to verify and control activities by its operators, using for this purpose the legal mechanisms determined in this Code, its implementing regulations or other applicable rules, and does not inform the relevant agencies of the violations so that the necessary administrative and legal measures can be taken;
d. refusal to allow inspections, verifications or audits by the ZEDE's competent authorities or, as agreed in each case by the competent administration, or impeding their exercise;

e. the entry into the ZEDE of goods such as: arms, explosives and ammunition; narcotics of any type; and products that are harmful to health, the environment, safety or public morals, not expressly authorized by the ZEDE's Operational Technical Unit, without prejudice to the civil or criminal proceedings imposed by such violations; and
f. where activities by operators cause environmental damage or involve non-compliance with the Environmental Management Plan, where this exists.

Committing any of these offences, as well as the repetition of a minor violation, shall be punished by a fine or the suspension of the manager or operator for a period of up to three months. If the offence is repeated, it shall be punished by annulment of the operator's status or withdrawal of authorization, according to whether the offender is a manager or operator.

Application of the penalties provided for the aforementioned offences shall be without prejudice to other legal liabilities.

Article 52.- Penalties.- Managers and operators of ZEDEs shall be punishable for the violations defined in this Chapter, depending on the seriousness of each case, by:

- For minor violations:

  a. A warning in writing; and
  b. fine amounting to a minimum of ten unified basic wages for workers in general or a maximum of one hundred;

- For serious violations:

  a. A fine amounting to a minimum of fifty unified basic wages for workers in general or a maximum of two hundred;
  b. suspension of the authorization granted to engage in the activities, for a period of up to three months;
  c. definitive annulment of status as an operator within the respective ZEDE; and
  d. withdrawal of the authorization for a ZEDE.

If there is environmental damage, in addition to the penalties defined, those responsible shall be obliged to make good the damage in accordance with the environmental regulations in force, pursuant to the rules in the Constitution and the Law.

The penalties provided for minor violations may be adopted by the unit responsible for the operational control of the ZEDE. The penalties provided for serious violations shall be adopted by the Sectoral Council for Production. Before applying the penalties defined in this Article, the relevant administrative procedure shall be initiated as determined in the implementing regulations for this Code. The suspension of authorizations, annulment or withdrawal shall lead to suspension or termination of the tax incentives granted for the same period as the penalty determined.

BOOK III - BUSINESS DEVELOPMENT OF MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES AND THE DEMOCRATIZATION OF PRODUCTION.

TITLE I - Promotion of micro, small and medium-sized enterprises
Chapter I - Promotion and development of micro, small and medium-sized enterprises (MSMEs)

Article 53.- Definition and classification of MSMEs.- A micro, small or medium-sized enterprise is any natural or legal person which, as a production unit, engages in production, trade and/or services, employs a certain number of workers and has annual sales of a gross value determined for each category, in accordance with the scales to be established in the implementing regulations for this Code.

If the criteria applicable are not met, the gross value of annual sales shall have priority over the number of workers for the purpose of determining an enterprise's category. Craftsmen who meet the criteria for MSMEs shall receive the benefits of this Code subject to compliance with the requirements and terms indicated in the implementing regulations.

Chapter II - Regulatory bodies for MSMEs

Article 54.- Institutional structure and functions.- The Sectoral Council for Production shall coordinate policies for the promotion and development of MSMEs with the sectoral ministries within the scope of their competence. It shall be given the following responsibilities and obligations for determining cross-cutting policies on MSMEs:

a. Approving the policies, plans, programmes and projects recommended by the implementing agency, and monitoring and evaluating the management of the bodies responsible for implementation, taking into account the cultural, social and environmental specificities of each area and drawing up the necessary measures for technical and financial support;
b. preparing, prioritizing and coordinating action for the sustainable development of MSMEs, and preparing the annual budget for implementation of all the programmes and plans prioritized within the Council;
c. authorizing the creation of special infrastructure for this purpose and overseeing its development, for example: MSME development centres, research and technological development centres, business incubators, transfer nodules or laboratories needed to boost, facilitate and encourage the development of these enterprises' production in accordance with the legislation applicable to each sector;
d. coordinating with specialized public and private bodies training, information, technical assistance and trade promotion programmes designed to encourage the participation of MSMEs in international trade;
e. fostering participation by universities and local, national and international teaching centres in the development of entrepreneurship and production programmes, relating them to production sectors, so as to strengthen MSMEs;
f. promoting application of the principles and criteria needed for certifying quality in MSMEs, as determined by the authority with competence for the sphere;
g. encouraging the implementation of clean production and social responsibility programmes by MSMEs;
h. encouraging the use of information and organizational development tools to support linkages among the public and private institutions involved in the business development of MSMEs;
i. coordinating action to facilitate MSMEs' access to loans with public and private sector institutions involved in business financing; and
j. others determined by Law.

Chapter III - Mechanisms for the development of production

Article 55.- Government procurement.- Public institutions shall be required to apply the principle of inclusion in their procurement. In order to promote MSMEs, the National Government Procurement Institute shall encourage and monitor compliance with the following by all contracting entities:

- Establishment of criteria for including MSMEs, in the procedures and in the percentages determined by the National Government Procurement Scheme;
- granting of every facility to MSMEs so that they have proper and timely information on the procedures in which they may participate;
- streamlined procedures for becoming government suppliers; and
- definition of those goods, services and works that may be supplied or carried out by MSMEs, within the annual procurement plans of public sector bodies.

The National Government Procurement Institute shall keep an updated register of procurement from the mutually supportive people's economy and from MSMEs and shall inform citizens of these benefits, together with future plans for government procurement by the State and its institutions. The same obligations and technical criteria for inclusive procurement shall apply to the benefit of actors in the mutually supportive people's economy.

Chapter IV - Single register of MSMEs and streamlining of formalities

Article 56.- Single register of MSMEs.- A single register of MSMEs is hereby created as a database under the responsibility of the Ministry chairing the Sectoral Council for Production,

which shall be in charge of managing it; for this purpose, all sectoral Ministries shall furnish the information needed for its creation and permanent updating in a timely manner.

This register shall permit the identification and classification of MSMEs engaged in the production of goods, services or manufacturing, in accordance with the concepts, parameters and criteria defined in this Code. Likewise, it shall generate a database to provide an information system for the sector on MSMEs participating in government programmes for their support and development or benefiting from the incentives in this Code so that the competent body may exercise its governance and define government policies, as well as facilitate suitable assistance and advice for MSMEs.

Solely for the purpose of monitoring government policies implemented in this sector, the Ministry responsible for managing the register may request MSMEs to enter in the database information concerning their classification, in the terms to be determined in the implementing regulations.

TITLE II - Democratization of the transformation of production and access to production factors

Article 57.- Democratization of production.- In accordance with the Constitution, democratization of production means the policies, mechanisms and instruments which lead to deconcentration of production factors and resources and facilitate access to financing, capital and technology in order to engage in production.

The State shall protect family and community farming as guarantees of food sovereignty, as well as crafts, the urban informal sector and MSMEs, implementing policies to regulate their trade with the private sector.

The State shall promote special policies to eliminate inequalities and discrimination against women producers in access to production factors

Article 58.- Implementation of procedures for the democratization of the transformation of production.- The Sectoral Council for Production shall prepare and monitor effective implementation of the policy on democratization of the transformation of production by developing and implementing special programmes that enable effective access to production factors such as land and capital, *inter alia*.

Article 59.- Objectives of democratization.- The following shall be the objectives of the policy on democratization of the transformation of production:

a. To promote and facilitate access by Ecuadorian citizens' to ownership and transformation of the means of production;
b. to facilitate Ecuadorian ownership of businesses by developing and implementing tools to give them access to shares in State-owned enterprises;
c. to provide support for raising the productivity of MSMEs, organized production groups or units through innovation in developing new products, new markets and new production processes;
d. to foster compliance with the business ethics advocated by the National Government by creating a publicly recognized management mark that encourages and catalyses businesses whose activities are environmentally friendly, which comply with their labour and social security commitments vis-à-vis their employees and workers and the community through timely payment of their tax obligations, in accordance with the legislation applicable;
e. to support the development of innovative processes in Ecuadorian firms by developing and implementing tools to allow firms to become more efficient and attractive, both on the domestic and international markets;
f. to encourage and attract investment that generates local and regional development, better and equitable production chains, strategic integration into the international market, decent jobs, technological innovation and democratization of capital;
g. the territoriality of government policies;
h. to promote the deconcentration of production factors and resources;

i. to implement measures specially designed for family farms, women and local communities and nationalities in order to eliminate inequalities and discrimination;
j. to encourage redistribution and eliminate inequalities in access to production factors, in sectors suffering from discrimination;
k. to promote special measures to eliminate inequalities and discrimination against women producers in access to production factors;
l. to boost the development and dissemination of production-process-oriented development and dissemination of knowledge and technology;
m. to support the promotion of domestic production in all sectors, especially with a view to guaranteeing food and energy sovereignty, which generates employment and value added; and
n. to develop government financing services in order to democratize credit and facilitate access to financing, capital and technology for the purpose of engaging in production, especially for those groups traditionally excluded from such financial services.

The initiatives which these mechanisms seek to promote shall be those which achieve transformation of production and add value. The implementing regulations for this Code shall determine the technical criteria and requirements to be met by individuals and firms involved in such processes.

Article 60.- Incentives for opening up business capital.- In order to comply with the objectives indicated in the preceding Article, the governing body responsible for production development policy, in coordination with the Internal Revenue Service, the Ministry responsible for labour policy, the Companies Supervisory Authority, the Banking and Insurance Supervisory Authority, as well as other government agencies, shall encourage and monitor implementation of the following mechanisms:

- Diversification of the ownership of stock in companies exclusively owned by the State or part of whose registered capital is publicly owned in favour of employees of the said companies. Shares may be acquired through the national stock exchange mechanism or other mechanisms recognized by the Law. This mechanism does not apply to government-owned enterprises;
- the State may temporarily participate in the capital of private or private-public production transformation companies so that it may subsequently finance the purchase of shares by the employees through loan and preferential financing schemes; and
- encouragement to open up the capital of private firms to their employees by approving the fiscal and financial incentives determined in this Code.

The implementing regulations for this Code shall set the parameters to be met by firms and employees involved in opening up the capital of firms, especially the mechanisms restricting relations among participants and any act simulating the accumulation of business capital. Likewise, special powers shall be given to the competent authorities to ensure the transparent dissemination of these processes throughout society as a whole and the appropriate evaluation of the objectives they have achieved.

Chapter I - Land

Article 61.- Access to land and its integrated promotion.- Through its competent government agencies, the State shall promote and facilitate access to land for farming families and communities that lack land, giving them priority in the redistribution of land through land registration, transfer of government land, mediation for selling/buying land on the market, reversion or other mechanisms enshrined in the Constitution and the Law. In order to ensure that such action leads to higher productivity and better market access, the following activities shall also be carried out:

- Fostering alternative marketing mechanisms which not only lead to higher incomes for family producers but also guarantee supplies for local and regional markets;
- supporting Ecuador's food sovereignty by boosting the production of food for domestic consumption, as well as encouraging productivity and the production of goods that assist proper nutrition of Ecuadorian families, especially children; and

- promoting production practices that ensure the conservation and sustainable management of land, especially the fertile layer, preventing its degradation, notably that caused by contamination and erosion.

Resources for these programmes shall be set aside annually in the State's overall budget.

Chapter II - Financing and capital

Article 62.- Access to the public bank.- The Sectoral Council for Economic Policy shall determine and monitor access to financing from the public bank for all those engaged in production; it shall draw up the guidelines and incentives for supporting access to private financing, in particular for those in the mutually supportive people's economy and MSMEs; and shall develop mechanisms to boost the deepening of the stock market, to encourage access by all those engaged in production and to reduce the cost of financial intermediation.

The authority with competence for public financing may establish special loan programmes for these sectors, with the involvement of the private financial system.

Article 63.- Registration.- Public and private financial entities shall mandatorily create and update a register of transactions involving firms with MSME status and shall report regularly to the agency responsible for implementing the policies on MSMEs.

Article 64.- Guarantees.- The financial regulatory authority shall create a special guarantee regime for private and public financing of MSMEs and for developing both public and private risk capital initiatives.

Article 65.- National Guarantee Fund.- A public National Guarantee Fund is hereby created to facilitate MSMEs' access to financing for their activities For financial purposes, the guarantees underpinning this Fund shall be considered as self-liquidating and their cover in respect of the loan guaranteed shall be one to one. The Fund shall form part of Ecuador's credit guarantee scheme regulated by the Banking and Insurance Supervisory Authority. This Fund's operating methods shall be determined in the implementing regulations.

Article 66.- Rules for MSMEs.- The stock market's regulatory authority shall prepare special rules for individual and associative access by MSMEs to financing through the stock market. Public institutional investors shall determine special rules that facilitate and permit the purchase of stock generated by MSMEs.

Article 67.- Other forms of financing.- The body with competence for promoting and regulating microfinancing for the people shall establish mechanisms to boost the financing of micro and small enterprises throughout Ecuador, particularly in regions where there is less financial coverage, and to enhance efficiency and access to the specialized technology of the system's private operators

The National Government shall implement a risk capital programme to permit MSMEs to have access to such forms of financing needed for innovation and transformation of production, as well as an integrated entrepreneurship programme covering the whole pre-investment and investment cycle.

Article 68.- Loans for opening up capital and investment.- Private firms which require financing in order to make new investment and which in turn wish to carry out a programme to open up their capital, in accordance with the provisions in this legislation, may be eligible for the flexible loan programmes to be implemented by the National Government for the accumulation of such processes, at preferential rates of interest and for the long term.

TITLE III - Equitable regional development

Article 69.- Regional prioritization.- Transformation of production shall seek to catalyse all regions in Ecuador; nonetheless, priority shall be given to public investment in developing production in economically depressed areas, taking into account factors such as: high unemployment rates, unsatisfied basic needs, *inter alia*; these shall be determined jointly with the

National Planning Secretariat, the Sectoral Council for Production and autonomous decentralized governments. These bodies shall evaluate and monitor compliance with this policy.

Article 70.- The National Planning Secretariat, the Sectoral Council for Production and autonomous decentralized governments may define policies to promote mechanisms to foster the endogenous economic development of the region, and integration into national and international markets.

BOOK IV - FOREIGN TRADE, ITS CONTROL BODIES AND ITS INSTRUMENTS

TITLE I - The institutional structure of foreign trade

Article 71.- Institutional structure.- The body responsible for approving Ecuador's government policies on trade shall consist of a public, intersectoral collegiate body in charge of regulating all foreign-trade related matters and procedures, to be entitled the Foreign Trade Committee (COMEX), which shall be composed of the following institutions or their representatives:

a. The Ministry in charge of foreign trade policy;
b. the Ministry in charge of agricultural policy;
c. the Ministry in charge of industrial policy;
d. the Ministry responsible for coordinating the development of production;
e. the Ministry responsible for coordinating economic policy;
f. the Ministry in charge of public finances;
g. the National Planning Agency;
h. the Ministry responsible for coordinating strategic sectors;
i. the Internal Revenue Service;
j. the national customs authority; and
k. other institutions determined by the President of the Republic by means of an executive decree.

Representatives, as a minimum, shall hold the rank of under-secretary.

The Committee shall operate according to the rules determined by the Executive's collegiate bodies and the following provisions:

1. COMEX shall be chaired by the Ministry designated by the President of the Republic, which shall also act as the Committee's Technical Secretariat; and
2. COMEX's Technical Secretariat shall have the technical competence to develop government policies and programmes on trade, and to monitor and evaluate them.

Article 72.- Functions.- The following shall be the functions and attributions of the body governing trade policy:

a. To formulate and approve general and sectoral policies and strategies for foreign trade, boost and promote exports, and designate the implementing bodies;
b. to issue prior opinions on the initiation of negotiations on international trade and economic integration agreements and treaties, as well as the negotiating guidelines and strategies. In connection with trade negotiations, the State may offer tariff or tax preferences for the entry of products of commercial interest, with special emphasis on environmentally responsible goods;
c. to create, modify or dismantle tariffs;
d. to review foreign-trade-related non-tariff rates other than customs duty;
e. to regulate, facilitate or restrict the export, import, movement and transit of goods that have not been inward cleared or are not Ecuadorian, in the cases provided in this Code and in international agreements duly ratified by the Ecuadorian State;
f. to issue the rules on registration, authorization, prior control documents, licences and import and export procedures, other than customs procedures, both general and sectoral, including the requirements to be fulfilled other than customs formalities;
g. to approve and publish the nomenclature for the classification and description of imports and exports;

h. to determine the parameters for international trade negotiations on origin;
i. to adopt the measures needed to streamline foreign trade and its efficient administration, other than customs procedures;
j. to adopt the rules and measures needed to prevent unfair international trade practices affecting domestic production, exports or, in general, Ecuador's trade interests;
k. to take cognizance of reports by the investigating authority and to adopt trade defence measures consonant with the national and international regulations in force against unfair international trade practices or an increase in imports which cause or threaten to cause injury to domestic production;
l. to approve import quotas or measures restricting foreign trade when the trade circumstances, the effect on local industry or the country's economic situation so require;
m. to settle disputes on competence that may arise among various public sector bodies in relation to foreign trade;
n. to promote programmes on financial assistance from the public bank for domestic producers, with flexible loans that facilitate implementation of appropriate environmental techniques for cleaner and more competitive production so as to promote the export of environmentally responsible goods;
o. to promote the creation of a scheme for environmental certification of agricultural and industrial products for the purpose of access to international markets, in coordination with the national environment authority;
p. to approve the trade policy rules required to boost trade in products that meet environmentally responsible standards;
q. to defer temporarily the application of general tariffs or those specific to an economic sector, as appropriate for domestic production or the State's economic needs;
r. to apply the common external tariffs in accordance with economic integration treaties;
s. to promote environmentally responsible exports and imports; and
t. other responsibilities determined in this Code.

Article 73.- Resolutions.- General and mandatory rules approved by the governing body for foreign trade shall be adopted through Resolutions to be published in the Official Journal. The form and effects of other acts approved by the Committee shall be governed by the implementing regulations and shall be subject to the provisions in this Code and in international agreements duly ratified by Ecuador.

Execution of the decisions adopted by the governing body for foreign trade, as well as their monitoring, shall be the responsibility of the competent Ministries and government agencies, in accordance with the functions and duties determined in the implementing regulations and in the resolutions issued by the agency concerned. COMEX's Technical Secretariat shall oversee compliance with its provisions.

Article. 74.- Coordination.- The Ministries and government institutions responsible for administering authorizations or procedures prior to import or export of goods, in relation to public or environmental health, animal or plant health, technical regulations and quality, the cultural heritage, control of narcotics and psychotropic substances and other trade-related measures, shall carry out these functions according to the policies and rules adopted by the governing body for foreign trade. These agencies may not apply trade-related administrative or technical measures that have not previously been coordinated with the governing body for foreign trade.

Article 75.- Investigating authority.- For the purposes of this Book, the investigating authority means the agency determined in the implementing regulations for this Code, which shall administer the investigative trade defence procedures in relation to foreign trade.

TITLE II - Tariff and non-tariff measures for regulating foreign trade
Chapter I - Foreign trade tariff measures

Article 76.- Form of expression.- Tariffs may be expressed in terms such as: percentages of the customs value of the goods (*ad valorem*), monetary terms per unit of measurement (specific) or a combination of both (mixed). Other forms agreed in international trade treaties duly ratified by Ecuador shall also be recognized.

Article 77.- Types of tariff.- Different technical types of tariff may be adopted, for example:

- Fixed tariffs, where a single tariff is determined for a subheading in the customs and foreign trade nomenclature; or
- tariff quotas, where a tariff level is determined for a certain quantity or value of imports or exports and another tariff for imports or exports which exceed this quantity or value.

Other methods provided in international trade treaties duly ratified by Ecuador shall also be recognized. National tariffs shall comply with the commitments adopted by Ecuador in the various international treaties duly ratified, without prejudice to the right to apply safeguard or trade defence measures when needed, to replace the tariffs determined.

Chapter II - Foreign trade non-tariff measures

Article 78.- Non-tariff measures.- The COMEX may determine regulatory non-tariff measures for the import or export of goods in the following cases:

a. Where necessary to guarantee the exercise of a fundamental right recognized in the Constitution of the Republic;
b. to comply with provisions in international treaties or agreements to which the Ecuadorian State is party;
c. to protect the life, health or safety of persons and national security;
d. to guarantee the preservation of the environment, biodiversity, and animal and plant health;
e. where measures need to be imposed in response to restrictions on Ecuador's exports, imposed unilaterally and unjustifiably by other countries, in accordance with the rules and procedures provided in the respective international trade agreements and the provisions determined by the governing body for foreign trade;
f. where measures need to be applied temporarily to remedy balance-of-payments imbalances;
g. to prevent unlawful traffic in narcotics and psychotropic substances; and
h. to ensure compliance with laws and regulations consistent with international commitments in areas such as customs controls, intellectual property rights, defence of consumers' rights, control of quality or the marketing of products destined for international trade, *inter alia.*

Article 79.- In addition to the cases provided, regulatory measures and non-tariff restrictions on exports may be determined in the following cases:

- To prevent shortages of food or other essential goods in Ecuador and to control prices for this type of product;
- to ensure supplies of raw materials for domestic producers in implementation of a government industrial development plan;
- to protect the country's non-renewable natural resources; to protect the national cultural, artistic, historical or archaeological heritage; and
- in other cases determined by the competent agency as necessary for Ecuador's trade and economic policies, as provided in duly ratified international agreements.

Article 80.- Fees.- The fees payable for permits, registration, authorizations, licences, analyses, inspections and other formalities required for the import and export of goods, or in connection with them, other than the ordinary customs procedures and services, shall be determined pro rata to the cost of the services actually provided, whether at the local or national level.

Accordingly, only the fees mentioned in the preceding paragraph shall be required, together with the formalities and requirements applicable to procedures for the import or export of goods as of their approval by the governing body for foreign trade, as set out in the relevant legal instrument published in the Official Journal. The formalities and requirements applicable to such procedures shall be those strictly necessary to achieve the objective sought.

Article 81.- Procedures.- Electronic procedures for the approval of applications, notifications and formalities concerning foreign trade and customs facilitation shall be recognized as valid.

The State shall promote the electronic system for interconnection of all foreign-trade-related public and private sector institutions in order to streamline and speed up operations for the import and export of goods, to be conducted by the national customs authority. The customs authority shall be responsible for implementing and developing this system.

Article 82.- Mechanisms.- The non-tariff measures provided in these regulations include non-tariff quotas, import licences, sanitary and phytosanitary measures, technical regulations, and any other mechanism recognized in international treaties duly ratified by Ecuador.

The requirements and procedures for applying these measures shall be determined in the implementing regulations for this Code.

Article 83.- Nomenclature.- In applying the tariff and non-tariff measures for the import and export of goods, and for foreign trade statistics, the nomenclature defined by the governing body for foreign trade shall be used, in accordance with the Convention on the Harmonized Commodity Description and Coding System (Harmonized System), and any other system recognized in international treaties duly ratified by Ecuador. The governing body for foreign trade may create additional or supplementary codes in order to apply specific trade measures for products that cannot be fully or partially classified in the existing nomenclatures.

Chapter III - Certificate of origin for goods

Article 84.- Rules of origin.- Rules of origin mean the technical parameters established for the purpose of determining the customs territory or region of origin of a product. The origin of goods may be national, if only one country is taken into account, or regional, if there is more than one country.

Goods may have to comply with rules of origin in order to benefit from tariff preferences, quotas, special customs regimes, or other specific trade measures which require that the origin of a product be determined.

Article 85.- Certificate or origin.- The government department designated in the implementing regulations for this Code shall be responsible for regulating and administering the certification of origin of domestic goods. Certification may be granted directly or through the public or private bodies empowered for this purpose; the competent authority may act ex officio or at the request of an Ecuadorian or foreign interested party in investigating doubts concerning the origin of a product exported from Ecuador.

The body empowered for this purpose shall also certify the origin of goods undergoing inward processing operations in a ZEDE which meet the requirements laid down for recognizing the origin of the processed product or in conformity with applicable international agreements, both for the purposes of export and for their entry into national customs territory.

Article 86.- Verification of origin.- The national customs authority shall be responsible for monitoring and verifying compliance with rules of origin for imports that are products of foreign origin, irrespective of the customs regime under which they are imported. For this purpose, it may make use of all the attributions given to it under the law and international agreements for the control of imported goods, including on-site inspection of production processes for goods imported into Ecuador.

Article 87.- Discrepancies regarding origin.- If there are doubts concerning the veracity of the certification or compliance with the rules of origin applicable, or if no certificate of origin is submitted, it contains mistakes or is incomplete, the Customs Administration may accept the deposit of security for the amount of the corresponding tariffs, duties and taxes for the import of goods of foreign origin, in accordance with the regulatory provisions applicable.

TITLE III - Trade defence measures
Chapter I

Article 88.- Trade defence.- The State shall promote transparency and efficiency in international markets and shall encourage equal conditions and opportunities. For these purposes

and in accordance with the provisions of this Code and of the relevant international instruments, it shall adopt appropriate trade measures to:

- Prevent or remedy any injury or threat of injury to domestic industry arising from unfair practices of dumping and subsidization;
- restrict or regulate any imports that increase significantly and are made under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products;
- respond to trade, administrative, monetary or financial measures adopted by a third country that affect the rights and trading interests of the State of Ecuador, provided that such measures may be deemed incompatible or unwarranted in the light of international agreements, or that they nullify or impair benefits accruing under an international trade agreement;
- restrict imports or exports of products on social or economic grounds so as to ensure local supply, domestic price stability or protection for domestic industry and domestic consumers; and
- offset any adverse effects on domestic production in accordance with the provisions of international agreements duly ratified by Ecuador.
- By means of international trade agreements, the application of these measures may be limited or other specific trade defence mechanisms established, based on the origin or provenance of the goods.

The trade defence measures that the governing body for trade policy may adopt include anti-dumping measures, countervailing duties, safeguard measures and any other mechanism recognized by international treaties duly ratified by Ecuador.

The requirements, procedures and mechanisms for the application and execution of the trade defence measures shall be governed by the provisions of the implementing regulations for this Code, including the retroactive application of measures determined upon completion of the formal investigation process set forth in the regulations; the type of products covered by the measures and the exceptions shall likewise be determined.

Article 89.- Duties.- Anti-dumping and countervailing duties and those arising from the application of safeguard measures shall be collected by the Customs Administration, together with the applicable foreign trade charges; however, as trade levies, they may not be treated as fiscal or tax charges. Accordingly, such measures shall not be bound by the general principles of tax law.

Anti-dumping and countervailing duties shall remain in force as long as and insofar as they are necessary to offset the injury to the domestic industry. Nevertheless, such duties shall be terminated within five years of their entry into force, in accordance with the terms laid down in the implementing regulations for this Code.

Safeguards shall be applied for up to four years and may be extended for a further period of up to four years where such extension is warranted, due regard being paid to implementation of the domestic industry's adjustment programme.

Economic levies applied as a result of these procedures may be lower than the margin of dumping or the amount of the subsidy established, provided that they suffice to discourage the importation of products under unfair international trade practices.

Where an investigation determines a need for retroactive payment of such levies, the customs authority shall decide on the procedure for the retroactive collection of the surcharges set in such cases, in accordance with the terms laid down in the implementing regulations.

Article 90.- Refunds.- The amount collected under provisional measures for anti-dumping duties, countervailing duties or provisional safeguards shall be refunded if, upon completion of the investigation, it is determined that the increase in imports has not caused or threatened to cause serious injury to a domestic industry.

Article 91.- Review.- Definitive anti-dumping duties, safeguards or countervailing duties may be reviewed and amended periodically at the request of a party or ex officio, at any time,

further to a report by the Investigating Authority, whether or not the duties in question are the subject of national or international administrative or judicial dispute proceedings.

In any case, the resolutions announcing the initiation and conclusion of the review shall be notified to known interested parties. The interested parties shall be entitled to participate in the review process.

Chapter II

Article 92.- Functions.- For the purpose of defending trade against trade measures applied by governments of third countries, the governing body for trade policy shall be responsible for:

a. Deciding on or, as appropriate, recommending such trade policy measures as are necessary to ensure observance of the rights of the State of Ecuador in accordance with international trade rules;
b. without prejudice to the powers of the Attorney-General of the State, deciding whether a foreign trade dispute is to be heard by a panel, court of arbitration, international court or any appellate body established in accordance with international treaties or agreements;
c. adopting appropriate measures compatible with international treaties and agreements, when a third country initiates internal or international proceedings regarding trade, financial, foreign exchange or administrative matters, the outcome of which may affect the production, exports or trading interests of Ecuador;
d. adopting such measures as are necessary to ensure implementation of the decisions taken by trade dispute settlement bodies established in accordance with this Code and relevant international agreements; and
e. the other functions assigned by this Code.

TITLE IV - Boosting and promoting exports

Article 93.- Export promotion.- The State shall promote export-oriented production and shall boost exports using the following general and directly applicable mechanisms, without prejudice to those included in other laws or government programmes:

- Access to tariff preference programmes or other types of benefits under trade agreements that are mutually advantageous for the signatories, meaning those at the regional, bilateral or multilateral level, concerning products or services which meet the origin requirements applicable or which are eligible for such benefits;
- the right to total or partial conditional refund of taxes paid on the import of inputs and raw materials incorporated into products for export, as determined in this Code;
- the right to be eligible for special customs regimes with suspended payment of tariff duties and import taxes, as well as tax-related surcharges, on goods for export, as determined in Book V of this Code;
- financial support or facilitation provided under general or sectoral programmes established in accordance with the national development programme;
- assistance in relation to information, training, external promotion, development of markets, formation of consortiums or unions of exporters and other action to promote exports, furthered by the national Government; and
- the right to be eligible for the incentives for investment in production provided in this Code and in other relevant regulations.

Article 94.- Insurance.- The public sector financial agency appointed by the Executive shall establish and administer an export credit insurance mechanism to cover the risk of non-payment of the amount due for goods or services sold abroad, respecting financial security parameters.

Article 95.- Non-financial export promotion- An Institute for the Promotion of Exports and Foreign Investment, under the Ministry governing foreign trade policy, is hereby created and shall be set up and operate in accordance with the Regulations.

BOOK V - SYSTEMIC COMPETITIVENESS AND CUSTOMS FACILITATION

TITLE I - Boosting and promoting strategic sectors key for the production infrastructure

Article 96.- Investment in strategic sectors.- The State may, exceptionally, delegate to private initiative and the mutually supportive people's economy investment in strategic sectors in the cases determined in the legislation for each sector and, subsidiarily, in this Code.

Without prejudice to the provisions in the relevant sectoral legislation, Ecuadorian and foreign investors implementing projects in the strategic sectors defined in the Constitution and in other applicable legal provisions may also be eligible for the provisions in this Chapter.

Article 97.- Authorization requirement.- An investment contract may not be deemed authorization to engage in activities in strategic sectors, for which other special authorizations defined in the sectoral legislation are required, for example, contracts, permits, authorizations, concessions, etc. The existence of an investment contract shall not imply a limitation on the State's exercise of checks and controls through the competent authorities.

Article 98.- Non-discriminatory treatment in the electricity sector.- New projects in the electricity sector by Ecuadorian private electricity-generating firms shall be given equal treatment, procedures and conditions guaranteeing and/or paying the purchase of energy as those applicable to international transactions in electricity, in accordance with the decisions of the Andean Community and the regulatory provisions issued by the governing body for the electricity sector in relation to payment guarantees, subject to a favourable report by the Ministry of Electricity and the Ministry of Finance in each case.

Article 99.- Streamlining of administrative formalities.- In accordance with the objective of the National Public Data Registration Scheme, State entities, institutions and agencies shall streamline their administrative formalities within their areas of competence,. In this connection, government entities, institutions and agencies shall set up computerized databases and may not require the submission of certified copies or photocopies of documents in their possession or of those to which they have legal and operational access.

Government entities, institutions and agencies shall endeavour to limit as far as possible the requirement to submit updated certified copies of public documents which they can obtain through legal or operational channels using the public sector's interconnected databases.

Art. 100.- Exceptions.- In exceptional cases duly decreed by the President of the Republic where necessary and appropriate in order to meet the public, collective or general interest, if the technical or economic capacity does not exist or if demand for the service cannot be met by government or public-private firms, the State or its institutions may delegate to private initiative or to the mutually supportive people's economy the management of strategic sectors and the supply of public electricity, highway, port or airport infrastructure, rail or other services.

The provisions in the Constitution shall be guaranteed and it shall be ensured that the prices and rates for the services are fair and that the State's institutional structure shall be responsible for their control and regulation.

Delegation may be in the form of a concession, association, strategic alliance or other contractual form allowed by the law, and, when designating the delegate, the public competition procedures determined in the regulations shall be followed, unless a State-owned enterprise that forms part of the international community is involved, in which case, authority may be delegated directly.

Article 101.- Efficient public services.- The State shall adopt special measures to support the generation of systemic competitiveness by lowering transaction costs through the elimination of unnecessary formalities, and shall promote a public culture of quality service. The use of computer systems, telematics and other electronic management media to obtain, validate and exchange information shall be encouraged; for this purpose, both Central Government and

decentralized autonomous governments shall establish special programmes to ensure permanent, flexible and efficient online services.

Article 102.- National value added.- The Ministry responsible for industrial policy, jointly with the governing body for government procurement, shall develop appropriate mechanisms to control the national added component in the purchase of goods and services for government procurement and investment in projects in strategic sectors.

TITLE II - Customs facilitation for trade
Chapter I - Fundamental rules

Article 103.- Scope.- This Title regulates the legal relations between the State and natural or legal persons directly or indirectly engaged in activities related to international goods traffic. For customs purposes, goods mean any tangible movable objects.

The rules in the Tax Code and other substantive or procedural legal rules shall apply to any aspects not explicitly covered in this Title.

Article 104.- Basic principles.- The following shall be the basic principles of these rules in addition to those laid down in the Constitution of the Republic:

- Foreign trade facilitation.- Customs procedures shall be rapid, streamlined, expeditious and electronic, securing the logistic chain so as to boost productivity and national competitiveness;
- customs controls: Specific controls using risk management techniques shall be applied to all foreign trade transactions, ensuring respect for the legal system and fiscal interest;
- cooperation and exchange of information.- The exchange of information and integration at the national and international levels shall be implemented both with government and private entities;
- good faith.- Good faith shall be assumed in all customs formalities or procedures;
- publicity.- All general provisions issued by the National Customs Service of Ecuador shall be public;
- application of good international practices.- Best international practices shall be applied in order to achieve international service quality standards.

Article 105.- Customs territory.- Customs territory is the national territory in which the provisions of this Code apply and includes the primary and secondary zones.

The customs border corresponds to the national border, with the exceptions provided in this Code.

Article 106.- Customs zones.- For the purpose of exercising the Customs Administration's functions, customs territory is divided into the following zones, each corresponding to one of the customs districts:

a. Primary.- composed of the internal area of ports and airports, customs zones and authorized premises at land borders; as well as other places to be determined by the Customs Administration, in which goods from abroad arriving in or leaving Ecuador are loaded, unloaded and moved; and
b. secondary.- comprises the remainder of Ecuador's territory, including territorial waters and air space.

Chapter II - Customs tax obligations

Article 107.- Customs tax obligations.- Customs tax obligations are the personal legal link between the State and persons engaged in international goods traffic, under which they are subject to customs authority, to payment of the applicable taxes upon verification of the event incurring the obligation, and to compliance with other formal obligations.

Article 108.- Foreign trade taxes.- The following are foreign trade taxes:

a. Tariffs;
b. taxes based on organic and ordinary laws whose chargeable events are related to the entry or exit of goods; and
c. fees for customs services.

The National Customs Service of Ecuador shall create or cancel fees for customs services, shall set their rates and regulate their payment by means of a resolution.

Tariff surcharges and other economic levies applied in connection with trade defence or other similar measures may not be considered as taxes in the terms laid down in this Code and are not therefore governed by tax law principles.

Article 109.- Event incurring a customs tax obligation.- The event incurring a customs tax obligation is the entry of foreign goods or the exit of goods from customs territory under the control of the competent customs authority.

Without prejudice to the foregoing, no customs tax obligation arises, even if goods are subject to customs control, when they move through national customs territory in the course of international customs transit covered by the regulations applicable to each case, or if they enter customs territory as part of an international goods traffic operation proceeding to foreign territory, including the trans-shipment regime. No customs tax obligation arises either if goods arrive unavoidably, even though they remain subject to customs control, unless the person having the right to dispose of the said goods declares his/her intention in the relevant customs declaration to bring them into national customs territory.

Article 110.- Taxable base.- The taxable base for tariffs is the customs value of the imported goods. The customs value of the goods shall be the value of their transaction plus transport and insurance costs, determined according to the provisions governing customs valuation. The cost of insurance shall form part of the customs value, but the insurance policy shall not constitute a mandatory supporting document required to be attached to the customs declaration.

If the taxable base for tariffs cannot be determined using the transaction value of the imported goods, it shall be determined using the secondary valuation methods provided in the rules governing the customs valuation of goods.

In calculating the taxable base, values expressed in foreign currency shall be converted into legal currency at the rate in effect on the date of submission of the customs declaration.

Article 111.- Application of the customs tax obligation.- The following are subject to the tax obligation: the obligee and the obligor:

- The State is the obligee of the customs tax obligation, through the National Customs Service of Ecuador;
- the person liable to pay the respective tax as a taxpayer or person responsible is the obligor.

A natural or legal person engaged in export or import shall be registered with the National Customs Service of Ecuador, in accordance with the provisions adopted by the Director-General for this purpose.

For imports, the taxpayer is the owner or consignee of the goods and, for exports, it is the consignor.

Article 112.- Regulations and taxes applicable.- The regulations applicable for the purpose of compliance with customs tax obligations are those in effect on the date of acceptance of the customs declaration. The taxes applicable, however, are those in effect on the date of submission of the customs declaration for consumption of the goods upon import, and for exports those in effect on the date the goods enter the primary customs zone.

Article 113.- Customs tax obligation requirement.- The customs tax obligation is payable:

a. Upon settlement and according to the equivalent import or export declaration, as of the day on which payment is authorized;
b. for the fees, as of the request for the service;
c. in other cases, as of the working day following notification of the additional settlement, adjustment of taxes or the corresponding administrative decision.

Article 114.- Expiry of the tax obligation.- The tax obligation expires upon:

- Payment;
- compensation;
- prescription;
- acceptance of express withdrawal;
- declaration of definitive abandonment of the goods;
- total loss or destruction of the goods; and
- administrative or judicial seizure of the goods.

Article 115.- Method of payment.- The method of payment of customs tax obligations shall be determined in the implementing regulations for this Code.

Article 116.- Time-limits for payment.- Foreign trade taxes shall be paid within the following time-limits:

a. For the settlement and equivalent declaration, within two working days following authorization of payment;
b. for fees, on the working day following the day on which the obligation became due; and
c. in other cases, within twenty working days of notification of the decision determining the customs tax or the corresponding administrative decision.

If the taxes are not paid within the time-limits prescribed, interest shall be payable, calculated as of the date on which the tax obligation became due.

For the import of capital goods, facilities may be granted for the payment of all foreign trade taxes, in accordance with the provisions in the Tax Code. Authorized self-assessment for payment, additional payments made as a result of valuation and adjustment of taxes shall be enforceable and shall suffice to seek payment through coercive procedures.

All foreign trade taxes and the interest thereon lawfully generated shall be included in the credit notes to be issued by the National Customs Service as a result of credit for the benefit of the obligee, in accordance with the provisions in the implementing regulations for this Code. Trade-related economic levies imposed on imports or exports as a result of trade defence measures adopted by the Central Government may also be refunded.

If the National Customs Service refunds amounts paid as foreign trade taxes determined in Article 108(b) of this Code, it shall regularly notify the authority administering the tax for its respective tax control

Article 117.- Payment.- Payment of any sums due to the National Customs Service of Ecuador shall be made through the institutions of the National Financial System. The Director-General of Customs may enter into special agreements with the aforementioned institutions for this purpose.

Article 118.- Coercive action.- The National Customs Service of Ecuador shall take coercive action to recover any sums owing to it. The rules in the Tax Code or the Code of Civil Procedure shall apply, depending on the type of obligation to be paid. In exercising such action, the settlement, additional payment, adjustment of taxes or the firm administrative decision imposing a sanction, whichever is applicable, shall be enforceable and shall suffice.

Article 119.- Compensation.- Either ex officio or at the request of a party, the taxes due by the obligee to the National Customs Service of Ecuador shall be reimbursed in full or in part by

means of tax credits recognized by any central tax authority provided that such credits are not found to be barred by the statute of limitations.

Article 120.- Prescription.- Action by the Customs Administration to collect tax obligations shall expire within five years as of the date on which the tax became due. For settlement and additional payment made as a result of valuation, the prescription shall end upon notification of the payment order under the coercive procedure. For subsequent control, the prescription shall end upon notification of the adjustment of the taxes or upon notification of initiation of the subsequent control procedure, prior to expiry of the relevant time-limit for prescription.

The right to make a claim for undue payment or over-payment shall expire five years as of the date on which payment was made; this prescription shall end upon submission of the relevant claim.

Prescription in customs matters shall be claimed specifically by the person seeking to benefit from it and shall be declared by the administrative or judicial authority, which may not declare it ex officio.

Article 121.- Express abandonment.- Express abandonment is the written renunciation of ownership of the goods to the benefit of the State by the person legally entitled to do so. Its acceptance on the part of the official in charge of the District Directorate of Customs extinguishes the customs tax obligation.

Express abandonment is not admissible if there is any well-founded presumption of an offence or tacit abandonment.

Perishable goods likely to decompose whose express abandonment has been accepted shall be donated to the State secretariat in charge of social policy.

Article 122.- Loss or total destruction of the goods.- The customs tax obligation shall be extinguished as a result of the loss or total destruction of the goods prior to their arrival, during their temporary storage or storage in industrial facilities authorized to operate normally under the temporary admission for inward processing regime, provided that it is fortuitous or a case of force majeure accepted by the Customs Administration.

Without prejudice to the provision in the preceding paragraph, for the purpose of applying foreign trade taxes, removal, theft or robbery of the goods within national territory does not constitute a cause of extinction.

Article 123.- Administrative confiscation.- Administrative confiscation means the loss of ownership of goods as a result of a declaration by the official in charge of the competent District Directorate of Customs in the form of a firm or enforceable decision taken in the following cases:

a. Goods abandoned, including in the primary zone, if the owner, consignee or consignor is unknown;
b. goods left behind in Ecuador;
c. goods that have been the subject of theft or robbery in customs areas or on board means of transport whose owner, consignee or consignor is unknown after they have been recovered; and
d. goods whose reloading has been ordered but has not been executed within the period allowed for this purpose, in which case the obligation to pay customs service fees is not extinguished.

Article 124.- Administrative claims and appeals.- Any person may submit an administrative claim against an administrative decision taken by the Director-General or the District Directors of the National Customs Service of Ecuador that directly affects their rights, within a period of twenty days as of the date on which the decision was notified.

Claims shall be substantiated and decided in accordance with the procedure established in the Tax Code within a period of sixty days as of the date on which the complainant submits the claim.

The District Director of Customs is the competent authority for considering and deciding on administrative claims

Complainants may lodge an appeal for review with the Director-General against decisions taken by the District Directors of Customs, in accordance with the rules in the Tax Code.

Chapter III - Exemptions

Article 125.- Exemptions.- Imports of the following goods for consumption are exempt from payment of any foreign trade taxes, with the exception of fees for customs services:

a. Travellers' personal effects;
b. household effects and work equipment;
c. relief shipments for natural or other disasters for the benefit of public sector bodies or private charitable or relief organizations;
d. goods imported by the State, public sector institutions, firms or organizations, including decentralized autonomous governments, companies whose capital is 50% owned by a public institution, the Guayaquil Charity Board and the Association to Combat Cancer (SOLCA). Imports by private-public companies shall be exempt for the percentage corresponding to the public sector's holding;
e. donations from abroad to non-profit-making public or private sector institutions intended to provide health, food, technical assistance, welfare, medical assistance, educational, scientific research or cultural services, provided that they have entered into cooperation agreements with public sector institutions. Donations of vehicles shall not be exempt from taxes unless these are needed for special purposes such as ambulances, clinical or X-ray vehicles, library vans, fire engines and similar vehicles, and provided that their function is consistent with the activity of the beneficiary institution;
f. caskets or urns containing human bodies or remains;
g. samples of no commercial value within the limits and conditions determined by the National Customs Service of Ecuador;
h. goods covered by the Law on Diplomatic Immunity, Privileges and Exonerations, including diplomatic and consular offices and missions, international organizations and other foreign governmental organizations accredited to the Ecuadorian Government;
i. medical equipment, technical support, special tools, raw materials for braces and prostheses for disabled persons for their own use or that of the persons legally responsible for their care. Vehicles for the same purposes, within the limits determined in the Law on Disabilities.
j. postal packages, within the limits determined in the implementing regulations for this Code and in the international laws and agreements to which Ecuador is party;
k. human biological fluids, tissues and organs for medical procedures to be carried out in accordance with the relevant legislation;
l. items and articles that are part of the State's cultural heritage and are imported or repatriated by State institutions legally set up for the purpose; and
m. waste of goods covered by special regimes and destroyed in accordance with the regulations of the National Customs Service of Ecuador.

The exemptions provided in this Article shall be granted by the official in charge of the District Directorate of Customs, with the exception of subparagraphs (a), (b), (c), (d), (f), (g), (j), (k) and (l), for which an administrative decision shall not be required, and they shall be governed by the implementing regulations for this Code.

Article 126.- Reimportation and return of goods.- Total or partial return abroad of goods imported for consumption is not subject to payment of taxes, except for service fees, in accordance with the terms laid down in the regulations. Reimportation of goods in the same state under the corresponding customs regime provided in this Code is exempt from payment of taxes, except for service fees.

If any taxes have been refunded to the exporter for goods reimported into Ecuador, for example, in the case of drawback, it shall first be verified that the full amount has been repaid to the National Customs Service, in accordance with the procedure and the time-limit laid down in the implementing regulations for this Code. If necessary, these sums may be recovered by means of coercive action.

Article 127.- Domain transfer.- Goods imported with full or partial exemption from taxes may be the subject of domain transfer subject to authorization by the competent District Director of the National Customs Service of Ecuador in the following cases:

- No taxes are payable after five years have elapsed from the date on which the benefit was granted;
- before five years have elapsed subject to payment of monthly instalments, taking into account the remaining time of the five-year period;
- no taxes are payable if the domain transfer is made for the benefit of organizations, entities or persons that enjoy the same benefit.
- Domain transfer of goods that are exempt under special legislation shall be subject to the time-limit and conditions established in that legislation.

Chapter IV - Customs operations

Article 128.- Customs operations.- Customs operations and other related operations shall be determined and governed by the implementing regulations for this Code and other rules issued by the National Customs Service of Ecuador.

Article 129.- Crossing the customs border.- Persons, goods or means of transport may only enter or leave national territory through the places, on the days and at the time authorized by the Director-General of the National Customs Service of Ecuador.

Any type or mode of transport entering customs territory shall be subject to control by the National Customs Service of Ecuador.

Article 130.- Arrival of the means of transport.- The competent authority shall receive any type or mode of transport in the primary zone of the district where it arrives and shall be presented with the documentation indicated in the procedures and manuals established by the Director-General for this purpose, in the hard copy or electronic format prescribed by the administration.

Article 131.- Loading and unloading.- Goods arriving from abroad by any means shall be expressly described in the cargo manifest.

Because of their quantity, volume or nature, where necessary, the official in charge of the District Directorate of Customs may authorize goods to be unloaded outside the areas usually approved for this purpose.

Goods for export shall be subject to the authority of the Customs Administration until the competent naval, air or land authority authorizes exit of the means of transport.

Article 132.- Loading units.- Loading units arriving in Ecuador in connection with international trade transactions shall be subject to the control and authority of the Customs, but shall not be considered goods as such. The entry or exit of such units shall not give rise to customs tax obligations.

Loading units to be used for other purposes shall be declared under a customs regime and, if they are to remain indefinitely in Ecuador, they shall be imported; the supporting documents and formalities to be completed shall be determined by the National Customs Service of Ecuador.

Article 133.- Date of arrival.- For customs purposes, the date of arrival of goods is the date on which the means of transport arrives at the first customs check point in Ecuador.

Article 134.- Temporary storage.- Unloaded goods shall be delivered by the carrier to temporary warehouses in the cases determined by the National Customs Service of Ecuador or to the corresponding port or airport operator.

It is the responsibility of the National Customs Service of Ecuador to authorize the operation of warehouses for the temporary storage of goods, in accordance with the requirements of foreign trade.

Article 135.- Liability during storage of goods.- The following liabilities apply during the storage of goods, without prejudice to any civil or criminal liability that may apply:

a. Persons authorized to operate warehouses for temporary storage and in-bond warehouses shall be liable for the following:

    1. compensation to the owner or consignee of the goods for any damage caused by destruction or loss of their goods;
    2. payment of the taxes due to the State. These include the taxes that would have been applicable to goods that suffered any damage or were stolen in the course of their transfer from the port, airport or border of arrival to the warehouse;

b. the owner, consignee or consignor of the goods is liable for compensation for any damage or prejudice caused in warehouses because of the nature or risk of their goods if this circumstance has not been declared in the bill of lading or the owners or companies authorized to operate temporary storage and in-bond warehouses have not been informed accordingly.

Article 136.- Rights of the owner, consignee or consignor.- Before submitting the declaration, subject to authorization by the official in charge of the District Directorate of Customs and under his/her control, the owner or consignee or his/her agent may inspect their goods in order to verify that they correspond to the documentary information received and to ensure their proper conservation.

Article 137.- Transfer.- Transfer means the customs operation by which goods under the control of the National Customs Service of Ecuador are transferred from one point to another within customs territory.

Chapter V - Customs declarations

Article 138.- Customs declarations.- Customs declarations shall be submitted in accordance with the procedures determined by the Director-General.

The National Customs Service of Ecuador may authorize direct customs clearance of goods in the cases indicated in the implementing regulations for this Code, subject to compliance with the requirements established therein and in conformity with the provisions issued by the Director-General of the National Customs Service of Ecuador. In such cases, the customs declaration may be submitted after the goods have been released in the form determined by the National Customs Service of Ecuador.

Goods classified as war materials and exclusively imported or exported by the Armed Forces and the National Police Force are exempt from submission of a customs declaration.

The National Customs Service of Ecuador may establish, regulate and withdraw simplified customs declarations when the trade situation so requires, lessening or modifying the formalities in order to streamline them.

Article 139.- Clearance and clearance methods.- Clearance is the administrative procedure to which goods entering or leaving Ecuador shall be subject, the procedure commencing with the submission of the DAU and ending with release of the goods.

The methods and formalities for clearance shall be determined in the implementing regulations for this Code.

The National Customs Service of Ecuador's risk profiles system shall determine the clearance method applicable to each declaration in accordance with the provisions issued by the Director-General for its application, based on international standards.

The declaration and clearance of goods transported under the special express courier regime shall be governed by the regulations determined by the National Customs Service of Ecuador for this purpose.

Article 140.- Valuation.- Valuation is the act by which the Customs Administration determines the tax and involves electronic checking, physical or documentary inspection regarding the origin, nature, quantity, value, weight and tariff classification of the goods.

Article 141.- Tariff classification issues.- Any person may consult the Director-General of the National Customs Service of Ecuador with regard to the tariff classification of the goods, fulfilling the requirements indicated in the Tax Code and in the implementing regulations for this Code. The Director-General's decision with respect to the issue shall be binding on the administration and on the petitioner and shall be published in the Official Journal.

Article 142.- Tacit abandonment.- Tacit abandonment shall automatically apply in any of the following cases:

- Failure to submit or forward the customs declaration within the period prescribed in the implementing regulations for this Code;
- failure to pay the foreign trade taxes within twenty days of the due date, unless payment facilities have been granted; and
- the time-limit for storage in an in-bond warehouse has expired.

If one of these cases applies, the obligee or his/her customs broker may remedy the shortcomings within twenty-five working days, in which case the tacit abandonment shall no longer apply and no administrative decision is needed, with a fine being imposed on the obligee for a breach of the regulations.

Article 143.- Definitive abandonment.- The official in charge of the District Director of Customs shall declare the definitive abandonment of goods in any of the following cases:

- The causes of tacit abandonment have not been remedied within the twenty-five working days indicated in the preceding Article;
- the declarant or his/her representative have not been present on the second date set by the Customs Administration for the physical inspection; and
- the personal effects of travellers or taxable goods held in the international arrivals hall have not been collected within five days after arrival in Ecuador.

In the declaration of definitive abandonment, the official in charge of the District Directorate of Customs shall make provision for the holding of a public auction, the award or destruction of the goods, in accordance with the rules determined in the implementing regulations for this Code and other administrative provisions taken for this purpose.

Chapter VI - Customs control

Article 144.- Customs control.- Customs controls shall apply to the entry, the stay, transfer, movement, storage or exit of goods, loading units and means of transport up to and from national territory, including goods which enter or leave ZEDEs for any reason.

Customs control shall also apply to persons engaged in foreign trade transactions and those entering and leaving customs territory.

Customs control shall be exercised at the following stages in accordance with international regulations: post-entry control, concurrent and post-clearance control.

For these purposes, the National Customs Service of Ecuador may request information from other government sector institutions and government-owned enterprises concerning persons

involved in international goods traffic. No reservations or plea of secrecy may be made regarding information requested by the National Customs Service of Ecuador.

When requested by one of the two institutions, post-entry control may be undertaken through coordinated action by the National Customs Service of Ecuador and the Internal Revenue Service.

If concurrent control reveals errors in a customs declaration already accepted that benefit the obligor, additional settlement shall be made. Additional settlement may be made up until the taxes are paid, otherwise post-clearance control shall apply. In the same circumstances and provided that there is no well-founded presumption of an offence, corrections may be made to the customs declaration and the supporting documents, except in those cases determined by the relevant customs regulations.

Whenever corrections are made to a customs declaration, the National Customs Service of Ecuador shall keep a record of the information originally forwarded or submitted, all the changes made and the government officials involved in the procedure.

Article 145.- Post-clearance control.- Within five years of the date of payment of foreign trade taxes, the National Customs Service of Ecuador may make customs declarations subject to checking, together with any information in the possession of any natural or legal person connected with the imported goods. Risk management methods shall be used to determine the customs declarations to be subject to post-clearance control.

If it is found that the declaration contains errors that benefit the obligor, the necessary corrections shall be made without prejudice to any other lawful action required, definitive adjustment of the taxes shall be enforceable and suffice for taking coercive action.

The obligee may submit a substitute declaration with a view to correcting the errors made in good faith in the customs declaration if higher amounts are involved or even if the amount payable does not change, within five years as of the acceptance of the declaration, provided that the administration has not issued a tax adjustment for the same reason and the post-clearance control procedure has not been formally initiated. The substitute declaration shall be endorsed and accepted in the same way as the customs declaration.

If deemed necessary, the National Customs Service of Ecuador may conduct an audit of special regimes within five years as of the date of the customs declaration and may undertake any verifications, either of documents or accounts or physical inspection.

The National Customs Service of Ecuador may also, through its operational units, investigate any claims of customs violations and carry out the checks it deems necessary within customs territory and within its scope in order to ensure compliance with this Code and its implementing regulations, adopting the precautionary measures and supervisory action required.

The operational unit of the National Customs Service of Ecuador responsible for post-clearance control may seize goods and items that may constitute proof or evidence that a customs violation has been committed and immediately make them available to the official in charge of the competent District Directorate of Customs.

Article 146.- Risk profiling.- Risk profiling consists of a predetermined combination of risk indicators based on information that has been collected, analysed and prioritized.

Note: Includes an Erratum published in Official Journal No. 374 of 31 January 2011.

Chapter VII - Customs regimes
Section I - Import regimes

Article 147.- Import for consumption.- The customs regime under which goods imported from abroad or from a ZEDE may move freely within customs territory with the objective of remaining there definitively, after payment of import duties and taxes, surcharges and penalties, where applicable, and compliance with customs formalities and requirements.

Article 148.- Temporary admission for re-export in the same state.- The customs regime that allows certain imported goods to enter customs territory in order be used for a specific purpose, with total or partial suspension of payment of import duties, taxes and surcharges, and then re-exported within a specified time-limit without undergoing any modification, except normal depreciation caused by wear and tear, as provided in the regulations.

Article. 149.- Temporary admission for inward processing - The customs regime that allows goods intended for export after having been processed to enter Ecuadorian customs territory with suspension of payment of the import duties, taxes and surcharges applicable, in the form of compensating products.

Industrial facilities which normally operate under this regime covered by a general guarantee may receive authorization if they meet the requirements provided in the implementing regulations for this Code.

Compensating products obtained by applying this regime may be the subject of a change in regime to the import for consumption regime, paying taxes on the imported component of the said compensating product.

Article 150.- Replacement of goods duty free.- The customs regime that allows goods that are identical or similar to those in free circulation because of their type, quality and technical characteristics and which have been used to obtain the goods previously definitively exported, to be imported free of import duties, taxes and surcharges, except for the fees applicable.

Article 151.- In-bond processing,- The customs regime that allows goods to enter customs territory, with suspension of payment of import duties and taxes and surcharges applicable, for the purpose of undergoing operations that modify their type or state with a view to subsequent import for consumption of the resulting products, applying the import duties, taxes and surcharges due according to the tariff category of the finished product.

Article 152.- Customs warehouse.- The customs regime under which imported goods are stored for a specified period under the control of the customs in a place approved and recognized for this purpose, without payment of the duties, taxes and surcharges applicable.

Article 153.- Reimport in the same state.- The customs regime that allows goods exported to be imported for consumption with exemption from import duties, taxes and the surcharges applicable, provided that they have not undergone any transformation, processing or repair abroad and that all amounts due for refunds or drawback, conditional exemption from duties and taxes or any other subsidies or amounts granted at the time of export, have been paid.

Section II - Export regimes

Article 154.- Definitive export.- The customs regime that allows the definitive exit of goods in free circulation outside Community customs territory or a ZEDE situated within Ecuadorian customs territory, subject to the provisions of this Code and the other regulations applicable.

Article 155.- Temporary export for re-import in the same state.-The customs regime that allows the temporary exit of goods in free circulation from customs territory for a specified purpose and period during which they are re-imported without having undergone any change, except for normal deterioration caused by wear and tear.

Article 156.- Temporary export for outward processing.- The customs regime under which goods in free circulation in the customs territory may be exported temporarily outside the customs territory or a ZEDE situated therein for the purpose of transformation, processing or repair and then re-imported as compensating products with exemption from the corresponding taxes according to the provisions in the implementing regulations for this Code.

Section III - Other customs regimes

Article 157.- Conditional drawback.- The regime under which foreign trade taxes paid on imports of goods that are exported within the time-limits and in the percentages indicated in the

implementing regulations for this Code are automatically refunded, in full or in part, in the following cases:

- Goods used in processing in the country;
- goods incorporated into other goods; and
- packages and containers.

The National Customs Service of Ecuador shall be wholly responsible for the conditional drawback procedure. Consequently, the customs authority shall refund all the corresponding foreign trade taxes and subsequently cross-reference these amounts with the other authorities entitled to the taxes refunded, which shall belong to the interconnected foreign trade electronic single window system.

The National Customs Service of Ecuador, through its electronic system, shall make the corresponding refund, without prejudice to the taxpayer's right to lodge an administrative complaint against the action taken if it considers it has been affected thereby.

Article 158.- Duty-free stores.- The duty-relief regime that allows Ecuadorian or foreign goods to be stored and sold to travellers leaving Ecuador or entering from abroad at international ports or airports, without payment of foreign trade taxes.

Article 159.- Special warehouses.- In accordance with the relevant international regulations, special warehouses may be authorized for the purpose of supplying, repairing and maintaining ships, aircraft and loading units intended for the supply of public passenger and freight transport services, and spare parts for their repair, preparation or adaptation may also enter free of foreign trade taxes.

The Director-General shall be responsible for determining streamlined formalities for implementing this provision.

Article 160.- International fairs.- The special customs regime which authorizes the entry of permitted imports with suspension of payment of taxes for a specified period to be used in exhibitions on previously authorized sites, and goods imported for consumption for the purposes of tasting, promotion or decoration, without payment of foreign trade taxes, subject to compliance with the requirements and formalities indicated in the regulations.

Article 161.- Customs transit.- The customs regime under which goods are transported abroad from a district office under customs control.

Article 162.- Return shipment.- The customs regime under which goods declared being stored in a temporary deposit while awaiting attribution of a regime or customs destination may be shipped back from customs territory.

Even when goods have been declared under a customs regime, they shall be shipped back if the customs control determines a change in tariff classification that requires prior control documents or others that were not required for the declaration originally made by the importer, and this prevents the legal importation of the goods.

Return shipment shall not be authorized when there is a well-founded presumption of an offence in relation to the goods.

Return shipment shall be mandatory for goods whose import is banned, except clothing, perishable goods and educational materials, which shall be donated to the State Secretariat responsible for social policies. This regime shall be applied by means of streamlined procedures in accordance with the implementing regulations for this Code.

Article 163.- Trans-shipment.- The customs regime under which goods are transferred from the means of transport utilized for their arrival in customs territory and loaded on to the means used for leaving customs territory, the transfer taking place under customs control. This regime shall be implemented by means of streamlined procedures in accordance with the implementing regulations for this Code.

Section IV - Exemption regimes

Article 164.- Postal traffic.- Postal dispatches or packages imported or exported for consumption whose customs value does not exceed the limits set in the regulations shall be cleared using streamlined formalities that comply with the relevant international agreements, according to the procedures determined by the National Customs Service. Dispatches or packages which exceed the limits set shall be subject to general customs rules.

Article 165.- Express or courier services.- Correspondence, documents and goods that meet the requirements in the regulations issued by the Director-General of the National Customs Service and which do not exceed the limits set therein, carried by so-called express services, shall be cleared by customs using streamlined formalities according to the regulations determined by the National Customs Service. Dispatches or packages which exceed the limits set shall be subject to general customs rules

Article 166.- Border traffic.- In accordance with international treaties and agreements, the exchange of goods intended for domestic use or consumption by the population along the border shall be exempt from formalities and payment of foreign trade taxes, within the geographical limits determined by the National Customs Service.

Article 167.- Tourism vehicles for private use.- The regime under which the entry of a tourism vehicle for private use is permitted without payment of taxes within the time-limits and under the conditions determined in the implementing regulations for this Code.

Article 168.- Other exemption regimes.- Travellers' luggage, household effects and supplies for ships and aircraft shall be subject to streamlined procedures in accordance with the implementing regulations for this Code and the relevant regulations issued by the National Secretary of the National Customs Service.

Section V - Common rules

Article 169.- Change of regime.- Goods declared under a regime that suspends or exempts them from foreign trade taxes may be declared under any other regime before expiry of the time-limit allowed. Subject to compliance with the legal and regulatory requirements, a change of regime shall be authorized by the competent public official. Change to any other regime is not allowed for goods declared for consumption.

Article 170.- Payment of taxes.- For changes to the import for consumption regime, foreign trade taxes shall be paid on the customs value of the goods, applying the rates and the exchange rate in effect on the date of acceptance of the declaration for consumption.

Article 171.- Payment of service fees.- None of the special regimes exempts from, compensates or suspends payment of service fees and does not permit their refund.

Article 172.- Transfer to third parties.- Goods subject to the temporary admission for inward processing regime may be the subject of a domain transfer in favour of third parties, subject to prior authorization by the Customs Administration, in accordance with the implementing regulations for this Code and the provisions adopted for this purpose by the Customs Administration. The transfer of this type of goods to third parties for the purpose of export shall also be governed by the same procedure.

Chapter VIII - Customs guarantees

Article 173.- Right of pledge.- The National Customs Service of Ecuador has a special and preferential right of pledge over goods subject to customs authority in order to ensure compliance with customs tax obligations. This right takes precedence over any other legally or conventionally established right.

Article 174.- Types of guarantee.- Customs guarantees are general or specific and shall be granted, approved and applied in the form, within the time-limits and for the amounts determined in the implementing regulations for this Code.

General guarantees secure all activities by a person engaged in international goods traffic or in carrying out customs operations.

Specific guarantees secure a particular customs or foreign trade operation.

Customs guarantees shall be irrevocable, applied in full or part, unconditional and payable immediately, and shall constitute sufficient assurance for their immediate application solely upon presentation for payment, in accordance with the provisions in the law.

TITLE III - Penalties for customs violations
Chapter I - General rules

Article 175.- Customs violations.- Offences, minor offences and breaches of regulations determined in this Code shall constitute customs violations.

The existence of fraud is required in order to determine that an offence has been committed, whereas failure to comply with a rule suffices for punishment of minor offences or breaches of regulations.

If goods not fit for human consumption are imported or exported, the District Director of Customs shall order their immediate destruction, informing the Director of the National Customs Service of Ecuador accordingly, the cost to be met by the owner, consignee or declarant.

Article 176.- Preventive measures.- If it is presumed that a customs offence may have been committed, the National Customs Service of Ecuador may take preventive and temporary measures for the provisional arrestment or retention of the goods in order to ensure compliance with customs formalities and obligations. For this purpose, the National Customs Service of Ecuador shall have the same powers as the National Police Force in respect of objects and instruments relating to the offence as regards the chain of custody.

Arrestment is the act by which the official in charge of the District Directorate of Customs decides that the goods should remain in the primary zone or other specific place, under the custody and responsibility of the legal representative of the temporary warehouse or the person designated by the customs authority, respectively, and may decide that they should be inspected. Arrestment may not last more than three working days, after which the respective procedure shall continue.

Provisional retention of the goods consists of taking compulsory possession of the goods in the secondary zone and transferring them to an in-bond warehouse or other place designated by the customs authority for this purpose while the legal situation of the goods is determined. The goods may not be retained for more than three working days, after which the respective procedure shall continue.

At any time, and provided that there is no risk to the shipment or any well-founded presumption of the carrier's involvement in the violation being investigated, the official in charge of the District Directorate of Customs may decide that the goods should be taken out of the loading units containing them so that the latter may be returned to the carrier or their owner.

The Director-General shall regulate the procedure for applying these measures.

Chapter II - Customs offences

Article 177.- Smuggling.- Any person who, in order to evade customs control and monitoring of goods of a value exceeding ten unified basic wages for workers in general, carries out any of the following acts shall be liable to a term of imprisonment of two to five years, a fine of up to three times the customs value of the goods that are the subject of the offence and definitive seizure of the goods:

a. Unlawfully takes goods out of or into customs territory;

b. moves foreign goods within the secondary zone without a document proving their legal ownership, provided that the lawful origin of the goods cannot be proved within 72 hours after discovery of the fact, unless there is evidence to the contrary;
c. loads or unloads undeclared goods from a means of transport without any authorization, provided that this is done in the absence of control by the competent authorities;
d. brings goods from a ZEDE or subject to a special regime into national customs territory without complying with the requirements laid down in this Code and its implementing regulations;
e. disembarks or unloads foreign goods, moves them by land, sea or any other means of transport before undergoing customs control, unless their arrival is fortuitous; or
f. hides foreign goods on ships, aircraft, transport vehicles or loading units in any way without undergoing control by the customs authorities.

Article 178.- Customs fraud.- Any person who impedes the Customs Administration in collecting taxes on goods whose quantity exceeds one hundred and fifty unified basic wages for workers in general by carrying out any of the following acts shall be punishable by a term of imprisonment of two to five years and a fine of up to ten times the amount of the taxes it is sought to evade, provided that the goods are subject to foreign trade taxes:

a. Imports or exports goods with false or adulterated documents in order to alter their value, quality, quantity, weight, type, age, origin or other features such as trademarks, codes, series, models; in such cases the initiation of criminal proceedings shall not depend on preliminary questions to be decided upon by civil courts;
b. simulates a foreign trade transaction in order to obtain an incentive or economic benefit in full or in part, or any other type of benefit;
c. fails to declare the exact quantity of the goods;
d. hides goods subject to declaration among other declared goods;
e. improperly obtains exemption or reduction of foreign trade taxes for goods which, according to the law, do not comply with the requirements for such benefits;
f. sells, transfers or improperly uses goods imported under special regimes, or with total or partial exemption, without proper authorization; or
g. damages or removes seals, padlocks or other security devices placed on the means of transport, loading units, sites or premises authorized as temporary deposits, provided that all or some of the goods are declared missing.

Article 179.- Attempted offences.- The mere fact of attempting to commit a customs offence shall be punishable by one half of the penalty fixed, provided that it is in the process of being carried out.

Article 180.- Administrative penalties and repeated offences.- If the value of the goods does not exceed the amounts defined for the offence of smuggling or fraud, the violation shall not constitute an offence and shall be subject to an administrative penalty as a minor offence, with the maximum fine provided in this Code for an offence.

Notwithstanding the above, any person who has received an administrative penalty more than once over a two-year period and the total amount of the goods concerned exceeds half of the amount specified as constituting the offence of smuggling or fraud provided in Articles 177 and 178 of this Code shall be subject to an investigation and proceedings for the corresponding offence. .

Article 181.- Responsibility of administrators, directors and representatives.- Persons acting as administrators, directors or representatives of a legal person who commit customs fraud are personally responsible, as perpetrator of the fraud, even if the customs fraud is for the benefit of the legal person they represent.

Persons who exercise control over a legal person and provide their services as employees or workers shall be responsible as perpetrators if they unlawfully commit customs fraud for the benefit of the legal person, even if they have acted without a mandate.

If the customs fraud committed is directly related to the functioning and control of legal persons, the competent Criminal Guarantees Tribunal may at any time take a decision and

automatically dissolve the legal person, for which purpose it shall forward to the Supervisory Authority for Companies a certified copy of all the proceedings showing the sentence pronounced so that the order may be carried out.

Article 182.- Concealment from the customs.- The acquisition of foreign goods against payment or free-of-charge or as a pledge, their possession or storage in order to conceal or sell them or for any other purpose without proof that they have been legally imported into or acquired in Ecuador within 72 hours following the competent customs authority's request shall be punishable by a fine of two times the customs value of the goods.

Article 183.- Ancillary measures.- If a customs offence has been committed, without prejudice to payment of the taxes, duties and levies and application of the penalties provided, the judge shall order the confiscation of the goods that are the subject of the offence and the objects used to commit it, including the means of transport, provided that they are the property of the perpetrator of the violation or his/her accomplice. If the means of transport is not owned by the perpetrator or accomplice, prior to its return, a fine corresponding to 20% of the customs value of the goods shall be imposed on its owner.

Article 184.- Aggravated offence.- If one or more of the following situations apply when any offence specified in this Code has been detected, it shall be punishable by the maximum term of imprisonment provided in the preceding Articles, and the maximum fine applicable to the offence of customs fraud, as well as the other penalties provided for the offence in question:

a. If a government official or civil servant is involved in the offence and abuses his/her position in the course of exercising his/her functions;
b. if a sworn customs agent or authorized economic operator is involved in the offence and abuses his/her position in the course of exercising his/her functions;
c. if discovery of the offence is prevented, rendered difficult or seizure, provisional retention, arrestment or confiscation of the goods that are the subject of the offence is obstructed by using violence, intimidation or force;
d. if non-existent natural or legal persons appear as the recipients or suppliers or false domiciles are declared on the documents and procedures referring to the customs regimes;
e. if persons who are minors or have no legal responsibility are used:
f. if the taxes generated on the goods exceed three hundred (300) times the unified basic wage; or
g. if the goods that are the subject of the offence have been counterfeited or given a place of manufacture other than the real one in order to benefit from tariff preferences or benefits in respect of origin.

In the case of subparagraph (a), the penalty shall include a permanent ban on exercising public office; and in the case of subparagraph (b), it shall also be punishable by definitive annulment of the licence or authorization and a ban on acting as a customs broker or becoming an authorized economic operator again, either in person or through another natural or legal person.

Article 185.- Proceedings.- Criminal proceedings against customs offences are public and shall take place in accordance with the provisions of the Code of Criminal Procedure. For customs offences, the National Customs Service of Ecuador shall have the rights and powers given to private prosecutors by the Code of Criminal Procedure, which shall be exercised through the competent official in the jurisdiction concerned, who shall participate in the criminal proceedings both at the intermediate stage and when a sentence is pronounced.

Article 186.- Substantive precautionary measures.- Following initiation of the investigation stage, the criminal court judge may order substantive precautionary measures against the property assets of the accused and of the legal person who allegedly benefited from the customs offence.

Article 187.- Ban on returning the goods investigated.- At no stage of the preliminary or criminal proceedings may return of the goods that are the subject of the offence or of the instruments used to commit it be ordered, including the means of transport, unless there is a legal

decision ending the investigation or the criminal proceedings, with the sole exception provided in the Article concerning ancillary measures in this Chapter.

For customs offences, as of the investigation stage, any public sector body, including the National Customs Service of Ecuador itself, may request the judge or court hearing the case to award it the goods indicated in the preceding paragraph where this is necessary for compliance with its institutional purposes. The value of the goods shall be that declared or, where this rule does not apply to the goods, it shall be determined by the National Customs Service of Ecuador.

Before signing the document awarding the goods, the requesting entity or, where applicable, the Ministry of Finance, shall certify that the value of the goods is recorded in the corresponding budget of the institution receiving them, and the respective budget line shall be maintained throughout the duration of the criminal proceedings.

If an enforceable decision determines that no customs offence has been committed by the accused, the court shall order the transfer of the corresponding proceeds to the owners of the good sold off, if not, the court shall obligatorily notify the public body concerned so that it may remove the corresponding budget line.

Furthermore, the accused may request the judge hearing the case to auction off the movable goods and fiduciary documents that are the subject of the substantive precautionary measure. The procedure set out in this Article shall be followed for their valuation. The sums generated by the auction shall be disposed of by the judicial authority.

Article 188.- Support and collaboration of the Police and Armed Forces.- The Armed Forces and the National Police Force shall assign permanently to the Customs Administration and its authorities, as required, the personnel needed for control to prevent the offences defined in this Code, who shall provide their services within the National Customs Service of Ecuador, in accordance with the provisions in the implementing regulations for this Title.

Article 189.- Duty of non-interference in the individual competence of the National Customs Service of Ecuador.- Judiciary bodies shall not intervene in the individual competence for customs clearance of goods that have been the subject of a criminal investigation, which is the task of the National Customs Service of Ecuador pursuant to this Code.

Chapter III - Minor offences

Art. 190.- Minor offences.- The following are minor customs offences:

a. Allowing persons to enter primary customs zones without complying with the provisions in the regulations approved by the Director-General;
b. late electronic forwarding of all or part of the cargo manifest by the carrier actually providing the means of transport;
c. delivery of the goods to be unloaded beyond the time-limit determined by the Customs Administration;
d. handing over information deemed confidential by the respective authorities on the part of public officials in the Customs Administration, without prejudice to other administrative sanctions applicable;
e. failure by the carrier to forward the list of passengers to the Customs Administration before the arrival or departure of the means of transport;
f. failure by the carrier to deliver to the Customs Administration goods shown on the cargo manifest, unless this has been authorized by the Customs Administration, in which case the goods shall be handed over in the actual district of arrival, with the carrier being subject to the penalty applicable if it fails to deliver;
g. preventing or impeding customs controls, either through action intended to hinder the activities of the National Customs Service of Ecuador or by refusing to collaborate in investigations;
h. failure by the owner, consignee, consignor or carrier to comply with the time-limits for trans-shipment or reloading;

i. failure by the owner, consignee or consignor to present accompanying documents together with the customs declaration if this is required for the type of clearance attributed to the declaration, unless the documents can be backed up by surety;
j. failure by the owner, consignee or consignor to comply with the time-limits for special regimes;
k. under- or over-valuation of goods established during subsequent controls. The existence of undeclared goods discovered in the course of valuation, provided that this is not punishable in accordance with preceding Articles;
l. allowing the entry of goods into temporary warehouses without the documents in support of their storage; or
m. failure of those responsible for temporary warehouses to provide the inventory of warehouses when so requested by the National Customs Service of Ecuador.

Article 191.- Penalties applicable.- Without prejudice to payment of taxes, minor offences shall be punishable as follows:

a. For subparagraph (a) in the Article above, by a fine equivalent to one (1) unified basic wage;
b. for subparagraphs (b), (c), (d) and (e) in the Article above, by a fine equivalent to five (5) unified basic wages;
c. for subparagraphs (f), (g), (h), (l) and (m) in the Article above, by a fine equivalent to ten (10) unified basic wages. In the case of subparagraph (g), if the offence has been committed by a customs agent auxiliary, it shall be punishable by annulment of his/her accreditation in addition to the fine;
d. for subparagraph (i) in the Article above, by a fine equivalent to ten percent (10%) of the customs value of the goods;
e. for subparagraph (j) in the Article above, by a fine equivalent to one (1) unified basic wage for each day of delay; and
f. for subparagraph (k) in the Article above, by a fine equivalent to three hundred percent (300%) of the customs value of the undeclared goods or the difference between the value declared and the customs value of the goods, as applicable.

Article 192.- Penalty for failure to provide information.- Any person who does not provide the information requested by the National Customs Service of Ecuador shall be punishable by the official in charge of the District Directorates by closure of the establishment in which he conducts his/her economic activities and this penalty shall be lifted when the information requested is forwarded.

If a person punished in accordance with the preceding paragraph fails to forward the information requested within 30 days, the National Customs Service of Ecuador shall request the criminal court judge urgently to order that the information requested by the National Customs Service of Ecuador be furnished within 48 hours; the judge shall order the submission of the information together with the police officer and a copy of all the information shall be forwarded to the Prosecutor's Office so that the investigations required may be initiated.

Chapter IV - Breaches of regulations

Article 193.- Breaches of regulations.- The following constitute breaches of regulations:

a. Mistakes by the carrier in the electronic transmission of data on the manifest that cannot be rectified in accordance with the implementing regulations for this Code;
b. late forwarding of the cargo manifest by the international shipping agent, freight consolidator or deconsolidator, unless this is due to late forwarding by the actual carrier;
c. mistakes by the customs broker, the importer or exporter, as applicable, in the electronic transmission of data in the customs declaration that cannot be rectified in accordance with the implementing regulations for this Code; or
d. failure to comply with the provisions laid down in the implementing regulations for this Title or the regulations issued by the Director of the National Customs Service of Ecuador and previously published in the Official Journal, provided that this does not constitute a more serious violation.

Failure to comply with or non-observance of any clause in the contract for which the penalty is not set out in the respective contract.

Article 194.- Penalties for breaches of regulations.- Breaches of regulations shall be punishable by a fine equal to fifty percent of the unified basic wage. With the exception of subparagraph (c) in the Article above, if the customs value of the export, re-export or import declaration is less than ten unified basic wages, the penalty shall be ten percent of the unified basic wage.

Article 195.- Procedure and penalties.- The National Customs Service of Ecuador, prior to the procedure to be established in the regulations, shall punish minor offences and breaches of regulations. It may notify any decisions taken in connection with such procedures through its computer system.

Chapter V - Administrative sanctions applicable to foreign trade operators

Article 196.- Functions.- The Director-General shall have competence for determining administrative responsibility and for punishing foreign trade operators, customs brokers and authorized economic operators through suspension or annulment of the relevant concession, authorization or permit, according to the provisions in this Law

Article 197.- Procedure.- If the Director-General has knowledge of a violation, he shall initiate an administrative procedure in accordance with the provisions in the rules regulating the Executive's administrative legal regime.

Article 198.- Suspension sanctions.- The following shall be punishable by suspension of up to 60 days:

1. Temporary warehouses if:

a. Unauthorized areas are used to store goods subject to customs authority;
b. the owner or consignee has not been compensated for an amount equal to the loss or damage of the goods;
c. the physical and electronic inventories of the goods are not updated;
d. goods under their custody are delivered or disposed of without following the procedure laid down by the National Customs Service of Ecuador; or
e. the customs authority is not notified of abandoned goods.

Following the suspension, the authorized firm may no longer enter goods using this means, although goods already entered may be cleared for import.

2. Customs warehouses and facilities normally authorized to operate under the temporary import for inward processing regimes if:

a. Goods subject to customs authority are stored in areas not authorized as customs warehouses;
b. unauthorized or prohibited goods or goods whose ownership is not proven are stored in their area authorized as a customs deposit;
c. the use of goods for storage, transformation, processing or repair is not substantiated;
d. the owner or consignee has not been compensated for the amount equal to the loss or damage of the goods; or
e. the goods under their custody are delivered or disposed of without authorization from the National Customs Service of Ecuador.

3. Duty-free stores if:

a. Goods covered by the special regime are sold for the benefit of persons other than passengers entering or leaving Ecuador or those in transit; or
b. the physical and electronic inventories of goods stored are not updated.

4. Express or courier services if:

a. Consignments are split three ways;
b. they have been punished for breach of the regulations owing to non-compliance or non-observance of any regulation, procedural manual, work instructions or customs administrative provisions that are obligatory but not classified as offences or minor offences in connection with more than 10 percent of the number of declarations submitted during one month;
c. they fail to keep the registers, documents and background information on customs clearance used as a basis for preparing the customs declarations submitted to the National Customs Service of Ecuador for the prescribed period;
d. they are not liable to the owner for the damage or loss of his/her goods while they are in the care of the authorized firm; or
e. the physical and electronic inventories of the goods are not updated.

Following the suspension, the authorized firm may no longer import or export goods using this means, although goods already loaded for transport to Ecuador prior to notification of the suspension and those goods already loaded for transport abroad prior to the notification of the suspension may be regularized.

In any event, after the sanction has expired, the foreign trade operator shall be authorized without any further procedure.

Article 199.- Annulment sanctions.- A concession, authorization or permit for temporary warehouses, in-bond warehouses, facilities authorized to operate normally under the temporary import for inward processing regime, express and courier services and duty-free stores shall be annulled, if:

- They fail to comply or no longer comply with the requirements and criteria determined for their operation;
- the authorized areas and sites are used for purposes or functions other than those authorized;
- the temporary warehouse has been used by those in charge to commit a customs offence, launder money or for drugs trafficking, and an enforceable sentence has been pronounced;
- the activities authorized have not been conducted for a consecutive period of six months;
- suspension has been pronounced more than two (2) times during the same financial year; and
- they fail to comply with the suspension sanction imposed by the National Customs Service of Ecuador.

Chapter VI - Prescription

Article 200.- Statute of limitations for criminal proceedings.- Criminal proceedings for customs offences are prescribed after a period of five (5) years as of the date on which the violation or the latest offence was committed.

If criminal proceedings have been initiated before the aforementioned time-limit expires, they shall expire within the same period calculated as of the date of notification of the investigation.

The power to impose sanctions for minor offences and breaches of the regulations expires in five years calculated as of the date on which the violation was committed or the date on which the latest such act was committed.

Article 201.- Expiry of sanctions.- The sanction of imprisonment expires after twice the period for prescription of criminal proceedings, calculated as of the date on which judgement was passed if the offender has not been imprisoned.

Chapter VII - Public auction, free award of the goods and destruction

Article 202.- Public auction.- Public auctions shall be subject to the rules determined for this purpose, either in the implementing regulations for this Code or in the provisions adopted by the Customs Administration. A third party may be employed for this purpose.

Article 203.- Free award of the goods.- Goods that have been expressly or definitively abandoned, those subject to administrative or judicial confiscation, those in respect of which a public auction procedure has been initiated, shall be disposed of free-of-charge within the time-limits and according to the provisions in this Code, its implementing regulations and other rules of the National Customs Service of Ecuador, for the benefit of public sector organizations and enterprises, including the Customs Administration, if they request them in order to fulfil their purposes. Banned imports may only be donated to public institutions, provided that they are used specifically for these institutions, or are destroyed.

Moreover, goods are awarded free-of-charge to non-profit-making social welfare, charitable, educational or research institutions which request them in order to fulfil their purposes, in accordance with their statutory activities, in those cases and on the terms provided in the implementing regulations for this Code.

Article 204.- Destruction of goods.- The official in charge of the District Directorate of Customs or his/her representative shall declare the destruction of the goods determined in the implementing regulations for this Code.

Without prejudice to the foregoing, arms, their spare parts, ammunition and similar goods that have been abandoned or confiscated shall be placed at the disposal of the competent military authority responsible for their control. Medicines that have been abandoned and/or confiscated shall be placed at the disposal of the Ministry of Public Health.

TITLE IV - Customs Administration
Chapter I - Status and functions

Article 205.- Legal status.- The customs service is a public authority exercised by the State through the National Customs Service of Ecuador, without prejudice to the exercise of functions by its duly authorized delegated bodies and the coordination and cooperation of other government bodies or agencies, under the present legislation, its implementing regulations, operating manuals and procedures, and other applicable rules.

The objective of the Customs is: to facilitate foreign trade and to control the entry and exit of goods, loading units and means of transport through borders and customs zones in the Republic, and of persons directly or indirectly engaged in international goods traffic; to determine and collect the tax obligations generated by the import or export of goods, in accordance with the systems provided in the Tax Code; to resolve claims, appeals, petitions and questions by interested parties; to prevent, prosecute and punish customs violations; and, in general, to fulfil the functions specific to Customs Administrations in the provisions adopted by Ecuador in international agreements.

Article 206.- Customs policy.- The National Customs Service of Ecuador shall be responsible for carrying out customs policy and for issuing the regulations for its application, through its Director-General.

Article 207.- Authority of the Customs.- The authority of the Customs consists of the series of rights and functions given by supranational rules, legislation and regulations exclusively to the National Customs Service of Ecuador for the purpose of fulfilling its functions.

Article 208.- Submission to customs authority.- Goods or means of transport which cross the border and are involved in activities directly or indirectly related to international goods traffic are subject to customs authority.

Article 209.- Scope of the submission.- Submission to customs authority includes compliance with all the formalities and requirements governing the entry or exit of persons, goods and means of transport; the payment of taxes and other levies payable even if they are owing to other central government bodies or other tax authorities but are controlled or collected by the National Customs Service pursuant to a legal mandate or regulations.

Article 210.- Customs service.- For the purpose of exercising customs authority, the National Customs Service of Ecuador shall have under its control the storage, valuation, control

and monitoring services for goods entering under its authority, as well as those determined by the body's Director-General; the National Customs Service of Ecuador may enter into agreements with government or private institutions for the supply of such services.

Such agreements shall contain the clauses and the penalties applicable in cases of non-compliance with the terms of the agreement, without prejudice to other civil and criminal liability that may arise, which may not be limited by the agreement.

Article 211.- Functions of the Customs.- The following are the functions of the Customs exercised in the form and under the circumstances determined in the implementing regulations:

a. To monitor persons, goods and means of transport in the primary and secondary zones;
b. to inspect and withhold goods, assets or means of transport for control purposes if it is presumed that the law has been violated in connection with the entry or exit of goods into or from customs territory, and to request the Public Prosecutor's Office for a search warrant;
c. to inspect and apprehend persons and place them at the disposal of the competent authority whenever a flagrant offence has been committed;
d. to conduct investigations, in coordination with the Ministry of Justice, when it is presumed that a customs offence has been committed, for which purpose it may take any action provided in the implementing regulations;
e. to exercise credible coercive action for the benefit of the National Customs Service of Ecuador, either directly or by delegation.
f. to coordinate its activities with other government or outside agencies and organizations, to request them for information and to provide them with information, relating to the entry or exit of goods, means of transport or persons into or from Ecuador, and to economic activities by persons in Ecuador. The recipient shall maintain the same reservation as the person or agency responsible for the information in respect of information furnished to or received from the National Customs Service of Ecuador;
g. to request the list of persons entering and leaving the country from the National Police Force, in the form and at the intervals determined by the National Customs Service of Ecuador, which the National Police Force shall be obliged to provide;
h. to take part in criminal proceedings investigating matters relating to customs offences committed;
i. to regulate and issue rules for customs operations related to the development of international trade and customs regimes, even if they are not specifically determined in this Code or its implementing regulations;
j. to collaborate in controlling the unauthorized exit of works considered to be part of the country's artistic, cultural or archaeological heritage; and of species of wild flora and fauna in the primary and secondary zones;
k. to collaborate in the control of illicit traffic in narcotics, psychotropic substances and precursors, arms, ammunition and explosives, in the primary and secondary zones; and
l. other functions attributed to it by the Law.

Chapter II - National Customs Service of Ecuador

Article 212.- National Customs Service of Ecuador.- The legal person under public law, for an indefinite period, with technical, administrative, financial and budgetary autonomy, domiciled in the city of Guayaquil, and with competence throughout Ecuador.

Pursuant to this Code, it is a body that has been given the technical and administrative competence necessary to advance the planning and implementation of Ecuador's customs policy and to exercise, in the prescribed form, responsibility for determining taxes, resolving, punishing and regulating customs matters, in accordance with this Code and its implementing regulations.

Article 213.- Administration of the National Customs Service of Ecuador.- The Director-General shall be responsible for administering the National Customs Service of Ecuador and shall be the maximum authority and legal, judicial and extra-judicial representative, and shall therefore exercise in customs territory the administrative and operational control and the monitoring provided in this Code through the authorities indicated in the preceding Article.

Article 214.- Policy council.- The Director-General shall participate in the policy council(s) convened by the President of the Republic in connection with his/her functions.

Article 215.- Director-General.- An official freely appointed or removed, designated directly by the President of the Republic, and meeting the following criteria:

a. Be an Ecuadorian national and enjoy political rights;
b. have a postgraduate professional diploma granted in Ecuador or abroad; and
c. be an experienced professional with competence in foreign trade, administration or related areas.

Article 216.- Functions.- The following shall be the functions and competence of the Director-General:

a. To act as the legal representative of the National Customs Service of Ecuador;
b. to administer the assets, material and human resources and funds of the Service;
c. to hear and decide on complaints submitted by taxpayers against officials in charge of the District Directorates of Customs, as well as appeals for review of their decisions;
d. to hear and decide on administrative complaints against his/her own acts;
e. to define the area for the application of border traffic, in accordance with international agreements, this Code and its implementing regulations;
f. to establish special check-points in the secondary zone and on border perimeters, subject to international agreements, this Code and its implementing regulations;
g. to grant, suspend, annul or declare expiry of licences for customs brokers, a function which may not be delegated;
h. to respond to questions on import tariffs concerning the tariff classification of goods or application of this Code and its implementing regulations, subject to the provisions of the Tax Code, the response being binding on the person posing the question;
i. to review his/her own acts ex officio in the terms provided in this Code and the Tax Code, and to annul them provided that annulment is not contrary to legislation and does not cause prejudice to the taxpayer;
j. to authorize the operation of industrial facilities in which the temporary admission for inward processing regime functions, firms which operate under the express or courier services customs regime, in-bond warehouses, duty-free and special stores and the international fairs regime;
k. to act as the appointing authority in the National Customs Service of Ecuador;
l. by means of decisions, to issue the regulations, manuals, instructions and office circulars needed to apply the operational, administrative, procedural and customs valuation aspects and for the creation, cancellation and regulation of fees for customs services, together with the regulations required for the proper functioning of the Customs Administration and other operational aspects not covered in this Code and its implementing regulations; and
m. any other functions determined in the law.

All the functions described above may be delegated, with the exception of those in subparagraphs (k) and (l). If the Director-General is absent or has a temporary impediment, the official specified in the organic and administrative structure of the National Customs Service of Ecuador shall replace him/her.

Article 217.- District Directorates of Customs.- The District Directorates cover the areas in which the National Customs Service of Ecuador exercises all the operational and other functions assigned to it by this Code and its implementing regulations.

The District Directorates shall be created, dissolved or modified by a decision of the Director-General, which shall be published in the Official Journal.

Article 218.- Functions of the District Directorates.- Officials in charge of District Directorates of Customs shall have the following functions:

a. To comply with and enforce the legislation, its implementing regulations, and other foreign-trade related rules;

b. to verify, accept or comment on customs declarations, to authorize customs operations and to control goods entering or leaving Ecuador, as well as passengers in ports, international airports and at approved border crossings and to provide for the inspection, examination and registration of international means of transport entering or leaving customs territory;
c. to grant the tax exemptions applicable in accordance with the provisions in the implementing regulations for this Code;
d. to resolve administrative complaints and undue payment claims;
e. to revise their own acts ex officio in the terms laid down in this Code and the Tax Code, provided that no prejudice is caused to the taxpayer
f. to punish minor offences and breaches of regulations pursuant to this Code;
g. to issue orders for collection and payment of taxes, securities and credit notes;
h. to exercise coercive action on behalf of the National Customs Service of Ecuador;
i. to declare administrative confiscation and to accept the express abandonment of goods, and to put them up for auction where applicable, in accordance with the provisions in this Code and its implementing regulations;
j. to carry out the administrative decisions and judicial rulings within their scope;
k. to take part in criminal proceedings investigating matters relating to customs offences committed and to make the goods seized available to the Public Prosecutor's Office;
l. to appear before the competent judge as special prosecutor, on behalf of the National Customs Service of Ecuador, in criminal proceedings against punishable acts that affect the interests of the institution;
m. to authorize the customs regimes indicated in this Code and in the regulations issued by supranational customs organizations;
n. to authorize a change in regime in accordance with this Code and its implementing regulations;
o. to control goods imported under special customs regimes;
p. to conduct a public auction of goods that have been abandoned;
q. to authorize direct customs clearance of goods; and
r. other functions determined in the law, as well as those delegated by the Director-General by means of a decision.

Article 219.- Notifications.- Notifications by the National Customs Service of Ecuador through its computer system shall have full legal effect.

Article 220.- Customs officials.- Public officials of the National Customs Service of Ecuador shall be governed by the Organic Law on Public Service. Where the needs of the institution so require, officials fulfilling functions in any administrative area may fulfil the operational functions required, without this involving an administrative change or transfer. Overtime may be worked outside the normal working day and shall be compensated in accordance with the law governing government service and the provisions laid down in the implementing regulations for this Code.

Article 221.- Responsibilities.- The National Customs Service of Ecuador is responsible for efficient and flexible treatment throughout the customs clearance procedure, its responsibility ending if the goods are placed at the disposal of the judicial authority. If unjustified delays in customs clearance of goods attributable to the National Customs Service of Ecuador are determined, the cost of storage and/or demurrage shall be refunded by the Service to those suffering prejudice. The amounts concerned shall in turn be passed on to the official whose negligence or malice led to the delay up to a maximum of one unified monthly salary of the said official, without prejudice to any administrative sanctions. The refund of the sums and their attribution to the official shall comply with the procedure determined in the regulations.

Customs procedures shall be conducted with due diligence and care on the part of officials of the National Customs Service of Ecuador, preventing any deterioration of the goods to be inspected.

The Director-General and other officials of the National Customs Service of Ecuador, when exercising any of the powers of the tax administration provided by the Law, shall act with the responsibilities defined in the Tax Code.

In determining responsibilities for the exercise of their functions, the Director-General and his/her replacement shall be under the jurisdiction of the National Court of Justice. Likewise, senior officials shall be under the jurisdiction of the Provincial Court.

Article 222.- Customs Monitoring Unit.- An administrative unit of the National Customs Service of Ecuador responsible for conducting operations to prevent customs offences and for their investigation throughout Ecuador, in support of the Ministry of Justice, pursuant to the Law regulating public service and the regulations issued by the Director-General, in coordination with the Ministry of Labour Relations, for which it may obtain permits for possessing or bearing arms from the competent authorities.

The Director-General of the National Customs Service of Ecuador is the highest authority in the Customs Monitoring Unit and shall be responsible for issuing the regulations required for its functioning.

Article 223.- Organic and administrative structure.- The Director-General shall determine the organic and administrative structure of the National Customs Service of Ecuador, together with the responsibilities of its administrative units.

Chapter III - Information

Article 224.- Information on foreign trade.- Statistical information on foreign trade processed by the National Customs Service of Ecuador shall be published free-of-charge and without restrictions other than those provided in the Intellectual Property Law on the website of the National Customs Service of Ecuador and may be consulted freely, in accordance with the provisions in the Organic Law on Transparency and Access to Public Information.

Information to be generated by the National Customs Service of Ecuador in formats other than those published on its website, at the request of third parties, shall be subject to a fee in accordance with the relevant provisions adopted by the Director-General.

At any time, the National Customs Service of Ecuador may require importers, exporters, carriers, entities or legal persons under public or private law to furnish any information concerning import or export activities that facilitate efficient monitoring of compliance with the tax obligations they entail, giving a non-renewable period of not more than fifteen days in which to respond.

Article 225.- Database.- The National Customs Service of Ecuador and the Internal Revenue Service, when they so request, shall have free unrestricted access, either via computer or physically, on a permanent and continuous basis, to all information on foreign trade activities to be found in the archives and databases of the Central Bank of Ecuador, the Immigration Police, the Civil Register, the Ecuadorian Social Security Institute, Supervisory Authorities, the Agricultural Quality Institute, the Ecuadorian Standardization Institute, the Commercial Register, the Financial Intelligence Unit and other bodies directly or indirectly involved in Ecuador's foreign trade. Government officials who fail to provide the information or hinder or interfere with obtaining it shall be punishable by dismissal from their functions.

The content of the databases of the National Customs Service of Ecuador is protected information, unauthorized access or improper utilization of the information therein shall be punishable in accordance with the Criminal Code.

Chapter IV - Financing of the customs service

Article 226.- Financing of the National Customs Service of Ecuador.- All the movables and immovables it has acquired or may acquire under any title constitute the property of the National Customs Service of Ecuador.

The National Customs Service of Ecuador shall be financed by:

a. Allocations from the national budget;
b. all the sums collected as fees for customs services, which shall be paid into the single Treasury account and then distributed according to the national budget;
c. the amounts received for contracts, licences and royalties;
d. non-repayable funds from international organizations; and
e. other income lawfully received not specified in this Code.

TITLE V - Customs Administration auxiliaries
Chapter I - Customs brokers

Article 227.- Customs broker.- The natural or legal person licensed by the Director-General of the National Customs Service of Ecuador regularly to manage customs clearance of goods on behalf of another person, signing the customs declaration for this purpose in those cases determined in the regulations, with the obligation to invoice its services according to the scale of minimum fees set by the Director-General of the National Customs Service of Ecuador. The licence shall have a term of five years and be renewable for the same term.

A customs broker may enter into an agreement with any operator engaged in international trade and shall be responsible to the National Customs Service of Ecuador for the information furnished in the documents.

A customs broker shall have the status of public notary and auxiliary so that the customs shall be assured that the data contained in the customs declarations drawn up are consistent with the information and documents which shall legally serve as the basis for the customs declaration, without prejudice to any verification by the National Customs Service of Ecuador.

In addition to the perpetrators themselves, customs brokers who, in exercise of their activities, have acted part as perpetrators, accomplices or accessories shall be subject to the criminal liability determined for the offence of counterfeiting of documents in general and no prior judicial ruling in civil proceedings shall be required in order to bring criminal proceedings, as provided in Article 180 of the Code of Civil Procedure. In any event, for the purposes of liability, customs brokers shall be considered public notaries.

For customs clearance of goods involving a customs broker, the latter shall be jointly responsible for customs tax obligations, without prejudice to the administrative or criminal liability specified in the law. Without prejudice to the foregoing, a customs broker shall not be liable for valuation of the goods.

Article 228.- Rights and obligations of customs brokers.- Customs brokers shall have the right to be recognized as such at the national level. The principal obligation of a customs broker is to comply with this Code, its implementing regulations and the provisions adopted by the National Customs Service of Ecuador, and to advise those who use his/her services regarding compliance.

The granting of licences to customs brokers, the latters' rights, obligations and the regulations governing their activities shall be determined in the implementing regulations for this Code and in the relevant provisions adopted by the National Customs Service of Ecuador.

Article 229.- Sanctions.- Provided that no offence or minor offence has been committed, customs brokers shall be subject to the following sanctions:

1. Suspension of the licence.- Customs brokers shall be punishable by suspension of their licence for up to sixty (60) calendar days for any of the following reasons:

a. They have been punished on three occasions for a breach of the regulations, non-compliance with the regulations under this Title or the regulations issued by the Director-General of the National Customs Service of Ecuador, over a 12-month period;
b. they have been punished on three occasions within a 12-month period for a minor offence such as: 1. hindering or preventing customs controls, either by action intended to impede the activities of the National Customs Service of Ecuador or by refusing to collaborate with investigations being conducted; 2. Failing to submit the accompanying documents together with the customs declaration if this is required for the type of clearance attributed to the declaration, on the part of the owner, consignee or consignor; or
c. failure to comply with the obligations determined for customs brokers in the implementing regulations for this Code and in the regulations governing the activities of customs brokers issued by the Director-General.

2. Annulment of the licence.- Customs brokers shall be punishable by annulment of their licence for any of the following reasons:

a. Renewed suspension of their licence within a 12-month period;
b. a conviction for a customs offence;
c. failure to keep files on the customs clearance operations for the period prescribed in the implementing regulations for this Code; or
d. death of the licence-holder or dissolution of the legal person.

Article 230.- Auxiliaries of customs brokers.- Customs brokers may employ auxiliaries for exercising their activities and these shall be approved by the National Customs Service of Ecuador in accordance with the relevant provisions adopted by the Director-General. The accreditation of the auxiliary shall have the same term as the accreditation of the customs broker and he/she shall provide his/her services to the broker.

Customs brokers' auxiliaries may act on behalf of the customs broker in any of the latter's actions with the Customs Administration, except for signature of the declaration.

The principal obligation of customs brokers' auxiliaries is to comply with this Code, its implementing regulations and the provisions adopted by the National Customs Service of Ecuador.

The accreditation of customs brokers' auxiliaries shall be annulled in the following cases:

- A conviction for a customs offence;
- death of the auxiliary; or
- other reasons to be determined in this Code.

Chapter II - Authorized economic operators

Article 231.- Authorized economic operators.- Natural or legal persons involved in the international movement of goods, irrespective of the function adopted, and who comply with the equivalent supply chain security standards established by the National Customs Service of Ecuador and hence benefit from simplified customs procedures.

Authorized operators include, *inter alia,* manufacturers, importers, exporters, carriers, consolidators, deconsolidators, international freight forwarders, ports, airports, in-bond warehouses, temporary warehouses, courier services and terminal operators, and shall be regulated in accordance with the relevant provisions adopted by the Director-General.

In order to be accredited as an authorized economic operator, the requirements specified in the implementing regulations for this Code shall be met.

Persons who have been punished for a customs offence or legal persons whose representatives, partners or shareholders have been so punished may not be authorized as economic operators. Any person who uses any type of pretence in order to become an authorized economic operator shall be liable to the ban provided in this Article and shall lose his/her status, as shall any natural or legal person who has helped in obtaining an authorization on such terms, and they may not be given any new authorization.

In cases of non-compliance with customs regulations and without prejudice to the corresponding penalty, the Director-General may suspend or withdraw the authorization of authorized economic operators in accordance with the provisions in the implementing regulations for this Code and in the regulations adopted by the National Customs Service of Ecuador governing activities by authorized economic operators.

BOOK VI - SUSTAINABLE PRODUCTION AND ITS RELATIONSHIP TO THE ECOSYSTEM

TITLE I - Eco-efficiency and sustainable production

Article 232.- Definition.- For the purposes of this Code, efficient production processes mean the use of environmentally clean technologies and non-polluting low-impact alternative energies, adopted in order to lessen the negative effects and damage to human health and the environment. Such measures shall include those whose design and implementation help to enhance production, taking into account the life cycle of products, as well as sustainable use of natural resources. More efficient and competitive production processes shall also include the implementation of advanced technologies that improve the management and rational use of resources and prevent and control environmental pollution as a result of the production processes, the supply of services and final use of the products.

Article 233.- Sustainable development.- Natural and legal persons and other associative forms governed by this Code shall develop all their production processes in accordance with the sustainable development principles set out in the Constitution and in international agreements to which Ecuador is party.

Article 234.- Cleaner technology.- When replacing technology, companies shall adopt measures to achieve cleaner production processes, for example:

a. Use non-toxic raw materials that are not dangerous and have a low environmental impact;
b. adopt sustainable processes and use efficient equipment that helps to prevent pollution when utilizing resources;
c. apply in an effective, responsible and timely manner the universally accepted principles of environmental management adopted in international agreements and in domestic legislation, in particular, the following:

    1. reduce, reuse and recycle;
    2. adopt the best available technology;
    3. integral responsibility when using certain products, especially chemicals;
    4. prevent and control environmental pollution;
    5. the polluter pays;
    6. progressive use of alternative sources of energy;
    7. sustainable management and proper assessment of natural resources; and
    8. intra- and inter-generational responsibility.

Article 235.- Incentives for cleaner production.- In order to boost clean production and energy efficiency, the State shall provide the following incentives:

a. The tax benefits created in this Code; and
b. economic benefits obtained from transfers such as "tradable emissions permits". The implementing regulations for this Code shall determine the parameters to be met by companies seeking such benefits and the way in which the tradable emissions permits market or pollution rights shall be regulated according to the national regulations and those of decentralized autonomous governments, with their respective terms, the transfer mechanism for such rights and the environment quality goal sought in the long term.

Article 236.- Adaptation to climate change.- In order to facilitate Ecuador's adaptation to the effects of climate change and minimize them, natural or legal persons and other associative forms governed by this Code shall acquire and adopt appropriate environment technologies to ensure the prevention and control of pollution, clean production and the use of alternative sources.

GENERAL PROVISIONS

FIRST.- In order to regulate the various subjects that form an integral part of this Code, specific regulations shall be issued for each Book within a period of 90 days, in accordance with the Constitution of the Republic.

SECOND.- The rights, obligations and responsibilities of natural or legal persons in accordance with the legislation, regulations, concessions, ministerial authorizations or agreements lawfully concluded prior to this Code shall continue for the period for which they were granted.

THIRD.- In all legal or regulatory provisions, any reference to the "Ecuadorian Customs Corporation"; "CAE" or the "Ecuadorian Customs Corporation, CAE" shall be replaced by "National Customs Service of Ecuador".

In all legal or regulatory provisions, any reference to the "customs military police" or "customs monitoring service" shall be replaced by "Customs Monitoring Unit", except in the Special Law reintegrating the personnel of the former customs military police into the customs monitoring service. Likewise, in all legal provisions at the same or a lower level which grant the customs military police or the customs monitoring service powers or responsibilities, it shall be understood that these shall be exercised by the National Customs Service of Ecuador.

FOURTH.- In all administrative regulations, any reference to "Directorate of the Ecuadorian Customs Corporation", "CAE Directorate" or simply "Directorate" referring to this collegiate body, shall read "Director-General of the National Customs Service of Ecuador" or "Director-General", as applicable. Likewise, references to "the General Administrator" or "the General Administration" shall read "the Director-General".

FIFTH.- The National Customs Service of Ecuador assumes all the rights and obligations of the Ecuadorian Customs Corporation. Pursuant to this provision, all the assets of the Ecuadorian Customs Corporation shall be taken over by the National Customs Service of Ecuador, and if they are subject to registration, the corresponding registration shall be made ex officio by those in charge of the said registers without payment of any fees, costs or levies.

SIXTH.- Concessionaires of temporary storage services, port and airport operators shall, within a period of ninety days, submit their control regulations for entry into the primary zone for approval by the Director-General.

SEVENTH.- As of publication of this Code, all plantations of bananas, plantains (barraganete variety) and other musaceae planted in Ecuador shall be registered with the Ministry of Agriculture, Livestock, Aquaculture and Fisheries.

AMENDING PROVISIONS

FIRST.- At the end of Article 72 of the General Law on Financial System Institutions, add the following new paragraph:

"... The Supervisory Authority for Banks shall introduce a special guarantee regime for micro, small and medium-sized enterprises to enable them to attain satisfactory levels of economic capacity, and it shall be designed in such a way as to incorporate generally applicable up-to-date instruments such as collectable invoices, patents, and other instruments to be included in the implementing regulations for this Law …".

SECOND.- Amendments to the Organic Law on the Domestic Tax Regime.

2.1.- Amend Article 9 as follows:

1. Replace no. 15 by the following:

"15.- The income earned by commercial trusts, provided that they not engage in business activities or operate businesses in activity, in accordance with the definition given in Article 42.1 of this Law. Likewise, the income earned by investment funds and complementary funds shall be exempt.

To be eligible for this exemption, it is a mandatory requirement for the aforementioned companies to benefit from this exemption that, when distributing benefits, earnings, or profits, the trustee or fund manager, has withheld income tax at source - in the same percentages as those determined for the distribution of dividends and profits, in accordance with the provisions in the

implementing regulations for this Law - for the beneficiary, founder or participant in each commercial trust, investment fund or complementary fund and, moreover, submits information to the Internal Revenue Service, on magnetic media, for each commercial trust, investment fund and complementary fund it manages, containing the information and at the intervals indicated by the Director-General of the IRS by means of a general resolution.

If it is found that the commercial trusts, investment funds or complementary funds do not comply with the aforementioned requirements, taxes shall be paid without any exemption."

2. Replace the unnumbered paragraph following paragraph 15 by the following:

"15.1.- Revenue from fixed term deposits paid by national financial institutions to natural persons and companies, with the exception of institutions in the financial system, as well as revenue earned by natural persons or companies from investment in fixed-income securities traded on Ecuador's stock exchanges and the profits or earnings of natural persons and companies distributed by commercial investment trusts, investment funds and complementary funds, provided that the investment is in fixed-term deposits or fixed-income securities traded on the stock exchange. In all the aforementioned cases, the investment or deposits shall originally have been issued for a term of one year or more. This exemption shall not apply if the beneficiary of the revenue is a direct or indirect debtor of the institution in which he/she keeps the deposit or investment, or any of its related institutions; and …"

3. Add the following number after number 16:

"17. The interest paid by workers for loans from their employers to enable them to buy shares or stock in the employer, while the employee retains ownership of such shares."

"18. Economic compensation for a decent wage."

2.2.- Add the following Article after Article 9:

"Article 9.1.- Exemption from payment of income tax for the development of new and productive investment.- Companies established as of the entry into force of the Production Code, as well as new companies set up by existing companies, for the purpose of making new and productive investment shall be given exemption from payment of income tax for five years calculated as of the first year in which income directly and solely attributable to the new investment is generated.

For the purposes of applying the provision in this Article, new and productive investment shall be made outside the urban jurisdictions of the cantons of Quito or Guayaquil and in the following economic sectors deemed priorities by the State:

a. Production of fresh, frozen or processed food;
b. forestry and agro-forestry and their manufactures;
c. engineering;
d. petrochemicals;
e. pharmaceuticals;
f. tourism;
g. renewable energy, including bioenergy or biomass energy;
h. logistics services for foreign trade;
i. applied biotechnology and software; and
j. strategic import substitution and export promotion sectors determined by the President of the Republic.

A mere change of ownership of production assets already functioning or operating does not imply new investment for the purposes of this Article.

If the requirements determined in this Article for application of the exemption are not met, the Tax Administration, in exercise of its legally established powers, shall determine and collect the amounts corresponding to income tax, without prejudice to any sanctions applicable.

No registration, authorization or requirement of any type other than those set out in this Article shall be required in order to be eligible for this benefit.".

2.3.- Amend Article 10 as follows:

1. Insert the following numbered paragraph:

"17) In order to calculate income tax, for a period of 5 years, medium-sized enterprises shall have the right to deduction of the additional 100% for costs incurred under the following headings:

1. Technical training for research, development and technological innovation to raise productivity, provided that the incentive does not exceed 1% of the cost of wages and salaries during the year in which it applies:
2. Costs incurred to raise productivity through the following activities: technical assistance for the development of products through market surveys and analysis and competitiveness; technological assistance by recruiting professional services to design processes and products, to adapt and implement processes, to design packaging, to develop special software and provide other business development services to be specified in the implementing regulations for this Law, provided that the incentive does not exceed 1% of sales; and
3. Costs incurred for travel, accommodation and trade promotion for access to international markets, for example, negotiating rounds, participation in international fairs, and other costs and expenses of a similar nature, provided that the incentive does not exceed 50% of the total value of the costs and expenses for promotion and advertising.

The regulations implementing this law shall establish the technical and formal parameters that taxpayers are required to fulfil in order to be eligible for this concession."

2. Add the following paragraph to paragraph 7:

"Depreciation and amortization for the acquisition of machinery, equipment and technology for the implementation of cleaner production mechanisms, mechanisms to generate energy from renewable sources (solar, wind or similar energy) or to lessen the environmental impact of production activities and to reduce the emission of greenhouse gases, shall be given an additional 100% deduction, provided that they are not necessary for compliance with the provisions of the competent environmental authority on lessening the impact of a work or as a requirement or condition for the issue of the corresponding environmental licence, profile or permit. In any event, authorization from the competent authority shall be required.

This additional cost may not exceed an amount equal to 5% of total income. Costs incurred in order to obtain the results indicated in this Article shall also be eligible for this incentive. The implementing regulations for this Law shall determine the technical and formal parameters to be met in order to be eligible for this additional deduction. This incentive does not constitute accelerated depreciation."

3. Add the words "where applicable" to the second paragraph under number 9, after the words "mandatory social security".

4. Add the following text to the fourth paragraph under number 9, following the words "of the respective financial year":

"For new investment in economically depressed or border areas and when workers resident in these areas are recruited, the deduction shall be the same and be for a period of five years. In the latter case, the specific aspects for its implementation shall be determined in the implementing regulations for this Law."

5. Add the following paragraph at the end of number 9:

"Economic compensation in order to provide a decent wage for workers shall also be deductible."

2.4.- Amend Article 13 as follows:

1. Delete number 2;
2. Replace number 3 by the following text:

"3.- Payment of interest on external loans and lines of credit opened by foreign financial institutions legally established as such, as well as interest on external loans from government to government or from multilateral organizations. In such cases, the interest may not exceed the maximum interest rates of reference set by the Directorate of the Central Bank of Ecuador on the date of registration of the loan or its novation; if the rates are exceeded, the corresponding excess amount shall be withheld so that the payment may be deductible. Failure to register in accordance with the provisions issued by the Directorate of the Central Bank of Ecuador shall mean that the financial costs of the loan may not be deducted. Interest on loans from financial institutions domiciled in tax havens or in lower tax jurisdictions may not be deducted."

2.5.- Amend Article 36 as follows:

1. In subparagraph "b", after the words "shall pay the single tariff", delete the words "twenty five percent (25%)" and add the words "provided for corporations".
2. In subparagraph "c", after the words "… shall pay the single tariff", delete the words "of 25%" and add the words "provided for corporations".
3. In subparagraph "e", after the words "which in no case shall be more", delete the words "at 25%", and add the words "at the income tax rate provided for corporations".

2.6.- Regarding the lower income tax rate for corporations, replace Article 37 by the following:

"**Article 37.-** Income tax rate for corporations.- Corporations established in Ecuador, as well as branches of foreign corporations domiciled in Ecuador and permanent establishments of foreign corporations not domiciled there, which have taxable earnings, shall be subject to the tax rate of twenty two percent (22%) of the taxable base.

Corporations which reinvest their profits in Ecuador may receive a 10 percentage point reduction in the rate of income tax on the amount reinvested in production assets, provided that these are to be used to acquire new machinery or equipment, irrigation plant and equipment, plant material, seedlings or any plant input for agricultural, forestry, livestock or flower production, that they are used in their production activities, or to acquire material for research and technology to raise productivity, diversify production and increase employment, for which purpose they shall increase their capital accordingly and shall meet the requirements determined in the implementing regulations for this Law. Private financial institutions, savings and loan associations or similar entities may also be eligible for this reduction provided that it is used to grant loans to the production sector, including small and medium-sized producers, under the conditions determined in the regulations and that they increase their capital accordingly. The increase in capital shall be made through registration in the respective Commercial Register up to 31 December of the tax year after that in which the profits reinvested were generated and for savings and loan associations and similar entities, it shall be made according to the relevant rules.

In exceptional and duly justified cases, following a technical report from the Production and Economic Policy Council, the President of the Republic of Ecuador, in an Executive Decree, may determine other production assets in respect of which profits may be reinvested thereby obtaining the 10 percentage point deduction. Production assets shall be defined in the implementing regulations for this Law.

Companies engaged in hydrocarbons exploration and exploitation shall be subject to the minimum tax rate determined for corporations on their taxable base in accordance with the first paragraph of this Article.

If a corporation gives its partners, shareholders, participants or beneficiaries cash loans, they shall be considered advance dividends or profits from the corporation and the rate applicable to corporations shall be withheld from the amount. The amount withheld shall be declared and paid the following month and within the time-limits provided in the regulations, and shall constitute a tax credit for the corporation in its income tax declaration.

For all the purposes provided in the law on the tax regime, any reference to the general rate of corporation tax means the 22% rate, in the terms set out in the first paragraph of this Article." (CONTINUES).

2.7.- Insert the following unnumbered Article after Article 37:

"Article (...).- As of the entry into force of the Production Code, obligees who are managers or operators of a Special Economic Development Zone shall be eligible for an additional five percentage point reduction in the rate of income tax."

2.8.- Amend Article 39 as follows:

1. After the words "shall pay the single tariff" in the first paragraph, delete the words "of 25%" and add the words "provided for corporations".
2. After the words "shall pay the single tariff" in the second paragraph, delete the words "of 25%" and add the words "provided for corporations".

2.9.- Insert the following unnumbered Article after Article 39 of the Law on the Internal Tax Regime:

"**Article 39.1.-** Any corporation not less than 5% of whose shares are transferred against payment to at least 20% of its employees may defer payment of its income tax and advance payment for up to five tax years, with the corresponding payment of interest, calculated on the basis of the statutory rate of corporation tax, in the terms prescribed in the implementing regulations for this Law. This benefit shall apply provided that such shares remain the property of the employees.

If the said employees transfer their shares to third parties or other partners in such a way that they do not comply with any of the minimum limits provided in these regulations, the deferral shall cease immediately and the corporation shall pay the remaining income tax in the month following that on which non-compliance with any of these limits has been verified. The benefit thus recognized shall apply for the time-limit established as long as the percentage of the enterprise's registered capital in favour of the employees remains the same or increases, as indicated in this Article. The implementing regulations for this Law shall determine the parameters and requirements to be met in order to be eligible for these incentives.

This provision shall not apply to employees to whom shares have been offered if, outside labour relations, they have any conjugal relationships, are blood relations to the fourth degree or relations by affinity to the second degree of any of the parties involved or who are related to owners or representatives of the company, in the terms prescribed in the tax legislation."

2.10.-Amend Article 41 as follows:

1. Replace the last paragraph of letter (b) of Article 41 by the following:

"Corporations recently created, new investment recognized in accordance with the Production Code, natural persons or undivided successions obliged to keep accounts, which initiate activities shall be subject to payment of advance tax as of the fifth year of effective operation, meaning the initiation of their production and business activities. If the production process so requires, this time-limit may be extended subject to authorization

from the Technical Secretariat of the Sectoral Council for Production and the Internal Revenue Service."

2. Insert the following letters (j), (k), (l) and (m) after letter (i) in number 2 of Article 41:

"(j) For dealers and distributors of fuel in the automobile sector, the coefficient corresponding to the total taxable earnings for the purpose of income tax shall be replaced by zero point four percent (0.4%) of the corresponding total marketing margin."

"(k) taxpayers whose economic activities are solely related to agroforestry or forestry agricultural production projects for forest species with a growth stage exceeding one year shall be exempt from advance payment of income tax during the tax years in which they do not receive any taxable income derived from a principal harvesting stage."

"(l) taxpayers whose economic activities are solely related to the development of software projects or technology with a development stage exceeding one year shall be exempt from advance payment of income tax during the tax years in which they do not earn any taxable income."

"(m) for the purpose of calculating advance payment of income tax, the amount of incremental costs incurred for generating new jobs or upgrading the labour force shall be excluded, together with the acquisition of new assets intended to raise productivity and technological innovation and, in general, investment and costs actually incurred and related to the tax incentives for payment of income tax recognized in the Production Code for new investment, in the terms prescribed in the regulations."

2.11.- Insert the following Article following Article 42:

"**Article 42.1.-** Payment of income tax by commercial trusts and investment funds.

Pursuant to this Law, commercial trusts engaged in business activities or running businesses shall declare and pay the income tax applicable on the profits earned, in the same way as other corporations.

Commercial trusts not engaged in business activities or running businesses, investment funds or complementary funds shall be exempt from payment of income tax provided that they meet the requirements prescribed in number 15 of Article 9 of this Law. Without prejudice to the foregoing, they shall only submit a statement of income tax showing the financial situation of the fund or commercial trust.

For tax purposes, it shall be understood that a commercial trust is engaged in business activities or running a business when its purpose and/or activities are of an industrial, commercial or agricultural nature or supply services, or involve any other profit-making activity, and which are regularly conducted through another type of corporation. Likewise, for the purpose of applying advance payment of income tax, in the case of real estate commercial trusts, reaching the break-even point of the real estate project or of any of its stages shall be taken into account when determining the time at which the actual operations commenced."

2.12.- Amend Article 55 as follows:

- Insert the following letter (e) after letter (d) in number (9):

"(e) Managers and operators of Special Economic Development Zones (ZEDEs), provided that the goods imported are intended solely for the authorized zone or are incorporated into any of the production transformation processes taking place there."

2.13.- Insert the following two paragraphs in Article 57:

"Likewise, taxpayers whose business includes carrying freight abroad and who have paid VAT on the purchase of fuel for aircraft, have the right to a tax credit exclusively for such payments. After the transport service has been supplied, the taxpayer shall request a refund from

the Internal Revenue Service in the form and on the terms prescribed in the corresponding resolution.

Operators and managers of Special Economic Development Zones (ZEDEs) have the right to a tax credit for the VAT paid on the purchase of raw materials, inputs and services from national territory and incorporated into the production process of the operators and managers of Special Economic Development Zones (ZEDEs). The taxpayer shall request a refund from the Internal Revenue Service in the form and on the terms prescribed in the corresponding resolution after the operational technical unit responsible for supervising and controlling ZEDEs certifies, under its responsibility, that the said goods are part of the production process in the purchasing firm."

2.14.- Replace the reference to "FOB value" or "CIF" value in all the provisions in the Law on the Domestic Tax Regime by the words "customs value".

2.15.- In the penultimate paragraph of the unnumbered Article following Article 4, delete the words "may be based for this purpose on information from the Organisation for Economic Co-operation and Development - OCDE and the Financial Action Task Force - FATF.".

THIRD.- Amendments to Ecuador's Tax Equity Reform Law:

3.1.- Add the following paragraphs to Article 159:

"Payments made abroad in order to amortize capital and interest generated on loans granted by international financial institutions for a term of over one year to be used to finance investment covered by the Production Code shall also be exempt. In such cases, the interest rate for the operations shall be lower than the asset interest rate of reference on the date the loan was registered. Institutions belonging to Ecuador's financial system and payments relating to loans granted by related parties or financial institutions established or domiciled in tax havens or, in general, in lower tax jurisdictions, shall not be eligible for this incentive.

Likewise, payments made abroad by managers and operators of Special Economic Development Zones (ZEDEs), either for imports of goods and services related to their authorized activities or to amortize capital and interest generated by loans granted to them by international financial institutions for a term of over one year in order to develop their investment in Ecuador, shall also be exempt. The interest rate for such operations shall be lower than the asset interest rate of reference on the date the loan was registered. This incentive shall not apply to loans granted by related parties or financial institutions established or domiciled in tax havens or, in general, in lower tax jurisdictions."

3.2.- Replace Article 177 by the following:

"**Article 177.-** Taxable base.- Calculation of the tax shall take into account as the taxable base the total area corresponding to all rural property owned or in the possession of the obligee at the national level, as determined in the land register drawn up for this purpose jointly by municipalities and the Ministry of Agriculture, Livestock, Aquaculture and Fisheries or its equivalent. This information shall be forwarded to the Internal Revenue Service and updated annually in accordance with the provisions in the regulations on application of the rural land tax."

3.3.- Amend Article 180 as follows:

a. Replace the text of subparagraph (a) by the following: "(a) Property situated in upland ecosystems, duly defined by the Ministry of the Environment."
b. in subparagraph (g) following the words "priority ecosystems", replace the full stop "." by a comma "," and add the words "duly qualified by the Ministry of the Environment".
c. Add the following subparagraph at the end of Article 180:

"(i) Farms that have suffered events as a result of an act of God or force majeure duly substantiated and certified by the Ministry of Agriculture, Livestock, Aquaculture and Fisheries that seriously affect their yields and productivity;"

3.4.- Replace Article 181 by the following:

"**Article 181.**- Settlement and payment.- The Internal Revenue Service shall determine the tax on the basis of the land register drawn up jointly by municipalities and the Ministry of Agriculture, Livestock, Aquaculture and Fisheries or its equivalent. Obligees shall pay it in the form and on the dates determined in the regulations on application of this tax."

FOURTH.- Add the following additional paragraph to Article 2 of the Law on the Regime for the Electricity Sector:

"The State may delegate supply of the generation, transmission, distribution and marketing stage of the electricity service to public-private enterprises in which it has a majority holding. On an exceptional basis, it may delegate to private initiative and the mutually supportive people's economy the supply of the public electricity service in any of the following situations:

1. If necessary and appropriate in order to meet the public, collective or general interest; or
2. If demand for the service cannot be met by public enterprises."

FIFTH.- Amend the following provisions of the Labour Code:

1. Add the following paragraphs in Article 81:

"Basic wage means the minimum economic payment by an employer to a person for his/her work and is part of remuneration; it does not include earnings in cash, kind or services received for special work and overtime, commissions, profit-sharing, reserve funds, the legal percentage of profits, occasional accommodation costs and subsidies, additional remuneration or any other usual or conventional payment or those determined by the Law.

The amount of the basic wage shall be determined by the National Wages Council CONADES, or by the Ministry of Labour Relations if there is no agreement in the aforementioned Council.

The basic wage shall be reviewed annually and progressively until it reaches the decent wage in accordance with the provision in the Constitution of the Republic and in this Code."

2. Add the following unnumbered Article after Article 105:

"**Article 105.1.-** Subject to the agreement of the employee and the employer, all or some of the profits accruing to the employee may be paid in the form of shares in the company where he/she works, provided that the company is registered on a stock exchange and complies with the protocol for compliance with business ethics defined by the State and the requirements prescribed in the implementing regulations for the Code of Production, Trade and Investment."

3. Add the words "or discontinuous" after the word "continuous" in the second paragraph of Article 17 of the Labour Code, and at the end of this paragraph, add the following: "The wage or salary paid under temporary contracts shall be 35% higher than the hourly basic wage for the sector in which the employee works.".

Add the following at the end of the third paragraph: "The wage or salary paid under casual contracts shall be 35% higher than the hourly basic wage for the sector in which the employee works.".

4. Add the following Article after Article 23:

"**Article 23.1**.- The competent Ministry may regulate special labour relations that are not regulated in this Code, in accordance with the Constitution of the Republic.".

5. Add the following text to the second paragraph of Article 95 of the Labour Code after the words "thirteenth and fourteenth remuneration": "economic compensation for a decent wage.".

SIXTH.- Amendments to the Social Security Law:

1. Add the following number to Article 14 of the Social Security Law: "Economic compensation for a decent wage.".
2. Add the following at the end of the second paragraph of Article 11 of the Social Security Law: "Economic compensation to achieve a decent wage shall not be taxable.".

SEVENTH.- Amend Article 165 of the Law on the Promotion of Investment and Participation by Citizens, published in the Supplement to Official Journal No. 144 of 18 August 2000, as follows: replace "National Vocational Training Council" by "The Governing Body for Vocational Training".

EIGHTH.- Replace Article 2 of the Law on Development of the Port at Manta by the following:

"**Article 2.-** The Special Interinstitutional Commission of the Port of Manta, with legal status, shall be an advisory body of the Directorate of the Port Authority of Manta, and shall be responsible for promoting the project to make the port of Manta Ecuador's international cargo transfer port. In order to achieve these objectives, the Commission shall have administrative, economic and technical autonomy.

The Commission shall be composed of the following members:

(a) the mayor of Manta, as chair;
(b) a representative of Manta's legally established chambers of production; and
(c) the President of the Directorate of the Port Authority of Manta. The Municipality of Manta shall provide the administrative facilities for the Commission's functioning. Furthermore, the Commission shall be financed with resources obtained from national and international organizations, to be used to achieve its objectives.

The Directorate of the Port Authority of Manta shall obligatorily consult the Commission when taking decisions relating to the development of Ecuador's international cargo transfer port project in the port of Manta. The Commission's decisions shall be in the form of technical advice and shall not be binding.".

NINTH.- Amend the Law on the Ecuadorian Quality System as follows:

1. Delete the words "and private" in the first paragraph of Article 7.

2. Replace subparagraph (a) of Article 8 and add subparagraph (e) as follows:

"(a) Interministerial Committee on Quality";
"(e) Ministry of Industry and Productivity (MIPRO)".

3. Add the following final paragraph to Article 8:

"The Ministry of Industry and Productivity (MIPRO) shall be the governing body for the Ecuadorian Quality System."

4. Replace Article 9 by the following:

"**Article 9**.- An Interministerial Committee on Quality is hereby created as a body for coordination and collaboration of intersectoral quality policy and shall be composed of the following government bodies:

1. The Minister responsible for coordinating production, employment and competition;
2. the Minister of Industry and Productivity, or his/her permanent delegate, as chair;
3. the Minister of the Environment or his/her permanent delegate;
4. the Minister of Tourism or his/her permanent delegate;
5. the Minister of Agriculture, Livestock Aquaculture and Fisheries;
6. the Minister of Public Health or his/her permanent delegate;
7. the Minister of Transport and Public Works or his/her permanent delegate;

8. the Minister of Electricity and Renewable Energy or his/her permanent delegate.

The Under-Secretariat or the Under-Secretary for Quality in the Ministry of Industry and Productivity shall act as the Committee's Secretariat.

5. Add the following unnumbered Article after Article 9:

- The Interministerial Committee shall have the following functions:

1. To approve the National Quality Plan;
2. to develop policies for implementation of this Law and compliance with the objectives therein;
3. to develop policies on the basis of which the goods and products whose import shall mandatorily comply with technical regulations and conformity assessment procedures shall be defined; to coordinate activities with bodies belonging to the Ecuadorian quality system;
4. to receive the management report on the activities of the Ecuadorian Standardization Institute (INEN), as well as that of the Ecuadorian Accreditation Organization (OAE), and to make any recommendations needed to government bodies belonging to the Ecuadorian quality system;
5. to be the ultimate forum for settling disputes arising in connection with this Law caused by action or omission on the part of bodies belonging to the Ecuadorian quality system;
6. to issue guidelines for conformity assessment procedures relating to the mandatory certification of products, systems and persons engaged in specialized work;
7. to coordinate and facilitate integrated implementation of national policies on quality;
8. to promote and request preparation of investigations, studies and technical and legal input for the development and adaptation of the policy on quality;
9. to request the preparation and endorsement of parameters to promote awareness of a culture of quality as regards both goods and services;
10. to request participation, advice and the establishment of working groups with institutions and organizations required for fulfilment of its functions;
11. to foster training, technical assistance, specialization and dissemination of issues relating to quality of goods and services;
12. to encourage the search for additional and complementary resources for assistance and interministerial cooperation on climate change issues through the institutional structure established for this purpose; and
13. to issue the rules required for its functioning and to regulate the exercise of its responsibilities. The relevant provisions in the Statutes of the Executive's Legal and Administrative Regime shall apply to all matters relating to its functioning not already regulated.

An Advisory Council for the Interministerial Committee shall be established composed of representatives of the production sector, academia and consumers.

The INEN and the OAE shall have their own technical advisory committees in which the production sector, universities and experts in their spheres participate.

These advisory committees shall mandatorily be consulted and their rulings shall be for reference purposes and shall not be binding."

1. Delete Articles 10 and 11;
2. Replace Article 12 by the following:

"**Article 12.-** In order to implement the policies adopted by the Interministerial Committee on Quality, the Ministry of Industry and Productivity shall have the following functions:

(a) To advise the Interministerial Committee on Quality on the study, design and feasibility of programmes and projects so as to fulfil the objectives of this Law;
(b) to comply with and enforce the provisions of the Interministerial Committee on Quality;

(c) to enter into any type of deed, contract or mutual recognition agreement with international institutions and agreements on technical assistance and/or financial cooperation with the approval of the Interministerial Committee on Quality;
(d) to impose the sanctions applicable for violation of the provisions in this Law, on the basis of a report submitted by the INEN or the OAE;
(e) to appoint temporarily laboratories, conformity assessment organizations or other organizations needed for specific topics, provided that they do not already exist in Ecuador;
(f) other functions assigned to this body in order to implement the policies adopted by the Committee."

8. Add the following unnumbered Article after Article 12:

"The National Quality Plan shall remain in force for one year calculated as of its approval in January by the Interministerial Committee on Quality, and shall be evaluated twice during its term.

The content of the National Quality Plan shall focus on the following aspects:

a. The promotion of quality;
b. the preparation and revision of the list of products or services subject to quality control;
c. guidelines for preparing technical regulations;
d. guidelines to promote and execute the designation and accreditation of conformity assessment bodies including: local and foreign laboratories, certification and inspection bodies, on the basis of the products and services indicated in subparagraph (a) of this Article;
e. conformity assessment procedures (CAPs)."

9. Delete Article 13.

10. After the words "Public Law" in Article 14, add "attached to the Ministry of Industry and Productivity".

1. Delete Article 16.
2. Amend Article 17 as follows:

Replace the first paragraph by the following:

"**Article 17.-** With regard to the INEN**,** the Ministry of Industry and Productivity shall have the following duties and functions."

- Replace subparagraph f) by the following "approve the proposed standards or technical regulations and conformity assessment procedures within its scope. The voluntary technical standards issued by the INEN (NTE INEN standards) are official and shall comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards of the World Trade Organization's TBT Agreement";
- in subparagraph g), replace the words "propose to the CONCAL" by "propose to the Interministerial Committee on Quality";
- in subparagraph j) replace the word "CONCAL" by "Minister of Industry and Productivity".

13. Replace Article 18 by the following:

"**Article 18.-** The Director-General of the INEN shall be freely appointed and dismissed by the Minister of Industry and Productivity; he/she shall be a graduate with a degree in the exact sciences, have a doctorate and proven experience and technical and professional expertise in areas related to the scope of this Law.

The Director shall be the legal, judicial and extrajudicial representative of the INEN. He/she shall be responsible for the proper functioning of the Institute, in accordance with the law

and its implementing regulations. In coordination with the sectors involved, he/she shall establish technical committees to prepare standards and technical regulations.

Either ex officio or at the request of the Minister of Industry and Productivity, the Director-General shall present draft standards and technical regulations to the Minister for approval, together with studies and other documents deemed appropriate, according to the approved plans and programmes.

The Director-General shall be responsible for conducting investigations into alleged violations of this Law and shall prepare the pertinent report, to be forwarded to the Minister of Industry and Productivity for information and registration.

The Director shall be responsible for the organization of the INEN and shall therefore recruit and dismiss the officials, employees and workers serving the Institute. He/she shall enter into any deeds or contracts required for conducting its activities and fulfilling its objectives, and shall prepare its draft annual budget."

14. Add "attached to the Ministry of Industry and Productivity" in the first paragraph of Article 20 after the words "Public Law", and delete paragraphs 2, 3, 4, 5 and 6.

14.4. Replace the first paragraph of Article 22 by the following:

"**Article 22.-** With regard to the OAE, the Ministry of Industry and Productivity shall have the following functions:"

16. Replace the word "CONCAL" in subparagraph a) of Article 22 by "Interministerial Committee on Quality" and replace the word "CONCAL" in subparagraph (i) by "Ministry of Industry and Productivity".

17. Replace the sentence "shall remain in office for four years and may be re-elected" in Article 23 by "shall be freely appointed and dismissed by the Minister of Industry and Productivity"; replace the words "Directorate of the OAE" in subparagraphs (f), (g) and (h) by "Minister of Industry and Productivity"; delete the words "at the request of the Directorate" and "to be presented to and signed by the Directorate"; and replace "National Council for Quality" by "Ministry of Industry and Productivity".

18. Replace the word "CONCAL" in Article 26 by "Ministry of Industry and Productivity".

19. Replace the word "CONCAL" in the second paragraph of Article 28 by "Interministerial Committee on Quality" and the words "Directorate of the OAE" by "Ministry of Industry and Productivity".

20. Replace the words "National Council for Quality" in the second paragraph of Article 29 by "Ministry of Industry and Productivity" and delete the word "policies".

21. Replace the word "CONCAL" in Article 34 by "Ministry of Industry and Productivity".

22. Replace the words "of its Directorate" in the second paragraph of Article 40 by "Ministry of Industry and Productivity".

23. Replace the word "CONCAL" in subparagraph (c) of Article 46 by "Ministry of Industry and Productivity"; replace the words "Directorate of the INEN" in subparagraphs (k) and (l) by "Minister of Industry and Productivity";

24. Replace the words "Directorate of the INEN" in the last paragraph of Article 47 by "Ministry of Industry and Productivity".

25. Replace the words "Directorate of the INEN" in Article 48 by "Ministry of Industry and Productivity".

26. Replace the word "CONCAL" in Article 50 by "Ministry of Industry and Productivity".

27. Replace the word "CONCAL" in the first and second paragraphs of Article 52 by "Ministry of Industry and Productivity".

28. Replace the words "National Committee for Quality" in subparagraph b) of Article 53 by "Ministry of Industry and Productivity or the Interministerial Committee on Quality".

29. Replace the word "CONCAL" in Article 57 by "Ministry of Industry and Productivity".

30. Replace the word "CONCAL" in the first paragraph of Article 58 by "Ministry of Industry and Productivity"; "National Council for Quality, whose President" in the second paragraph by "Minister of Industry and Productivity who"; replace the word "CONCAL" in the sixth paragraph by "Ministry of Industry and Productivity"; replace the words "National Council for Quality" in the seventh paragraph by "Ministry of Industry and Productivity", and replace the word "CONCAL" by "Ministry of Industry and Productivity".

31. Delete the first and second General Provisions.

TENTH.- Amendments to the Law on the Promotion and Control of the Production and Marketing of Bananas and Plantains (Barraganete variety) and Other Similar Musaceae for Export, codified in RO-S315 of 16 April 2004.

10.1 Replace the first and second paragraphs of Article 1 by the following:

"**Article 1.-** Minimum support price.- The Executive, by means of an agreement adopted by the Minister of Agriculture, Livestock, Aquaculture and Fisheries, shall determine, in United States dollars, the minimum support price to be paid mandatorily to banana producers (at the boat) for each of the various types of box and specifications of bananas, plantains (Barrangete variety) and other musaceae for export, under any transaction or trade arrangement allowed under this Law. For this purpose, the Ministry of Agriculture, Livestock, Aquaculture and Fisheries shall organize negotiations. If these do not result in an agreement, the Ministry of Agriculture, Livestock, Aquaculture and Fisheries shall set the respective prices by means of a ministerial decision. It shall also set the minimum reference prices (f.o.b.) to be declared by the exporter according to the various types of box and their specifications. The price fixing mechanism shall be determined in the regulations."

10.2 Replace the word "intermediary" by "dealer, i.e. the associations of banana and plantain producers" in the fifth paragraph of Article 1, and in the same paragraph replace the words "thirty days" by "one year".

10.3 Add the following text after the fifth paragraph of Article 1: "Dealers who buy fruit from producers shall be exempt from the surety. Subject to a technical analysis, the Ministry of Agriculture, Livestock, Aquaculture and Fisheries shall determine which exporters are exempt from providing surety."

10.4 Replace the words "for the benefit of the producer" in the sixth paragraph of Article 1 by "for the benefit of the Ministry of Agriculture, Livestock, Aquaculture and Fisheries".

10.5 Add the following text after the sixth paragraph of Article 1:

"All producers, dealers and exporters shall sign sales contracts for the fruit and shall abide by the clauses freely and voluntarily agreed by the parties, provided that they are not contrary to this Law and its implementing regulations. Any exporter who does not sign a contract with producers and/or dealers may not export."

10.6 Replace the first paragraph of Article 4 by the following:

"**Article 4.-** Sanctions for non-compliance and its repetition.- The Ministry of Agriculture, Livestock, Aquaculture and Fisheries, through the competent administrative authority, either ex officio or following a written complaint, shall check that exporters and/or dealers pay producers

the minimum support price determined for boxes of bananas, plantains (Barrangete variety) and other musaceae.

If non-compliance is determined, the administrative authority dealing with the proceedings, after having received the technical report and heard the interested parties orally and summarily, shall impose a fine equal to twenty-five to fifty times the amount of the evasion or non-compliance, shall order repayment and refund to producers of the amount evaded or not paid, and shall order the suspension of exports for fifteen days, without prejudice to any civil or criminal proceedings.

If there is a repetition of non-compliance, exports shall be suspended for thirty days. If the producer does not receive the minimum support price for the third time, the exporter shall be punishable by suspension of exports for sixty days and, if non-compliance occurs for a fourth time, the exporter shall be definitively suspended.

Repetition means repeated failure to comply within a twelve-month period."

10.7 Add the following text after the third paragraph of Article 4:

"Exporters shall mandatorily pay for the purchase of boxes of bananas, plantains (Barrangete variety) and other musaceae of different types within a period of eight calendar days calculated as of the date of definitive shipment, by transferring funds through the Interbank Payments System (SPI) at the Central Bank of Ecuador, from the exporter's current and/or savings account into the bank account of the producer and/or dealer. Failure to pay through the Interbank Payments System (SPI) shall lead to the competent administrative authority imposing a fine equal to the amount evaded or not paid through the SPI."

10.8 Delete the fourth paragraph of Article 4.

10.9 Add the following after the words "present Law" in the first paragraph of Article 8:

"that have not previously been authorized by the Ministry of Agriculture, Livestock, Aquaculture and Fisheries".

TRANSITIONAL PROVISIONS:

FIRST.- The reduced rate of corporation tax mentioned in the amendment to Article 37 of the Law on the Internal Tax Regime shall be applied progressively as follows:

The tax rate shall be 24% during the 2011 fiscal year and 23% during the 2012 fiscal year. From the 2013 fiscal year onwards, it shall be 22%.

SECOND.- In order to bring about civil action and processes among companies, diversify share ownership and open up the capital of companies in which the State has a holding, within one hundred and eighty days of the date of entry into force of this Code, the State shall define the terms and mechanisms for deinvestment in such companies, provided that they do not belong to the strategic sectors of the economy determined in the Constitution. Over this period, therefore, the Sectoral Council for Production, within its scope, shall develop financing mechanisms and sales procedures for the shares or companies in question for the benefit of Ecuadorian citizens and investors in general, giving priority for their purchase to employees of the said companies.

THIRD.- Free zones for which concessions have been granted under the Law on Free Zones shall continue to operate according to the terms in effect when they were authorized, for the duration of the concession. Management companies and users of the current free zones shall, however, be administratively and operationally subject to the provisions of this Code.

FOURTH.- As of the enactment of this Code and for the purposes of approving them, companies wishing to register as new users of free zones still operating shall comply with the requirements prescribed in these regulations for operators of Special Economic Development Zones, and shall be approved provided that they are consistent with the investment plans submitted for the Free Zone prior to being approved.

FIFTH.- Free zone management companies which wish to become eligible for the special economic development zones regime may do so provided that they submit their application to the competent authority within six months before the end of the concession as a free zone. Wherever possible, the Sectoral Council for Production shall give priority to the entry of existing free zones into the new scheme determined in this Code.

SIXTH.- As of the publication of this Code in the Official Journal, it is provided that the official planning and implementation of activities to promote exports and non-financial investments, both in Ecuador and abroad, which was the responsibility of CORPEI pursuant to the provisions in Title IV, Chapter I, of Law No. 12: the Foreign Trade and Investment Law (LEXI), published in the Official Journal of 9 June 1997, shall become the responsibility of the Ministry of Foreign Affairs, Trade and Integration, in coordination with the other government bodies and institutions responsible until the President of the Republic, in exercise of the powers given by paragraph 5 of Article 147 of the Constitution of the Republic, organizes and regulates the functioning of the Export and Foreign Investment Promotion Institute.

Pursuant to Title XXX of the Civil Code, the Export and Investment Promotion Corporation (CORPEI) will continue as a non-profit-making legal entity under private law, contributing to the country's development through private action to promote exports and investment in Ecuador and abroad.

Accordingly, in line with this provision, within a maximum period of ninety days calculated as of the publication of this Law in the Official Journal, the CORPEI shall amend its Statutes in respect of its functions, activities, members, administrative bodies, Directorate, resources and assets; the competence, functions and responsibilities assigned to the government agency specializing in promoting exports and foreign investment under these provisions shall be eliminated. The Ministry of Foreign Affairs, Trade and Integration shall decide on the amendments to the CORPEI's Statutes within thirty days of submission of the corresponding project for its information and decision.

Inasmuch as it is a strategic policy and objective of the Ecuadorian State covered by the Fundamental Charter, the Government's current representation on the CORPEI as member of the Assembly and of the Directorate shall continue so as to coordinate joint foreign trade policies and make the best use of human and economic resources. Accordingly, the Ministry of Foreign Affairs, Trade and Integration shall draw up agreements on collaboration with the CORPEI so as to take advantage of its experience and technical capacity in promoting exports and investment.

SEVENTH.- The following concerns the redeemable quotas paid to CORPEI:

1. Without prejudice to the provision in the previous Transitional Provision, the redeemable quotas created by Law No. 24, published in Official Journal No. 165 of 2 October 1997, shall continue to be collected by the CORPEI until 31 December 2010, after which the obligation to pay this redeemable quota shall cease.
2. For the purpose of guaranteeing refund of the redeemable quotas, certificates and coupons of contributors within the corresponding time-limits, the Export and Investment Promotion Corporation (CORPEI) shall, within the strict deadline of 90 days, create the trust funds deemed necessary and sufficient for refund of the sums to contributors. These trust funds shall be created in a public sector financial institution using the resources retained statutorily and technically for the refund concerned. The general features of these trust funds, and any other aspect related to CORPEI's assets generated prior to 31 December 2010, shall be incorporated into the amendment of its Statutes provided in the Sixth Transitional Provision.
3. In order to ensure that contributors which have accumulated US$500.00 in coupons cash them in for CORPEI contribution certificates for the purpose of the corresponding refund; the CORPEI shall issue a notification in a national newspaper once every quarter as from the date of publication of this Code in the Official Journal. Contributors shall have a period of two (2) years in which to cash in the coupons for CORPEI contribution certificates and the time-limit for payment of these certificates shall be 10 years as of the date of issue of the last coupon paid to the CORPEI.
4. Likewise, contributors which have not accumulated US$500 in coupons shall be notified by means of a national newspaper so that, within a period of two years, they convert them into CORPEI contribution certificates. In turn, these certificates shall be paid within five years

calculated as of the date of issue of the last coupon paid to the CORPEI in the same terms as indicated in the preceding paragraph.

5. Sums remaining in the trust fund from coupons and certificates that have not been claimed by the contributors shall be used to finance joint export promotion and investment projects by the Ministry of Foreign Affairs, Trade and Integration and the CORPEI, taking into account the particular features of the trust fund's establishment.

EIGHTH.- The current Directorate of the Ecuadorian Customs Corporation shall remain in function for a period of nine days as of enactment of this Code so as to wind up matters still to be resolved. After this period, the continuation and resolution of procedures that have not been concluded shall become the responsibility of the Director-General.

NINTH.- Officials in post in the current Directorate of the Ecuadorian Customs Corporation shall be employed in the National Customs Service of Ecuador.

Civil servants belonging to the Customs Monitoring Service at the time this Code comes into force shall be transferred to the National Customs Service of Ecuador under a reclassification process, either to the Customs Monitoring Unit or to other operational units of the Service, retaining their remuneration and duration of contract in accordance with the Law on the Civil Service.

TENTH.- Until the new Director-General takes office, the General Manager of the Ecuadorian Customs Corporation shall carry out the functions of the Director-General of the National Customs Service of Ecuador.

ELEVENTH.- Goods that are being stored under the custody of the Ecuadorian Customs Corporation or in warehouses it has rented, for any reason, shall be subject to an inventory and valuation by the institution, unless an expert valuation already exists as part of judicial proceedings, in which case this shall serve as the value of the goods.

After the goods have been valued, three notices shall be published in two national newspapers at an eight-day interval giving a period of 20 days as of the date of the last notice to allow those who believe they have rights to the goods to prove their rights in legal and due form.

If during this period it is found that the goods are subject to judicial proceedings, they shall be auctioned off, and the proceeds of the public auction shall be deposited in the name of the National Customs Service of Ecuador, as provided in the regulations, until the end of the proceedings concerned; if the judge or court rules that the goods should be returned, the administration shall hand over the proceeds of the public auction; if confiscation of the goods is decided, the proceeds shall be deposited in the Treasury's Single Account.

The same procedure shall be followed for goods that are not under the orders of the judicial authority but under the custody of the National Customs Service of Ecuador, In such cases, if no person provides evidence of a right to the goods, the proceeds of the public auction shall be deposited in the Treasury's Single Account; if, on the other hand, a person proves a legitimate right to the goods, the matter shall be dealt with in each case according to the provisions of the legislation applicable.

If it is determined that the goods are of no commercial value and, within the period indicated in this provision, no person provides evidence of a right to the goods, their destruction shall be ordered without further delay. Clothing whose import is banned shall be donated to the Ministry responsible for social policy.

The private sector may be contracted for the purpose of carrying out the procedure described in this provision.

TWELFTH.- Administrative or judicial proceedings brought against the authorities of the Customs Administration up to 2000 inclusive or brought by it against those liable to customs tax in respect of amounts not exceeding two thousand United States dollars shall be closed ex officio by the judicial or administrative authority and the amount of the tax shall be deleted from the accounts, whether they are amounts claimed by the taxpayer or payable to the Treasury.

THIRTEENTH.- Until such time as the planned amendments to the implementing regulations for the Organic Customs Law have been adopted and/or the respective administrative provisions concerning consumables, live animals, perishable or easily degradable goods have been issued, Article 157 of the General Regulations for the Organic Customs Law, published in Official Journal No. 158 of 7 September 2000, shall apply, together with the relevant internal manuals. For other matters, until the implementing regulations for this Code have been adopted, the Directorate of the Ecuadorian Customs Corporation, while it remains in existence, and thereafter the Director-General of the National Customs Service of Ecuador, may issue technical rules for their implementation.

FOURTEENTH.- After this Code has come into force, the Director-General of the National Customs Service of Ecuador, subject to the Law and in accordance with institutional needs and purposes, may decide on the administrative transfer of civil servants belonging to the institution, including those who belonged to the Customs Monitoring Service

FIFTEENTH.- The relevant amending agreements with concessionaires of customs services shall be concluded within 90 days of the entry into force of this Code in order to adapt to the new rules.

SIXTEENTH.- The Director of the National Customs Service shall issue the regulations for the Customs Monitoring Unit determining its functions, responsibilities and organic structure, within 90 days of the entry into force of this Code.

SEVENTEENTH.- The institution with competence for administrative control of Special Economic Development Zones shall be composed of civil servants, with the financial and administrative resources and infrastructure of the National Free Zones Council (CONAZOFRA).

EIGHTEENTH.- The President of the Republic, in an Executive Decree, shall appoint the "Governing Body for Vocational Training", and decide on its composition and structure, within a period of 90 days of the enactment of this Code. Until the Executive Decree appointing the Governing Body for Vocational Training has been adopted, the National Vocational Training Council shall continue to be in charge.

In order to comply with the provisions in this Code on vocational and technical training, the Governing Body for Vocational Training shall, within a maximum period of eighteen months as of the entry into force of these regulations, build up a vocational training system based on labour skills, making the necessary structural and managerial changes in such a way that its financing leads to the creation of academic curriculums based on professional profiles in order to develop vocational training and recognition of labour skills through evaluation and certification.

For this purpose, the Governing Body for Vocational Training may finance all activities and direct and indirect costs to bring about a labour-skills-based system, for example, studies, identification of professional profiles, development of standards and rules, preparation of curriculums, training programmes, evaluation and certification of labour skills, *inter alia.*

NINETEENTH.- The resources generated as a result of applying Article 1 of the law amending the Law on the Development of the Port of Manta, published in Official Journal No. 323 of 22 May 1998, shall be distributed as follows until entry into force of this Code:

- 10% of the resources shall be handed over to the Special Interinstitutional Commission of the Port of Manta, to be invested in complementary studies and projects on promotion of development of the Port and the airport of Manta, for the purpose of setting up a logistics services centre in this canton, without prejudice to their use also to fulfil contractual obligations entered into prior to the entry into force of this Code; and

- The remaining 90% of the resources shall be transferred to the Manta Port Authority and shall be used to finance works in the Port of Manta to be paid by the Authority, and to implement Ecuador's international cargo transfer port project at the Port of Manta. This institution shall be responsible for the planning, organization and execution of Ecuador's international cargo transfer port project at the Port of Manta. The project shall be promoted in coordination with the Special Interinstitutional Commission of the Port of Manta.

Subsequently, the resources generated on the basis of the legal provision mentioned in this Article shall be attributed to the Manta Port Authority in order to carry out the international cargo transfer port project.

TWENTIETH.- Economic compensation to reach the decent wage based on the provisions of Article 8 of this Code shall be paid for as long as the sum of the unified basic wage plus the components mentioned in Article 8 amount to less than the decent wage or until the unified basic wage alone equals the decent wage. The temporary compensation shall, under no circumstances, be converted into an acquired right for workers.

TWENTY-FIRST.- The time-limit for declaring and paying the tax on rural land for the 2010 fiscal year shall be up to 31 December of this fiscal year.

TWENTY-SECOND.- For real estate in the Amazon Region, for the fiscal periods between 2010 and 2015 inclusive, the trigger for the tax shall be ownership or possession of land exceeding 70 hectares, pursuant to the terms of Article 174 of Ecuador's Tax Equity Reform Law. Persons having paid the tax for the year 2010, however, but not owning or possessing land exceeding 70 hectares shall have the right to refund of the excess payment in accordance with the Tax Code.

If the obligee owns and/or possesses land in the Amazon region and in other regions in Ecuador at the same time, all these areas shall be added together in order to calculate the tax and the land in the Amazon Region subtracted up to the maximum allowed for each fiscal year. The surplus resulting from this calculation shall be the taxable base. If the obligee owns less than 25 hectares in the Amazon Region, however, the taxable base shall be the amount exceeding 25 hectares in the total amount of his/her rural land at the national level.

From 2016 onwards, the number of hectares set out in the table below shall apply when calculating the tax on rural land in the Amazon Region.

- FISCAL YEAR LIMIT (HECTARES) 2016 61, 2017 52, 2018 43, 2019 34, 2020 .... ONWARDS, 25.

In any event, for payment of the rural land tax, as long as no national disaster has been proclaimed and the Internal Revenue Service informed accordingly, as provided in this Law and its implementing Regulations, obligees shall declare and pay this tax in the authorized financial institution, using the form prepared for this purpose by the Internal Revenue Service.

If the tax administration finds evidence of a case of force majeure or an act of God, payment facilities may be granted according to the terms laid down in the Tax Code for a period of up to five years.

TWENTY-THIRD.- Within 60 days of the entry into force of this Code, the administrative resources and personnel currently with the Foreign Trade and Investment Council (COMEXI) shall be transferred to the ministry appointed as the Technical Secretariat for the governing body for trade policy. Likewise, all decisions adopted by COMEXI shall remain in force and shall have their respective legal effects until explicitly or tacitly repealed.

TWENTY-FOURTH.- Within 60 days of the entry into force of this Code, the administrative resources and personnel currently with the National Council for Quality, the Directorate of the INEN and the Directorate of the OAE shall be transferred to the Ministry of Industry and Productivity. Likewise, all decisions adopted by these bodies shall remain in force and shall have their respective legal effects until explicitly or tacitly repealed by the Interministerial Council on Quality or by the Ministry of Industry and Productivity, whichever is applicable.

TWENTY-FIFTH.- Fines for breaches of regulations recorded up to 30 October 2010 in the Interactive Foreign Trade System (SICE) of the Ecuadorian Customs Corporation under the Organic Customs Law, except for those recorded because of late submission of the customs declaration or failure to provide facilities for customs control, and not paid, in respect of which the Ecuadorian Customs Corporation has not brought any legal proceedings for their payment, shall be automatically deleted from the Customs Administration's computer system by the Director-General of the National Customs Service of Ecuador.

REPEAL PROVISIONS

Unless otherwise specified in the Transitional Provisions, as of the date of entry into force of this Code, all regulations that are contrary to its provisions are hereby repealed. In addition, the following regulations are explicitly repealed:

a. Codification No. 2006-004 to the Industrial Promotion Law, published in Official Journal No. 269 of 12 May 2006;
b. The Law to Promote Small Industry, contained in Supreme Decree No. 921, published in Official Journal No. 372 of 20 August 1973;
c. The Law on Tax and Loans for Industries Established in the Province of Esmeraldas, published in Official Journal No. 130 of 14 August 1997;
d. Law No. 35 on Agroindustrial and Tourism Development in the Province of Manabí, published in the Supplement to Official Journal No. 194 of 14 November 1997;
e. Law No. 45 on the Promotion of Industry in the Province of Bolívar, published in Official Journal No. 218 of 18 December 1997;
f. Law No. 48 on the Promotion of Industry and Agroindustry in the Province of Imbabura published in Official Journal No. 223 of 26 December 1997;
g. Law No. 51 on the Promotion of the Production of Goods and Development of the Agricultural Sector in the Province of Chimborazo, published in Official Journal No. 227 of 2 January 1998;
h. Law No. 65 on the Promotion of Industrial, Handicrafts and Tourism Development in the Province of Cañar, published in Official Journal No. 269 of 5 March 1998;
i. Law No. 136 on the Promotion of Production and Prevention of the Population Exodus from the Province of Loja, published in Official Journal No. 1 of 12 August 1996;
j. Law No. 46 on Investment Promotion and Guarantees, published in Official Journal No. 219 of 19 December 1997;
k. Foreign Trade and Investment Law, published in the Supplement to Official Journal No. 82 of 9 June 1997;
l. Article 7 of the Law on the Promotion and Development of Agriculture, published in Official Journal No. 792 of 15 March 1979;
m. Article 15 of the Law on Agricultural Development, published as Codification No. 2004-02, published in the Supplement to Official Journal No. 315 of 16 April 2004;
n. Law on Free Zones, published as Codification No. 4, published in Official Journal No. 562 of 11 April 2005;
o. The second chapter of Law No. 90 on the Maquila Regime and Hiring of Part-Time Labour, published in the Supplement to Official Journal No. 493 of 3 August 1990. Where applicable, the regulations repealed by this provision may be incorporated into the customs regulations, in the temporary admission for inward processing regime, taking into account the special features of the maquila system which remain in force in the aforementioned Law;
p. Articles 3 and 5 of the Law on the Development of the Port of Manta are repealed, together with the unnumbered Article following Article 3, introduced by Law No. 28, published in Official Journal No. 231 of 12 December 2003. The second paragraph of Article 1 of the Interpretative Law No. 2006-51, published in Official Journal No. 344 of 29 August 2006 is also repealed;
q. The Organic Customs Law; and
r. The Industrial Parks Law, published in Official Journal No. 137 of 1 November 2005, and amendments thereto.

The provisions in this Code and the repeal provisions shall enter into force as of the date of their notification in the Official Journal.

Done and signed at the seat of the National Assembly in the Metropolitan District of Quito, Pichincha Province, on the sixteenth day of December two thousand and ten.

(signed) Fernando Cordero Cueva. President. (signed) Dr. Francisco Vergara O., Secretary-General.

ANNEX 7

RAFAEL CORREA DELGADO

PRESIDENT OF THE REPUBLIC

WHEREAS:

Ecuador's Constitution provides that Ecuador is a constitutional State with rights and justice whose principal duty is to guarantee the effective enjoyment of the rights enshrined in the Constitution and in international instruments without discrimination;

One of these fundamental rights to be guaranteed is: "The right to ownership in any form, bearing in mind social and environmental functions and responsibilities", recognized in Ecuador's Constitution and in international human rights instruments;

The Organic Code of Production, Trade and Investment was published in Official Journal No. 351 of 29 December 2010 and Book V thereof concerns "Systemic competitiveness and customs facilitation";

Executive Decree No. 758, published in Official Journal No. 452 of 19 May 2011 issues the "Regulations on the Title 'Customs facilitation for trade' of Book V of the Organic Code of Production, Trade and Investment";

The legal responsibilities conferred on the National Customs Service of Ecuador by the Organic Code of Production, Trade and Investment shall be exercised by the former observing constitutional rights;

The customs regulations shall ensure the maximum facilitation of foreign trade to make it a pillar for revitalizing production; and

In legitimate exercise of his attributions and in compliance with his Constitutional duty,

HEREBY DECREES:

AMENDMENTS TO EXECUTIVE DECREE No. 758 CONTAINING THE REGULATIONS ON THE TITLE "CUSTOMS FACILITATION FOR TRADE" OF BOOK V OF THE ORGANIC CODE OF PRODUCTION, TRADE AND INVESTMENT

Article 1: Replace Article 249 by the following:

> "The occurrence of any of the grounds for definitive abandonment implies tacit admission of the owner's desire to abandon the goods in favour of the Customs Administration. The administrative act by which the competent District Director of Customs declares definitive abandonment shall mean the loss of ownership of the goods to the Customs Administration.
>
> Notwithstanding the foregoing, the administrative act may be annulled on the grounds of lapse of time if, within the evidential stage of the administrative appeal, the individual concerned remedies the omission that led to the declaration of definitive abandonment.
>
> If it is sought to obtain release of the goods once the omission has been remedied in the course of the appeal for review, a request shall be made before the initiation of the procedure to auction off or award the goods free of charge.
>
> The Director-General of the National Customs Service of Ecuador shall determine the cases and the forms in which surety has to be lodged for application of this Article."

TRANSITIONAL PROVISION.- All importers who currently have a decision pending on an administrative claim or review procedure against an administrative act declaring the definitive abandonment of their goods may remedy the omission that led to the declaration up until the decision on the review is taken. If they do so, the administrative act contested shall be validly annulled for reasons of expediency.

This Executive Decree shall enter into force as of its publication in the Official Journal.

Done in the National Palace in Quito on the eleventh day of June 2012.

Rafael Correa Delgado
PRESIDENT OF THE REPUBLIC

ANNEX 8

Resolution No. SENAE-DGN-2012-0231-RE

Guayaquil, 29 June 2012

NATIONAL CUSTOMS SERVICE OF ECUADOR

WHEREAS

Paragraph 3 of Article 225 of the Constitution of the Republic of Ecuador specifically provides that the public sector is comprised of bodies and institutions created by the Constitution or by law to exercise the powers of the State, to provide public services or to carry out economic activities entrusted to the State.

The Supplement to Official Journal No. 351 of Wednesday, 29 December 2010, published the Organic Code of Production, Trade and Investment, whose Title II on Customs Facilitation for Trade contains the rules to regulate legal relations between the State and natural and legal persons engaged directly or indirectly in international goods traffic, specifically repealing the Organic Customs Law.

Article 17 *et seq.* of Decision No. 571 of the Andean Community on the customs valuation of imported goods provides the following: "Doubts concerning the truth or accuracy of the value declared: When a declaration has been submitted and the Customs Administration has reason to doubt the truth or accuracy of the value declared or the data or documents submitted in support of the declaration, the Customs Administration shall request the importers to provide written explanations, additional documents or proof to show that the value declared represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions in Article 8 of the WTO Customs Valuation Agreement (…)".

Article 18 *ibid* states: "Burden of proof: In determining the customs value, as well as in checks and enquiries by Customs Administrations of Andean Community member countries, concerning valuation, the burden of proof shall, in principle, lie with the importer or buyer of the goods. If the importer and buyer are not the same person, the burden of proof shall lie with both the importer and the buyer of the imported goods; if the importer or buyer is a legal person, with its legal representative and the person authorized to act on its behalf.".

By means of Executive Decree No. 934 of 10 November 2001, the undersigned was appointed Director-General of the National Customs Service of Ecuador.

In exercise of the powers and responsibilities conferred by subparagraph (l) of Article 216 of the Organic Code of Production Trade and Investment: "by means of decisions, to issue the regulations, manuals, instructions and office circulars needed to apply the operational, administrative, procedural and customs valuation aspects (…)", the Director-General of the National Customs Service of Ecuador.

HEREBY DECIDES:

REGULATIONS FOR THE REASONABLE DOUBT PROCEDURE

Article 1: The period given to the declarant to furnish the Customs Administration with evidence of the price actually paid or payable shall be five (05) working days, solely renewable by another two (02) days to be calculated as of receipt of the corresponding notification.

Article 2: To adopt and update the format for notification of reasonable doubt, in accordance with the customs regulations currently in force, attached as the single annex to this resolution.

SINGLE PROVISION.- This resolution shall enter into force as of its signature, without prejudice to its publication in the Official Journal. The Directorate of the SENAE General Secretariat shall be responsible for its dissemination on the institution's website, publication in and transmission to the Official Journal.

ANNEX 9

DIRECTORATE OF THE ECUADORIAN CUSTOMS CORPORATION

WHEREAS:

It is the task of the Ecuadorian Customs Corporation to administer customs services' flexibly and transparently, focusing on efficient collection of taxes, facilitation and control of customs administration in foreign trade, based on integrated and computerized procedures, with a strong culture of competition, to guarantee the excellence of the service for external and domestic users, making an active contribution to Ecuador's development;

Decision No. 571 of the Andean Community deals with the customs valuation of imported goods, stating in its "**Article 1 - Legal basis.** - For the purposes of customs valuation, the member countries of the Andean Community shall be governed by the provisions in the 'Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994', hereinafter 'the WTO Customs Valuation Agreement', attached to this Decision, by this Decision and by its Community implementing regulations to be adopted for this purpose in a Resolution by the General Secretariat.";

RESOLUTION No. 846, Community implementing regulations for Decision No. 571 - Customs valuation of imported goods, deals with application of customs valuation to goods imported into Community Customs Territory, providing details and procedures for the implementation of Decision No. 571.

Decision No. 574 of the Andean Community deals with the Andean Customs Control Regime, determining:

Article 2.- The objective of this Decision is to determine the regulations which the Customs Administrations of Andean Community member countries shall apply for the control of foreign trade operations.

Customs control means the series of measures adopted by the Customs Administration for the purpose of ensuring compliance with customs legislation or any other provisions whose application or implementation are within the competence or responsibility of the customs.

Article 3.- Customs control shall apply to the entry, stay, transfer, movement, storage and exit of goods, loading units and means of transport to and from Community customs territory.

Likewise, customs control shall be exercised over persons engaged in foreign trade transactions and those who enter or leave customs territory;

Article 4.- Customs control may be exercised at the following stages:

(a) **Post-entry control,** exercised by the Customs Administration prior to acceptance of the customs declaration for the goods;
(b) **Concurrent control,** exercised from the time of acceptance of the declaration by the Customs up to the time when the goods are released or loaded;
(c) **Post-clearance control**, exercised as from release or loading of the goods cleared for a specific customs regime;

Article 16.- The Customs Administrations shall be authorized to carry out such controls in respect of any importer or exporter declaring goods that are subject to control; any person directly or indirectly involved for professional reasons in customs transactions subject to control; any other person possessing or having available information, documents or data concerning transactions subject to customs control; or any person in possession of goods subject to customs control;

The post-clearance control unit may inspect books, documents, files, magnetic media, computer data and any other information concerning foreign trade transactions. It may also

require the submission of such information even if it is to be found outside the scope of its territorial control.;

Article 53 of the Organic Customs Law states the following: "Verification and rectification.- Within three years as of the date of payment of foreign trade taxes, customs declarations shall be subject to random checks by the General Manager of the Ecuadorian Customs Corporation. If errors in payment are found either to the benefit or detriment of those subject to tax obligations, the corresponding settlement shall be made without prejudice to other action legally applicable, provided that there is no presumption of an offence. If the settlement results in a difference to the benefit or detriment of the obligee, the respective note or entitlement to credit shall immediately be issued.";

Article 56 of the General Implementing Regulations for the Organic Customs Law, amended by Executive Decree No. 855, published in Official Journal No. 260 of 25 January 2008, states "Random selection mechanism: The random selection mechanism shall operate on the basis of the risk profiles determined by the Customs Corporation.";

Pursuant to the foregoing, in accordance with the last paragraph of Article 46 in accordance with the responsibilities given by paragraph 7 of Article 109 of the Organic Customs Law,

HEREBY DECIDES:

ARTICLE 1.- To authorize the General Manager of the Ecuadorian Customs Corporation to adopt the procedure concerning control of the value of imported goods, based on a selection by risk profile.

For this purpose, the General Management shall take the following into account, *inter alia:*

a. Concurrent control:

- The reasonable doubt procedure may only be initiated in respect of goods subject to the single customs declaration (DAU) and the physical inspection channel with monitoring of value, in accordance with supranational rules and the manuals or instructions issued or to be issued for this purpose.
- Once the documents have been inspected by the official concerned, goods subject to the single customs declaration (DAU) and the inspection channel without monitoring of value shall not result in any notes in the documents as a result of action by the person conducting the physical inspection. If doubts are raised in the administrative act determining the tax or there are inconsistencies in the declared value of the goods, the official in charge shall include a warning in the inspection report, and this information shall be transmitted to the general intervention coordination department through the computer system before the inspection concludes, in accordance with supranational rules and the manuals or instructions issued or to be issued for this purpose.
- The single customs declaration (DAU) and the documents inspection channel shall be reviewed by the official in charge in accordance with the procedures in effect. Only if doubts are raised or there are inconsistencies concerning the declared value of the goods, shall a warning be included in the report containing information on value, which shall be transmitted to the general intervention coordination department through the computer system before the inspection concludes, in accordance with supranational rules and the manuals or instructions issued or to be issued for this purpose.

If the physical or documentary inspection reveals further new elements other than the value of the goods, the official in charge shall abide by the respective customs declaration and comply with the procedures established for this purpose.

b.- Post- clearance control

- Using properly and technically substantiated risk-analysis-based selection mechanisms, the general intervention coordination department, through the sectoral

risk analysis division, shall consider the warnings reported by the district divisions together with the risk variables for each declaration, in order to select the single customs declarations to be subject to a non-participatory review. This selection and the resulting identification of cases to be reviewed shall lead to initiation of a non-participatory review, in accordance with the supranational rules and the manuals or instructions issued or to be issued for this purpose. The non-participatory review division of the general intervention coordination department shall be the body responsible for the proper conduct and conclusion of such reviews. The selection is without prejudice to the other cases determined in the Organic Customs Law and its General Implementing Regulations.

- The general intervention coordination department, through the sectoral risk-analysis division, shall determine the single customs declarations (DAU) to be subject to post-clearance control using properly and technically substantiated risk-analysis-based selection mechanisms for those single customs declarations (DAU) that have previously been subject to non-participatory review. This selection process and the ensuing identification of cases shall be carried out every two (2) months and the post-clearance control division of the general intervention coordination department shall be the administrative unit responsible for the proper conduct and conclusion of such investigations. The identification of cases shall be without prejudice to the other cases determined by the general intervention coordination department.

TRANSITIONAL PROVISION

In order to comply with this delegation of authority, the General Management of the Ecuadorian Customs Corporation shall take the necessary administrative measures to establish the general coordination department(s), draw up appropriate plans for ensuring the operational efficiency of foreign trade operators, and approve the technological tools needed for this purpose.

Until procedures solely applicable to control of the value of imported goods exist, procedures shall continue in accordance with the regulations and methods presently in effect.

FINAL PROVISION

The Office of Operations, the Regional Office, General Coordination Departments, District Divisions, the General Secretariat of the Ecuadorian Customs Corporation have been informed of this provision, for notification.

This resolution shall come into force as of the date of its signature, without prejudice to notification in the Official Journal. For publication and dissemination on the website of the Ecuadorian Customs Corporation.

Done and signed in the city of Guayaquil, on 15 March 2010.

ANNEX 10

Resolution No. SENAE-DGN-2012-0353-RE
Guayaquil, 21 October 2012

NATIONAL CUSTOMS SERVICE OF ECUADOR

THE DIRECTOR GENERAL
WHEREAS

Article 226 of the Constitution of the Republic of Ecuador enshrines the legal principle of due process as a limit on all action by persons belonging to Ecuador's government sector, indicating that: "State institutions, bodies, agencies, public servants and persons who act by virtue of a state power granted to them shall perform only those duties and wield those powers that are given to them by the Constitution and the law. They shall coordinate actions for the fulfilment of their purposes and enforce the enjoyment and exercise of the rights recognized in the Constitution.";

Article 212 of the Organic Code of Production, Trade and Investment provides that the National Customs Service of Ecuador is the body which has been given the technical and administrative competence necessary to advance the planning and implementation of Ecuador's customs policy and to exercise, in the prescribed form, responsibility for determining taxes, resolving, punishing and regulating customs matters;

Article 11 of Decision No. 571 of the Commission of the Andean Community "Customs valuation of imported goods", published in Official Gazette No. 1023 of the Cartagena Agreement of 15 December 2003 and published in Ecuador in Official Journal No. 317 of 20 April 2004, provides that: "The Andean Customs Value Declaration shall be completed and signed by the importer or buyer of the goods; and if the domestic legislation of the member country so provides, by their legal representative or the person authorized to do so on their behalf. The Andean Customs Value Declaration shall be submitted to the customs authority, together with the customs declaration of the imported goods, by the importer or by the person authorized to act on his/her behalf, as provided in domestic customs legislation (…).";

Article 13 of the aforementioned Decision No. 571 on "Customs valuation of imported goods" determines the responsibilities of persons drawing up and signing the Andean Customs Valuation Declaration as follows: "Article 13.- Responsibilities. Pursuant to Article 11 of this Decision, any person completing and signing the Andean Customs Value Declaration shall be responsible for: (a) the truth, accuracy and completeness of the particulars given in the declaration of value; (b) the authenticity of the documents submitted in support of these particulars; and (c) the supply and submission of any additional information or document necessary to establish the customs value of the goods. (…).";

Article 12 of the aforementioned Decision No. 571 on "Customs valuation of imported goods" provides for the possibility of submitting the declaration in electronic form, specifically: "(…) Electronic declaration.- The Andean Customs Value Declaration may be submitted to the competent customs authority using an electronic data transmission system, in accordance with the provisions in domestic legislation.";

The First Transitional Provision of the Regulations in the Title "Customs facilitation for trade" in Book V of the Organic Code of Production, Trade and Investment, fixes 30 April 2013 as the deadline for the Customs Administration to implement the modules for the new computer service of the National Customs Service of Ecuador, which is intended to computerize, improve the transparency and streamline all customs procedures, including the electronic submission of supporting documents such as the Andean Customs Value Declaration;

Article 2020 of Ecuador's Civil Code determines the stipulative definition of an agency contract, providing that. "(..) a mandate is a contract by which one person entrusts another person with managing one or more business transactions and assumes the risk on behalf of the former. The person giving the mandate is the principal and the person accepting the mandate the agent, proxy or representative . (…).";

Subparagraph (d) of Article 73 of the Regulations in the Title "Customs facilitation for trade" in Book V of the Organic Code of Production, Trade and Investment, states that the Director-General of the National Customs Service of Ecuador may determine the submission of the supporting documents required to control transactions and to verify compliance with the regulations applicable;

The Director-General of the National Customs Service of Ecuador, in exercise of his/her powers granted in subparagraph (l) of Article 215 of the Organic Code of Production, Trade and Investment, HEREBY DECIDES to issue the following;

GUIDELINES CONCERNING PERSONS THAT MAY SIGN THE ANDEAN CUSTOMS VALUE DECLARATION (DAV)

Article 1: Preparation of the DAV: The data required for the Andean Customs Value Declaration (DAV) shall be taken from the data entered and forwarded in the Customs Import Declaration (DAI). After the Customs Import Declaration (DAI) has been forwarded, the computer system may generate the corresponding Andean Customs Value Declaration (DAV) electronically, where necessary, and it shall be fully legally effective.

Article 2: Obligation to conclude an agency contract: In order to be able to submit a customs declaration on behalf of a third party importer, customs brokers or persons acting in their stead or place shall have previously concluded the corresponding agency contract with the principal in order to submit and sign the DAV. In the agency contract concluded by the parties, the consignee shall delegate to the customs broker or the person acting in his/her stead or place the signature of the DAV, in the name and on behalf of the importer and at the latter's risk.

Article 3: Termination of the mandate: The agency contract referred in the previous Article shall be for an indefinite period and shall be valid for the submission of an indefinite number of customs declarations. If for any reason, however, the importer, whether a natural or legal person, wishes to annul the mandate given to the customs broker or the person acting in his/her stead or place, he/she shall inform the Customs Administration of the deed by which the contractual relationship is terminated.

Article 4: Principal: Only an importer who has his/her domicile or residence in Ecuador and who is aware of the data required for the Andean Customs Value Declaration (DAV) and has them available may appear as a principal in the agency contract with the customs broker.

Importers who are natural persons shall enter into contracts jointly with their customs brokers, but if they are legal persons the mandate shall be signed by their legal representative. In both cases, the contract shall be concluded in the proper format set out in Annex I to this resolution

Article 5: Administrative responsibility: Conclusion of an agency contract in favour of a customs broker does not alter the administrative responsibility incumbent upon the importer legally obliged to forward the Andean Customs Value Declaration. Consequently, the only person administratively responsible for the truth, accuracy and completeness of the data in the DAV is the importer.

Article 6: Control: If post-clearance control reveals that this document is missing, a fine shall be imposed on the customs broker who forwarded the customs declaration for breach of the regulations. In such cases, a customs broker who completed a Customs Import Declaration without having previously entered into an agency contract shall be fully responsible for the information therein.

Article 7: Conservation of the contractual instrument: The customs broker and the importer shall conserve the agency contract for up to five years after payment of the taxes in respect of the latest customs declaration forwarded under the aforesaid agency contract. This specific and written contractual instrument is the only proof acceptable to the Customs Administration for the purpose of proving the relationship between the principal and the agent.

GENERAL PROVISION

Add the following subparagraph (o) to Article 26 of the "Regulations governing the activities of customs brokers" (Resolution DGN-0409): "(o) Obtain from any importer the broker declares that he/she represents, the mandate to sign the Andean Customs Value Declaration on behalf and in the name of the former and at his/her risk, under the terms and conditions provided in the corresponding resolution.".

FINAL PROVISION: Resolution No. 0723 " Guidelines concerning persons that may sign the Andean Customs Value Declaration (DAV)" is hereby repealed.

This resolution shall enter into force as of its signature, without prejudice to its publication in the Official Journal.

Document signed electronically
Econ. Pedro Xavier Cárdenas Moncayo
DIRECTOR-GENERAL

ANNEX I

Mandate to sign and submit the Andean Customs Value Declaration

In the city of (___) on (dd/mm/year), appearing as party of the first part (_____) identity card number (_____), [(in his/her own right)/(having the right to represent the company (_____) identified by RUC (_____)], hereinafter called "the principal". Appearing as party for the second part (_____) identity card number (_____), [(in his/her own right)/(having the right to represent the company (_____) identified by RUC (_____)] having the status of (customs broker) duly authorized by the National Customs Service of Ecuador to exercise this activity, hereinafter called "the agent".

The principal declares that he/she is acting with sufficient rights and confers a special mandate on the agent so that in the name and on behalf of the principal, and at the latter's risk, he/she may sign the Andean Customs Value Declaration, pursuant to Article 8 of Decision No. 571 of the Commission of the Andean Community on the Customs Valuation of Imported Goods. The Andean Customs Value Declaration signed by the agent in exercise of this instrument shall be used by the agent for customs clearance of the goods imported by the principal.

The parties declare that they are aware that the administrative responsibility which public law provisions confer on the importer in respect of the completion and signature of the Andean Customs Value Declaration may not be transferred to a third party under a contractual arrangement between individuals. Consequently, the parties declare that they are aware that the principal alone shall be responsible, in accordance with Article 13 of Decision No. 571 of the Commission of the Andean Community, for the truth, accuracy and completeness of the particulars given in the Andean Customs Value Declaration (DAV).

This contract shall be for an indefinite period and shall be valid to enable the agent to sign an indefinite number of Andean Customs Value Declarations on behalf of the principal. The principal may, however, annul this mandate at his/her discretion at any time, although the parties declare that such annulment shall not have any legal effect until it has been transmitted to the National Customs Service of Ecuador.

Importer
Principal

Customs broker
Agent

Translation of pages 164-165

KEY TO THE TABLE

ANDEAN COMMUNITY	Andean Customs Value Declaration	LOGO CUSTOMS AUTHORITY OF THE COUNTRY	COUNTRY CODE
Official use		No. of form	

1. No. of additional sheets attached to the DAV
2. No. of customs declaration of the goods - Date
3. Decision - Type - Specify - Number - Year
4. Decision - Type - Specify - Number - Year
5. Decision - Type - Specify - Number - Year
6. Decision - Type - Specify - Number - Year

Between 7 and 56 vertically on the left-hand side

I. General information

Between 1 and 12 - Importer
Between 17 and 20 - Supplier
Between 26 and 33 - Commercial transaction
Between 39 and 43 - Intermediation
Between 49 and 56 – Requirements

7. Name or trade name
8. Type and no. of identity document
9. Commercial level code
10. Specify
11. Address
12. City
13. Country code
14. Telephone
15. Fax
16. Email
17. Name or trade name
18. Code function
19. Specify
20. Address
21. City
22. Country code
23. Telephone
24. Fax
25. Email
26. No. of invoices
27. No. contract or other document - Date
28. Specify
29. Form of payment
30. Specify
31. Method of payment
32. Specify
33. Code form of consignment
34. Code nature of transaction
35. Specify
36. Terms of delivery INCOTERMS - Place
37. Specify
38. Total value

39. Any intermediation?
40. Code type of intermediary
41. Specify
42. Name or trade name
43. Address
44. City
45. Country code
46. Telephone
47. Fax
48. Email
49. Any restriction?
50. Code type of restriction
51. Any conditions or considerations?
52. Code condition or consideration
53. Specify
54. Can they be determined?
55. Any royalties and/or licence fees?
56. Any accruals to seller?
57. Any relationship between buyer and seller?
58. Code relationship
59. Influence of relationship on price
60. Any test values?
61. No. customs declaration - Date
62. Total f.o.b. value
    62.1 Price actually paid or payable
63. Total transport costs
64. Total insurance costs
65. Total other additions
66. Total deductions
67. Total transaction value declared

Between 68 and 120 vertically on the left-hand side

II. Detailed description and determination of the customs value

68. Item
69. Subheading
70. No. commercial invoice - Date of invoice
71. Designation of goods
72. Trademark
73. Type
74. Class
75. Model
76. Condition
77. Specify
78. Year of manufacture
79. Quantity
80. Commercial unit
81. Other features
82. Price per item on invoice
83. Deductions or additions - f.o.b. value per item
84. F.o.b. value per item
85. F.o.b. value per unit by product
86. Indirect payments per item
87. Retroactive discounts per item
88. Other payments per item
89. Total price paid or payable per item
90. Transport costs per item
91. Insurance cost per item
92. Adjustment code
93. Adjustment value per item
94. Adjustment code
95. Adjustment value per item

96. Adjustment code
97. Adjustment value per item
98. Adjustment code
99. Adjustment value per item
100. Adjustment code
101. Adjustment value per item
102. Adjustment code
103. Adjustment value per item
104. Adjustment code
105. Adjustment value per item
106. Adjustment code
107. Adjustment value per item
108. Adjustment code
109. Adjustment value per item
110. Adjustment code
111. Adjustment value per item
112. Customs value per unit by item
113. Customs value per unit by product
114. Estimated or provisional values
115. Currency code
116. Rate of exchange - Date
117. Box no.
118. Currency code
119. Rate of exchange - Date
120. Box no.
121. Currency code
122. Rate of exchange - Date
123. Box no.
124. Code country of origin
125. Code country of shipment
126. Code valuation method used

Between 127 and 132 vertically on the left-hand side

III. Declarant

127. Name or trade name
128. Type and no. of identity document
129. Address
130. City
131. Telephone
132. Surnames and first names of signatory
133. Type and no. of identity document
134. In signing this document, I hereby confirm the accuracy and completeness of the information furnished on this form, on all the attached sheets accompanying it, and the authenticity of all the supporting documents. I also hold myself responsible for supplying any additional documents required to determine the customs value of the goods.
135. Signature and stamp of the declarant