

# WORLD TRADE ORGANIZATION

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Committee on Customs Valuation

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## NOTIFICATIONS UNDER ARTICLE 22 OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

PEOPLE'S REPUBLIC OF CHINA

The following communication, dated 14 March 2008 is being circulated at the request of the delegation of the People's Republic of China.

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Pursuant to Article 22 of the Agreement on Implementation of Article VII of GATT 1994, and in accordance with the Decision of the Committee on Customs Valuation of 12 May 1995, the following administrative measure in China regarding customs valuation is notified to the Committee on Customs Valuation:

Decree of the Customs General Administration of the People's Republic of China, No. 148 of 2006: *The Rules regarding Determination on Customs Value of Imported and exported Goods.*

The above-mentioned administrative measure is authentic in the Chinese language only.

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**Decree of General Administration of Customs  
People's Republic of China**

No. 148  
March 28, 2006

*The Revised Customs Rules Regarding Determination on Customs Value of Imported and Exported Goods has been ratified by the Working Meeting of the Executives of the General Administration of Customs on March 8, 2006 and is hereby publicized. The Revised Rules shall come into force as from May 1, 2006, whereupon the Rules of General Administration of Customs of the People's Republic of China Regarding Determination on Customs Value of Imported and Exported goods promulgated in the form of Decree No.95 of the General Administration of Customs on December 31, 2001 and the Customs Regulations of the People's Republic of China Regarding Determination on Customs Value of Royalties and License Fees Related to the Imported Goods promulgated in the form of Decree No.102 of the General Administration of Customs on May 30, 2003 shall be invalid.*

MU Xinsheng

(Signature)

General Administration of Customs  
The People's Republic of China

Commissioner

**The Rules Regarding Determination on Customs Value  
of Imported and Exported Goods**

**Chapter I  
General Provisions**

**Article 1** For the purpose of determining the Customs value of imported and exported goods with legitimacy, these Rules are formulated in accordance with the *Customs Law of the People's Republic of China* and the *Regulations of the People's Republic of China on Import and Export Duties*.

**Article 2** Customs shall determine the Customs value of imported and exported goods pursuant to the principles of objectivity, fairness and uniformity.

**Article 3** The determination of Customs value of imported and exported goods shall be subject to these Rules.

Whereas, these Rules are not applicable to determine the Customs value of passenger personal effects, personal postal articles and other belongings for personal use allowed to be brought into the Customs territory, or to calculate the dutiable value of the imported or exported goods or personal articles under suspicion of smuggling.

**Article 4** Customs shall in accordance with relevant provisions of laws and regulations, keep the commercial information provided by the duty payer properly, especially once involved with business confidentiality and shall not disclose such information outside Customs, unless otherwise provided for by laws or administrative regulations.

Upon written request, the duty payer may ask Customs to keep confidential of its commercial secrets by making a specific list of the contents that need to be covered. However, he shall not refuse to provide Customs with pertinent information by excuse of commercial confidentiality.

## **Chapter II** **Customs Value of Imported Goods**

### **Section I** **Methods of Determination on Customs Value of Imported Goods**

**Article 5** The Customs value of imported goods shall be determined by Customs on the basis of the transaction value, including the costs of transport and other charges associated therewith, and the cost of insurance incurred prior to unloading of the goods at the port or place of entry within the Customs territory of the People's Republic of China.

**Article 6** Where the transaction value of the imported goods is incompliant with the provisions as prescribed in Section II, or it is impossible to determine the transaction value, Customs shall, after inquiring relevant information and consulting over price with the duty payer, determine the Customs value by applying the following methods in its sequential orders:

- (a) transaction value of the identical goods;
- (b) transaction value of the similar goods;
- (c) deductive value;
- (d) computed value; and
- (e) reasonable means.

At the request of the duty payer, the order of the application of item (c) and item (d) in the preceding paragraph could be reversed, provided that sufficient information has been submitted to the Customs.

### **Section II** **Transaction Value Methods**

**Article 7** The transaction value of the imported goods is the price actually paid or payable by the buyer for the goods when sold for export to the Customs territory of the People's Republic of China adjusted in accordance with the provisions of Section III of this Chapter. Payment for the price may be made either directly or indirectly.

**Article 8** The transaction value of the imported goods shall be subject to the following terms:

- (a) that there are no restrictions as to the disposition or use of the imported goods by the buyer other than restrictions which are imposed by laws and regulations or to limit the geographical area for resale or do not have substantial effect on the value of the goods;
- (b) that the price is not subject to some condition or consideration for which a value cannot be determined with respect to the imported goods being valued;
- (c) that no part of the proceeds of any subsequent resale, disposal or use of the imported goods by the buyer will accrue directly or indirectly to the seller, or where there are proceeds, but an appropriate adjustment can be made in accordance with the provisions of paragraph 1(d) of Article 11; and
- (d) that the buyer and seller are not related, or where the buyer and seller are related, that the relationship did not influence the transaction value under the provisions of Article 17.

**Article 9** The disposition or use of the imported good by the buyer shall be deemed to be restricted in any of the following cases:

- (a) the imported goods can only be for displays or complimentary presentations;
- (b) the imported goods can only be sold to the specific third party;
- (c) the imported goods can only be sold to the seller or the specific third party after being processed to finished products; and
- (d) other cases of restriction on disposition or use of the imported goods examined and determined by Customs.

**Article 10** It shall be deemed that the price of the imported goods is subject to some condition or consideration for which the transaction value cannot be determined in any of the following cases:

- (a) the price of the imported goods established on condition that the buyer shall buy other goods from seller in specified quantities;
- (b) the price of the imported goods established on condition that the buyer shall sell other goods to the seller;
- (c) other cases after examined by Customs, treated as the price of the goods concerned influenced by some condition or consideration for which a value cannot be determined.

### **Section III** **Adjustable items of Transaction Value**

**Article 11** In determining the Customs value of the imported goods on the basis of the transaction value, the following costs or value, to the extent that they are not included in the price actually paid or payable for the goods being valued, shall be added:

- (a) the costs incurred by the buyer:
  - (i) commissions and brokerage, except buying commissions;
  - (ii) the cost of containers which are treated as being one 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 or services where supplied directly or indirectly by the buyer to the seller free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods to the Customs territory of the People's Republic of China:
  - (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 Customs territory of the People's Republic of China and necessary for the production of the imported goods.
- (c) royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, except in either of the following cases:
  - (i) royalties and license fees that are not related to the imported goods being valued; and
  - (ii) royalties and license fees that are not paid as a condition for the sale of the goods in question to the Customs territory of the People's Republic of China.

- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues directly or indirectly to the seller.

For the above-mentioned value and costs, the duty payer shall provide Customs with information on the basis of objective and quantifiable data. Where such information is not available, Customs shall consult over price with the duty payer and determine the Customs value by the methods prescribed under the provisions of Article 6.

**Article 12** When the value of goods/service(assists) supplied by buyer added to the Customs value of the imported goods as provided in paragraph 1(b) in Article 11 of these Rules, one of the following methods of calculation for addition shall be used:

- (a) if the goods (assists) are bought from an unrelated third party by buyer, the value added shall be the purchase price;
- (b) if the goods (assists) are produced by the buyer or obtained from a related third party, the value added shall be the production cost;
- (c) if the goods(assists) are obtained on lease by the buyer, the value added shall be the lease cost borne by the buyer;
- (d) the value of tools, dies, moulds and similar items used in the production of the imported goods shall include the charges of engineering, development, artwork, design work, and plans and sketches.

Where the goods have been used by the buyer before being provided to the seller, the value added shall be the depreciated value calculated in compliance with generally accepted accounting principles adopted in the People's Republic of China.

**Article 13** Royalties and license fees shall be deemed to be related to the imported goods, provided:

- (a) Royalties and license fees are paid for the rights of patent or know-how, where the imported goods fall into any one of the following situations:
  - (i) goods containing patent or know-how;
  - (ii) goods produced under patent or know-how; or
  - (iii) machine and/or equipment specially designed and/or manufactured to perform the patented process or know-how.
- (b) Royalties and license fees are paid for the right of trademark, where imported goods fall into any of the following situations:
  - (i) imported goods bearing trademark;
  - (ii) imported goods that can be resold directly with the trademark affixed after importation; or
  - (iii) goods that contains the right of trademark as being imported, and could be resold with the trademark affixed after minor processing.
- (c) Royalties and license fees are paid for the copyright, where imported goods fall into any one of the following situations:
  - (i) imported goods containing software, words, music, pictures, images and other similar contents, which are in forms of magnetic tapes and disks, CDs and other similar media; or
  - (ii) imported goods containing other copyrighted contents.

- (d) Royalties and license fees are paid for the rights to distribute, resell or other similar rights owned by the seller of the imported goods in the Customs territory of the People's Republic of China, where imported goods belong to either of the following cases:
- (i) goods that could be sold directly after importation; or
  - (ii) goods that could be resold directly after minor processing.

**Article 14** Where, without payment of royalties and license fees, the buyer cannot buy the imported goods or where that transaction will not be concluded under the terms and conditions set forth in the sales agreement, the payment of royalties and license fees shall be deemed as a condition for the sale of the imported goods to the Customs territory of the People's Republic of China.

**Article 15** In determining the Customs value of the imported goods, the following taxes and charges shall not be added to the Customs value of the imported goods concerned, provided that they have been enumerated separately:

- (a) charges for construction, erection, assembly, maintenance, technical assistance undertaken after importation on goods such as industrial plant, machinery and equipment, excluding the charges of guarantee;
- (b) the cost of transport, insurance and other charges incurred after unloading the goods at the port of entry or place of importation within the Customs territory of the People's Republic of China;
- (c) import duties, taxes on and in connection with importation collected by the Customs and other internal taxes;
- (d) charges for reproduction of the imported goods in the Customs territory of the People's Republic of China; or
- (e) charges for technical training within and outside of the Customs territory of the People's Republic of China and study tour out of the Customs territory of the People's Republic of China.

The interest charge shall not be added to the Customs value provided it meets the following conditions at the same time:

- (a) interest charges are duly incurred under a financing arrangement for the purpose of purchasing of the imported goods by buyer;
- (b) the financing arrangement in question was made in writing;
- (c) the interest charges are identified separately from the price actually paid or payable for the goods; and
- (d) the duty payer can demonstrate that 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, and the price actually paid or payable for the imported goods being valued closely approximates to the price of identical or similar imported goods without the financing arrangement.

#### **Section IV Related Parties**

**Article 16** The buyer and seller shall be deemed to be related in any of the following circumstances:

- (a) they are the members of the same family;
- (b) they are officers or directors of one another's businesses;
- (c) one party directly or indirectly controls the other party;

- (d) both of them are directly or indirectly controlled by a third party;
- (e) together they directly or indirectly control a third party;
- (f) one party directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting stock or shares of the other party;
- (g) one party is an employee, officer or director of the other party; or
- (f) the buyer and seller are legally recognized partners in business.

If the buyer and seller are associated in business with each other in that one is the sole agent, sole distributor or sole concessionaire of the other, they, if fall within the criteria of the foregoing paragraphs, shall be deemed to be related.

**Article 17** Where the seller and the buyer are related, it shall be deemed that the relationship did not influence the price of imported good when the duty payer can demonstrate that such value closely approximates to the one of the following prices occurring at or about the same time:

- (a) the transaction value in sales to unrelated buyers of identical or similar goods for export to the Customs territory of the People's Republic of China;
- (b) the Customs value of identical or similar goods as determined under Article 22;
- (c) the Customs value of identical or similar goods as determined under Article 24.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, and costs incurred by the seller in sales in which the seller and buyer are not related and that are not incurred by the seller in sales in which the seller and the buyer are related.

## **Section V**

### **Valuation Methods Other Than Method of Transaction Value**

**Article 18** The method of transaction value of identical goods refers to the valuation method applied by Customs to determine the Customs value of the imported goods on the basis of the transaction value of identical goods imported at or about the same time for the sale to the Customs territory of the People's Republic of China as the goods being valued.

**Article 19** The method of transaction value of similar goods refers to the valuation method applied by Customs to determine the Customs value of the imported goods on the basis of the transaction value of similar goods imported at or about the same time for the sale to the Customs territory of the People's Republic of China as the goods being valued.

**Article 20** In applying the method of transaction value of identical or similar goods, the transaction value of identical or 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 of the imported goods. In applying the above-mentioned value, an adjustment shall be made to take account of differences in costs and charges between the imported goods and the identical or similar goods in question arising from differences in distances and modes of transport on the basis of objective and quantifiable data.

If, in applying the foregoing paragraph, no such transaction value of identical or similar goods is found, the transaction value of the identical or similar goods sold at a different commercial level and/or in different quantities could be used. In applying the above-mentioned value, an adjustment shall be made to take account of differences in prices, costs or other charges attributable to commercial level, quantity, and/or distance and modes of transport on the basis of objective and quantifiable data.

**Article 21** In determining the Customs value of the imported goods with the application of the method of transaction value of identical or similar goods, the transaction value of the identical or similar goods produced by the same manufacturer shall be used in the first place.

Where the transaction value of the identical or similar goods of the same manufacturer is not found, other transaction values of the identical or similar goods of other manufacturers in the same country or its region can be used.

If more than one transaction value of identical or similar goods is found, the lowest value shall be used to determine the Customs value of the imported goods.

**Article 22** Deductive value method refers to the valuation method applied by Customs to determine the Customs value of the imported goods on the basis of the resale price in the Customs territory of the People's Republic of China of the imported goods or identical or similar imported goods, after deduction of costs and charges incurred within the Customs territory of the People's Republic of China, provided that the imported goods or identical or similar imported goods are sold:

- (a) at or about the time of importation of the goods being valued;
- (b) in the condition as imported;
- (c) in the first sale within the Customs territory of the People's Republic of China.
- (d) to an unrelated party within the Customs territory of the People's Republic of China and
- (e) in the greatest aggregate quantity.

**Article 23** In determining Customs value of the imported goods with the application of deductive value method, the following items shall be deducted:

- (a) profit, general expenses (either direct or indirect) and commissions usually paid, which are incurred in connection with first sales within the Customs territory of the People's Republic of China of imported goods of the same class or kind as the goods in question;
- (b) the cost of transport, charges associated with transport and the cost of insurance incurred after unloading of such goods at the port or place of entry within the Customs territory of the People's Republic of China;
- (c) import duties, taxes collected by the Customs on behalf of other government department at importation of goods and other domestic taxes;

Where neither the goods being valued nor the identical and similar goods are sold within the Customs territory of the People's Republic of China in the condition as imported, at the request of the duty payer, the price of the goods after further processing shall be used to determine the Customs value, provided other conditions set in Article 22 are satisfied, however, the value added for such processing shall be deducted.

The added value resulting from further processing provided in the preceding paragraph shall be calculated on the basis of objective and quantifiable data relating to the cost of process, with criteria and methods accepted by the industry and other industrial practice.

In determining the items to be deducted under this Article, principles and methods applied shall be consistent with the generally accepted accounting principles adopted in the People's Republic of China.

**Article 24** Computed value method refers to the valuation method applied by Customs to determine the Customs value of the imported goods on the basis of the sum of the following items:

- (a) the cost or value of raw materials and processing employed in producing the imported goods;



- (b) the profit and general expenses (either direct or indirect) of the goods of the same class or kind as the imported goods being valued which are sold for export to the Customs territory of the People's Republic of China;
- (c) the cost of transport, insurance and other charges incurred prior to unloading the goods at the port or place of entry within the Customs territory of the People's Republic of China.

In determining the Customs value of the imported goods under the foregoing paragraph, Customs may conduct on-site verification of the information provided by the producer of the goods in another country with the agreement of the producer and notification in advance to the governments of the country or its region in question.

In determining the values or costs under the first paragraph of this article, principles and methods applied shall be consistent with the generally accepted accounting principles applied in the country or its region where the goods are produced.

**Article 25** Reasonable means refers to the valuation method applied by Customs to determine the Customs value of the imported goods on the basis of objective and quantifiable data in consistency with the principles prescribed in Article 2, when the Customs value of the imported goods cannot be determined with the application of transaction value method, transaction value method of identical or similar goods, deductive value method, and computed value method.

**Article 26** In applying reasonable means, no Customs value shall be determined on the basis of:

- (a) the selling price in the Customs territory of the People's Republic of China of the goods produced wherein.
- (b) the higher of two alternative prices;
- (c) the selling price of the goods on the domestic market of the country of exportation;
- (d) the price of identical or similar goods computed other than the values or costs prescribed in Article 24;
- (e) the selling price of the goods for export to a third country or region other than the People's Republic of China;
- (f) minimum Customs values, arbitrary or fictitious values.

### **Chapter III Customs Value of Special Imported Goods**

**Article 27** Where the materials and parts for inward processing or their finished products are subject to Customs duties, the Customs value shall be determined in accordance with the following provisions:

- (a) the Customs value of the imported materials and parts attributed to inward processing with imported materials which are destined dutiable shall be determined on the basis of the transaction value of the materials and parts in question at the time of declaration of entry;
- (b) the Customs value of the materials and parts or their finished products (including defective or substandard products) attributed to inward processing with imported materials but for domestic sale shall be determined on the basis of the transaction value of the materials and parts at the first real time of importation. Where such value is unascertainable, the Customs value shall be determined on the basis of the transaction value of the imported goods, which is identical or similar to the materials and parts in question, at or about the same time when Customs accepts the declaration for domestic sale;
- (c) the Customs value of the materials and parts or their finished products (including defective or substandard products) attributed to inward processing with supplied materials but for domestic sale shall be determined on the basis of the transaction value of the imported goods,

which is identical or similar to the materials and parts in question, at or about the same time when Customs accepts the declaration for domestic sale;

- (d) the Customs value of the leftovers (scraps and wastes or residues) or by-products, which are attributable to processing by an inward processing enterprise, shall be determined on the basis of the domestic selling price determined by Customs.

Where the Customs value of the goods for inward processing cannot be determined under the provisions of the foregoing paragraphs of this Article, Customs shall determine the Customs value with the application of reasonable means.

**Article 28** The Customs value of the finished products (including defective or substandard products) which are sold to domestic market by processing enterprises in Export Processing Zones shall be determined on the basis of the transaction value of imported identical or similar goods at or about the same time when Customs accepts the declaration for domestic sale.

The Customs value of the leftover materials or by-products produced in processing which are sold by processing enterprises in Export Processing Zones for domestic sale shall be determined on the basis of the domestic selling price determined by Customs.

Where the Customs value of finished products (including defective or substandard products) and leftover materials or by-products produced in processing by processing enterprises in Export Processing Zones cannot be determined under the provisions of the foregoing two paragraphs of this Article, Customs shall determine the Customs value with the application of reasonable means.

**Article 29** The Customs value of imported materials and parts or their finished products (including defective or substandard products) sold by processing enterprises from Bonded Areas for domestic sale shall be determined on the basis of the transaction value of imported identical or similar goods at or about the same time when Customs accepts the declaration for domestic sale.

Where the finished products, which is embodied with some of domestic materials and parts purchased within the Customs territory and made through the course of the inward processing with imported materials, is declared by a processing enterprise from a Bonded Area for domestic sale, the Customs value of such a finished product shall be determined on the basis of the value of the rest materials and parts purchased outside the Customs territory at the first real time of importation. Where such a value cannot be determined, the Customs value shall be determined on the basis of the transaction value of the goods identical or similar to the rest materials and parts at or about the same time when Customs accepts the declaration for domestic sale.

Where the finished product, which is embodied with some of domestic materials and parts purchased within the Customs territory and made through the course of the inward processing with supplied materials, is declared by a processing enterprise from a Bonded Area for domestic sale, the Customs value of such a finished product shall be determined on the basis of the transaction value of the goods identical or similar to the materials and parts embodied therein and purchased outside the Customs territory at or about the same time when Customs accepts the declaration for domestic sale.

The Customs value of the leftover materials or by-products attributable to processing which are sold by processing enterprises from Bonded Areas for domestic sale shall be determined on the basis of the domestic selling price determined by Customs.

Where the Customs value of the finished products (including defective or substandard products), leftover materials or by-products sold by processing enterprises from a Bonded Area for domestic sale cannot be determined under the provisions of the foregoing four paragraphs of this Article, Customs shall determine the Customs value with the application of reasonable means.

**Article 30** For goods, excluding materials and parts for inward processing and the finished products made thereof, entering into the Customs territory from special Customs controlling areas and places such as a Bonded Area, Export Processing Zone, Customs Bonded Logistics Park or Customs Bonded Logistics Centre, when they are subject to import duties and taxes, the Customs value shall be determined on the basis of the selling price at the time of entering the Customs territory from the above-mentioned areas and places.

Where the above-mentioned selling price does not contain costs and charges incidental to storage and transportation or other associated expenses, incurred within the area, zone or warehouse thereof, those costs and charges or expenses shall be added on the basis of objective and quantifiable data.

**Article 31** The Customs value for machines, tools, means of transport or any other goods, which are transported out of the Customs territory for the purposes of repair with the declaration thereof made to the Customs at the time of departure and consequently returned to the Customs territory within the time limit set by the Customs, shall be determined on the basis of the charges of the repairs and the cost of materials, components and parts used in the course of the repairs.

Where the goods fail to be shipped back within the time limit specified by Customs, the Customs value shall be determined under the provisions of Chapter II of these Rules.

**Article 32** The Customs value of goods which are transported out of the Customs territory for outward processing with the declaration thereof made to the Customs at the time of departure and returned to the Customs territory within the time limit set by the Customs shall be determined on the basis of the costs of overseas processing and the cost of materials and parts used in the course of processing, and the cost of transport, charges associated therewith and the cost of insurance of re-importation.

Where the goods fail to be returned within the time limit specified by Customs, the Customs value shall be determined under the provisions of Chapter II of the Rules.

**Article 33** The Customs value of the temporarily imported goods, when they are subject to import duties and taxes, shall be determined under the provisions of Chapter II of these Rules. Where the goods for temporary admission are sold with special approval from Customs, the Customs value shall be determined on the basis of the purchasing price for home use determined by Customs.

**Article 34** The Customs value of the imported goods on lease shall be determined in accordance with the following means:

- (a) the Customs value of the imported goods on lease with payment in form of rental charges shall be determined on the basis of the rental charges determined by the Customs during the time period together with the interest charges thereof added;
- (b) the Customs value of the leased goods which are purchased for home use shall be determined on the basis of the purchasing price under an option of purchase;
- (c) where the duty payer applies for one-off payment of import duties and taxes, the Customs value may be determined either by the methods prescribed under the provisions of Article 6 at the request of the duty payer, or on the basis of the total rental charges determined by Customs.

**Article 35** The Customs value of the goods which were duty-exempted or duty-reduced and are subject to recovery of Customs duties and taxes shall be determined on the basis of the value of the

goods determined at the first real time of importation, deducting all the value depreciated. The formula shall be expressed as follows:

Customs value = Customs value determined at the time of entry

The time accurately used before the recovery of duties (in term of months)

$$X \left( 1 - \frac{\text{Time accurately used before the recovery of duties (in term of months)}}{\text{Statutory years of Customs control}} \right)$$

Statutory years of Customs control X 12

In the above formula, the time accurately used before the recovery of duties shall be calculated in term of month. If the time is less than a month but more than 15 days, it shall be calculated as a month; if the time is less than 15 days, it shall not be calculated.

**Article 36** When there is no transaction value, as for imported goods by way of barter, consignment, donation and presentation etc., Customs shall determine the Customs value by the application of the methods prescribed under the provisions of Article 6 after having consulted over price with the duty payer.

**Article 37** The Customs value of imported carrier media bearing software especially for data processing equipment shall be determined on the basis of the value or cost of the carrier media itself, in either of the following cases:

- (a) where the value or cost of the carrier media and the value of the software contained therein are listed separately; or
- (b) where duty payer can either furnish documentary evidences to prove the cost or value of the imported carrier media itself, or the value of the software, even though value of software so loaded is not distinguished from the cost or the value of the carrier media.

Carrier media containing beaux-arts, photography, sound, cinematographic or video recordings, games, and electronic publications etc., shall not be applicable to the foregoing paragraphs.

#### Chapter IV

##### Calculation of the costs of transport and other charges associated therewith, and the cost of insurance in the Customs Value of Imported Goods

**Article 38** The cost of transport for imported goods shall be calculated on the basis of charges that are actually paid. Where the cost of transport is unascertainable, however, Customs shall calculate the cost en facto for transportation or on the basis of the freight rate or freight amount for the carriage of the goods published by the Shipping Industry at the time of importation.

Where the vehicles themselves are treated as imported goods and transported by using their own power, no cost of transport shall be added to the Customs value in determining Customs value.

**Article 39** The cost of insurance for imported goods shall be calculated in the fact that the charges are actually paid. If the insurance for imported goods is unascertainable or does not occur in practice, Customs shall calculate the cost of insurance on the basis of 3‰ of the sum of C & F. The formula shall be expressed as follows:

$$\text{The cost of insurance} = (\text{Cost of Goods} + \text{Freight}) \times 3\text{‰}$$

**Article 40** For goods imported by mail, postage alone shall be treated as the costs of transport and other charges associated with transport, and the cost of insurance.

**Article 41** Where goods are imported by railway or highway and transacted in the term of Delivered at frontier, Customs shall calculate the costs of transport and other charges associated with transport, and the cost of insurance. on the basis of 1% of the DAF value of the said goods.

## **Chapter V Customs Value of Exported Goods**

**Article 42** The Customs value of exported goods shall be determined by Customs on the basis of the transaction value, including the inland costs of transport and other charges associated therewith, and the cost of insurance incurred prior to loading of the goods at the port or place of departure within the Customs territory of the People's Republic of China.

**Article 43** The transaction value of exported goods shall be the total value collected or to be collected, directly or indirectly, by the seller from the buyer for the goods when sold for export to the outside of the Customs territory of the People's Republic of China.

**Article 44** The following duties, and charges shall not be added to the Customs value of exported goods:

- (a) export duty;
- (b) the costs of transport and other charges associated therewith, and the cost of insurance which are incurred after loading of the export goods at the port or place of departure within the Customs territory of the People's Republic of China but listed separately in the payment of the goods;
- (c) commissions incurred by the seller and listed separately in the payment of the goods.

**Article 45** Where the Customs value of exported goods cannot be determined, Customs shall, after having inquired relevant information and consulted over price with the duty payer, determine the Customs value by applying the following methods in their given order:

- (a) transaction value of the identical goods exported to same country or region at or about the same time;
- (b) transaction value of the similar goods exported to same country or region at or about the same time;
- (c) value calculated on the basis of cost, profit and general expenses (either direct or indirect) for producing the identical or similar product and charges associated with the transport and cost of insurance within the Customs territory;
- (d) value determined by reasonable means.

## **Chapter VI Examination and Verification of Customs Value**

**Article 46** When making declarations to Customs, the duty payer shall submit truthful and accurate documents including invoice, contract, bill of loading, and packing list according to the provisions of the Rules.

Required by Customs, the duty payer shall also furnish Customs with legal payment instruments related to transaction and other supplemental commercial documents, information or data, in writing or electronic, reflecting the truth and accuracy of the transaction value.

Where there are any of the adjustments of value prescribed under the provisions of Section III of Chapter II of these Rules in the sale of goods, the duty payer shall make a declaration to Customs strictly according to the facts.

Where the foregoing adjustments of value need to be apportioned, the duty payer shall do it on the basis of objective and quantifiable criterion, and at the same time provide Customs with proof of the apportionment.

**Article 47** To examine and verify the truth or accuracy of the declared value, Customs may exercise the following authorities to check the declared value:

- (a) to examine and copy the contracts, invoices, account books, certificates for foreign exchange settlement and/or payment, bills, business correspondences and faxes, audio or video products in relation with the imported goods and other commercial bills, written information and electronic data reflecting the relationship and transaction activities between the buyer and the seller;
- (b) to interview the duty payer of imported or exported goods and citizens, legal persons and other organizations having monetary and transaction relationship with the duty payer to inquire into the matters concerning Customs value of the imported or exported goods;
- (c) to examine the goods or take samples of the goods for examination or laboratory test;
- (d) to enter into the obligatory duty payer's premise and storage facilities to examine the goods and operations relating to imported or exported goods;
- (e) with approval of director general of Customs districts directly under the General Administration of Customs of PRC or of director of local Customs authorized by the former and by showing Notice of Account Inquiry of Customs of People's Republic of China and Customs officers identity cards, to inquire information relating to collection and payment in the company accounts opened with the bank or other financial institution by the obligatory duty payer, and deliver the banking supervisor agency about relevant information; and
- (f) to inquire of national tax authorities the situation and consequences concerning the payment of internal tax in relation to the imported and exported goods.

When Customs exercises the above authorities, the duty payer and relevant citizens, legal persons and other organizations are obligated to provide truthful information, and submit relevant documentary evidence in written or electronic forms. No refusal, delay, concealment is allowed.

**Article 48** Where the Custom has doubts about the truth or accuracy of the value declared by the duty payer, or considering the relationship between the buyer and seller did influence the price, Customs shall issue Notice to Query Declared Value by Customs of People's Republic of China (hereinafter referred as Notice to Query Declared Value; and notify the duty payer or his agent of the grounds for doubts in written form. The duty payer or his agent shall, within 5 days from the date of receipt of Notice to Query Declared Value, provide related documents or other evidence in writing that could demonstrate the truth or accuracy of the declared value or the declared value not being influenced by the relationship between the buyer and seller.

If having due cause for not being able to provide the above-mentioned information within the time limit, the duty payer or his agent may, in written form, apply to Customs for extension prior to the expiration of the time limit.

Except under special circumstances, the extension shall not exceed 10 working days.

**Article 49** Once the Notice to Query Declared Value is issued, Customs shall, after having a process of consultation over the price with the duty payer, determine the Customs value of the

imported or exported goods with the application of the methods listed in Article 6 or Article 45 of these Rules, in any of the following cases:

- (a) where the duty payer or his agent fails to provide further explanation within the time limit;
- (b) where Customs, after examining the document or evidence provided by the duty payer or his agent, still has reasonable doubts about the truth or accuracy of the declared value; or
- (c) where Customs still, after examining the document or evidence provided, has reasonable doubts that the relationship between the buyer and seller did influence the transaction value.

**Article 50** Where after examination, Customs determines that imported goods have no transaction values, then valuation inquiry may not be made. Customs shall determine the Customs value with the application of the methods laid down in Article 6 of these Rules after having consulted over price with the duty payer.

Where after examination, Customs determines that the exported goods have no transaction value, valuation inquiry may not be made, and after having consulted over price with the duty payer, Customs shall determine the Customs value with the application of the methods laid down in Article 45 of these Rules.

**Article 51** When Customs notifies the duty payer to consult over price according to the provisions of these Rules, the duty payer shall, within 5 days from the date of receipt of Notice of Valuation Consultation of Customs of People's Republic of China, engage in the valuation consultation with Customs. Where the obligatory duty payer fails to response within the time limit, it is deemed that he has given up its right of valuation consultation, and Customs may directly determine the Customs value of the imported or exported goods with the application of the methods laid down in Article 6 or Article 45 of these Rules.

When completing the valuation consultation with the duty payer, Customs shall issue a Record Sheet for Valuation Consultation by Customs of People's Republic of China.

**Article 52** In the following cases, upon written request by the duty payer, Customs may not launch a valuation inquiry and not perform valuation consultation and thus determine the Customs value of the imported or exported goods with the application of the methods laid down in Article 6 or Article 45:

- (a) where goods are imported or exported in repeated shipments under the same contract and Customs has determined the Customs value of goods in one of the previous shipment;
- (b) where the Customs value of imported or exported goods is below 100,000 yuan RMB or the total amount of the Customs duty and other import taxes levied by Customs is below 20,000 yuan RMB; or
- (c) where imported or exported goods are those by nature of hazardous goods, fresh live goods, perishable goods, vulnerable goods, wasted and used goods, etc.

**Article 53** In cases prescribed by Articles 27, 28 and 29 of these Rules, Customs may, after having a process of consultation over price with the duty payer, determine the Customs value of imported goods with the application of the methods laid down in Article 6 of these Rules without any valuation inquiry.

In cases prescribed by Articles 27, 28 and 29 of these Rules, Customs may, upon written request by the duty payer, determine the Customs value of imported goods with the application of the methods laid down in Article 6 of these Rules without having a process of valuation consultation.

**Article 54** Where, in the course of determining the Customs value of import and export goods by Customs, the duty payer shall be able to withdraw them from Customs after providing guarantee according to the relevant rules and regulations.

**Article 55** After the determination of the Customs value of imported or exported goods by Customs, the duty payer may, upon written request, ask for an explanation in writing from Customs as to how the Customs value of his goods was determined. Once so requested, Customs shall issue Notification of Determination of Customs Value by Customs of People's Republic of China.

## **Chapter VII Supplementary Provisions**

**Article 56** For the purposes of these Rules, the terms and expressions are defined as follows:

**“Customs territory”** referred to the Customs territory of the People's Republic of China.

**“Customs value”** means the value for the purpose of levying Customs duties.

**“Buyer”** means any natural person, legal person or other organization that buys goods by fulfilling his payment obligation, assuming title and bearing the risk of loss for the imported goods, and as such obtaining incomes. Accordingly, buyer of imported goods means anyone who buys imported goods into the Customs territory of the People's Republic of China.

**“Seller”** means any natural person, legal person or other organization that sells goods. Accordingly, seller of imported goods means anyone who sells imported goods into the Customs territory of the People's Republic of China.

**“Sold for export to the Customs territory of the People's Republic of China”** means the act of actually bringing the imported goods into the Customs territory of the People's Republic of China, transferring the ownership or title of the goods and risks by the seller to the buyer, and making payment therefore by the buyer to the seller.

**“Price actually paid or payable”** means the total payment, as a condition for the sale of the imported goods from the seller, directly or indirectly made, or to be made, by the buyer to or for the benefit of the seller to the third party.

**“Indirect payment”** means that upon the seller's request, the total payment made, or to be made, in whole or in part, by the buyer to the third party; or the payment made to offset the differences involved in other financial activities between the buyer and seller.

**“Buying commissions”** means any fees paid by a buyer to the buyer's agent for the service in the purchase of the imported goods.

**“Brokerage fees”** means any service fee paid by the buyer to the broker on behalf of the interests of both the buyer and the seller for the service in the purchase of the imported goods.

**“Identical goods”** means goods produced in same country or region, which are the same in all respects, including physical characteristics, quality and reputation. However, minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.

**“Similar goods”** means goods produced in same country or region which, although not alike in all respects, have like characteristic and like component materials which enable them to perform the same functions and to be commercially interchangeable.

**“About the same time”** means within 45 days before or after the date of entry of the imported goods being valued. In determining Customs value of the imported goods with the application of deductive value method, if imported goods and identical or similar goods were not sold within the Customs territory within 45 days before or after the date of entry of the imported goods being accepted, the time for sale within the Customs territory may be extended to 90 days before or after the date of entry of the imported goods being accepted.

**“Generally accepted accounting principles”** refers to any accounting principles, norms and methods generally recognized in relevant countries or regions, including accrual method, matching



method, historical cost method and division of revenue expenditure method and capital expenditure method, which are related to the value of the goods.

**“Royalties and license fees”** means any fees paid by the buyer for the right to use copyrights, patents, trademarks, know-how and other rights relating to the imported goods. However, in determining Customs value, the fees for the right to reproduce the imported goods within the Customs territory shall not be added into the price actually paid or payable.

**“Charge for technical training”** means all the expenses solely to personnel assigned by the buyer, including salary and tuition, boarding and lodging, traffic and medicare, borne by the buyer of imported goods for technical training offered by seller or a third party related to him.

**“Software”** means any programs or documents used by data processing equipments under the provisions of Regulations Regarding Protection of Computer Software.

**“Know-how”** means any undisclosed knowledge, experience, methods, techniques and skills concerning technological process, formula, product design, quality control, examination and test, marketing management, etc., expressed in forms of blueprints, models, technical data and standards.

**“Minor processing”** means diluting, mixing, sorting out, primary assembling, repacking, and other similar processing.

**“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.

**“Carrier media”** refers to any goods falling into tariff heading 85.24 in *The Customs Import and Export Tariff of the People’s Republic of China*.

**“Valuation examination”** means that for the purpose of determination of the Customs value of imported or exported goods, Customs exercises its legal authorities prescribed under the provisions of Article 47 in order to check out whether the declared value of the imported goods is true or accurate and whether the relationship between the buyer and seller did influence the transaction price by examining documents, verifying data, inspecting physical goods and other related account books.

**“Valuation consultation”** means that when applying the valuation methods other than the transaction value method, on the basis of keeping commercial secret confidential, Customs offers to exchange information and data with the obligatory duty payer for the purpose of determination of the Customs value.

**Article 57** The duty payer who dissents from the decision by the Customs on the Customs valuation shall pay duties and taxes first according to relevant administrative decisions made by Customs and may submit an appeal for reconsideration of the case to Customs at a higher level in accordance with the law. Should the duty payer refuse to accept the decision on the appeal, he may bring the case to the People’s Court.

**Article 58** Any action in violation of the Rules which constitutes smuggling or violates Customs administrative regulations shall be dealt with by Customs in accordance with the *Customs Law of the People’s Republic of China* and the *Implementing Regulations on Imposing Administrative Penalties under the Customs Law of the People’s Republic of China*. Where the violation constitutes a crime, it shall be subject to criminal penalty according to relevant laws.

**Article 59** General Administration of Customs of the People’s Republic of China is entitled to interpret and construe these Rules.

**Article 60** The Rules shall be effective as of 1 May 2006, where upon the *Rules of General Administration of Customs of the People’s Republic of China Regarding Determination on Customs Value of Imported and Exported Goods* promulgated in the form of Decree No.95 of the General Administration of Customs on 31 December 2001 and *the Customs Regulations of the People’s Republic of China Regarding Determination on Customs Value of Royalties and License Fees Related to the Imported Goods* promulgated in the form of Decree No.102 of the General Administration of Customs on 30 May 2003 shall be repealed simultaneously.

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