



CUSTOMS VALUATION REGULATIONS 2011

SAMOA

Arrangement of Provisions

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PURSUANT to section 123 of the Customs Act 1977, I, **TUI ATUA TUPUA TAMASESE EFI**, Head of State, acting on the advice of Cabinet, **MAKE** the following Regulations:-

DATED this day of.....2011

.....
(Tui Atua Tupua Tamasese Efi)
HEAD OF STATE

**PART I
PRELIMINARY**

1. **Short title and Commencement** – (1) These Regulations may be cited as the Customs Valuation Regulations 2011.

(2) These Regulations shall come into force on the day they are made by the Head of State.
2. **Interpretation** – (1) In these Regulations unless the contrary intention appears.

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

“Customs value” or **“value”**, in relation to any goods, for purpose of levying Ad valorem duties, means the Customs value of those goods determined in accordance with the provisions set out in these Regulations;

“Country of export”, or **“the country from which any goods are exported”**, means the country from which the goods are shipped directly to Samoa or, as the case may be, goods exported to Samoa from any country but transhipped in that other country on

their voyage to Samoa (whether transshipped in that other country or not) shall be deemed to be shipped direct from the first mentioned country;

“Country of Importation” means country or Customs territory of importation;

“Deductive value” means the value determined in accordance with Regulation 7;

“Documents” means documents in any form, whether or not signed or initialed or otherwise authenticated by their maker; and includes all forms of writing material, all information recorded, transmitted, or stored, labels, markings, and other forms of writing that identify any thing of which the form part or to which they are attached by any means, books, maps, plans, graphs, and drawings, photographs, films, negatives, tapes and other devices in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

“Effective date” means 1 January 1999;

“Generally accepted accounting principles” refers to any generally recognized consensus or substantial authoritative support within a country at a particular time regarding:

- (a) Which economic resources and obligations should be recorded as assets and liabilities;
- (b) which changes in assets and liabilities should be recorded;
- (c) how the assets and liabilities and changes in them should be measured;
- (d) what information should be disclosed and how it should be disclosed; and
- (e) which financial statements should be prepared.

“Goods of the same class or kind”, means imported goods that:

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

“Identical goods”, means imported goods that –

- (a) are the same in all aspects, including physical characteristics, quality, and reputation, as the goods being valued, except for minor differences in appearance that do not affect the value of the goods; and
- (b) were produced in the country in which the goods being valued were produced; and
- (c) were produced by on behalf of the person who produced the goods being valued, - But does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in Samoa were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

- (d) goods produced by a different person shall be taken into account only when there are no identical goods, as the case may be, produced by the same person as the goods being valued.

“Packing costs” means the cost of all containers (exclusive of instruments of international traffic) and coverings of whatever nature and of packing, whether for labor or materials use in placing goods, in condition, packed ready for shipment to Samoa

“Price actually paid or payable”, in relation to any goods, means the aggregate of all amounts paid or payable by the buyer to or for the benefit of the seller in respect of the goods and includes all payments (whether direct or indirect inclusive of all costs, charges and expenses incurred for sourcing, arranging, procuring, packaging, freight, transporting, insuring and related services incidental to the international shipment of the goods from the country of exportation to the place of importation in Samoa);

“Produced” includes grown, manufactured and mined, and the phrase “to produce” has the corresponding meaning;

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

“Similar goods” means imported goods that –

- (a) closely resemble the goods being valued in respect of component materials and parts and characteristics and are functionally and commercially interchangeable with the goods being valued having regard to the quality and reputation of the goods and the goods being valued; and

- (b) were produced in the country in which the goods being valued were produced; and
- (c) were produced by or on behalf of the person who produced the goods being valued; but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in Samoa were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;
- (d) goods produced by a different person shall be taken into account only when there are no similar goods, as the case may be, produced by the same person as the goods being valued.

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

“Time of importation” may include the time of entry for customs purposes.

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

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

- (i) materials, components, parts and similar items incorporated in the imported goods;

- (ii) tools, dies, moulds, and similar items incorporated in the imported goods;
- (iii) goods consumed in the production of the imported goods;
- (iv) engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in Samoa and are necessary for the production of the imported goods.

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

- (i) performed by an individual domiciled within Samoa;
- (ii) performed by that individual while acting as an employee or agent of the buyer of the imported goods; and
- (iii) incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within Samoa;

(4) The following apply in determining the value of **assist** described in sub – regulation (2) (iv) of this regulation:

- (i) the value of an assist that is available in the public domain is the cost of obtaining copies of the assist;
- (ii) if the production of an asset occurred in Samoa and one or more foreign countries, the value of the assist is the value added outside Samoa;
- (iii) if the assist was purchased or leased by the buyer from an unrelated person, the value of the assist is the cost of the purchase or of the lease

(5) For the purposes of these Regulations, persons shall be deemed to be related only if –

- (a) they are officers or directors of one another's businesses; or
- (b) they are legally recognized partners in business; or
- (c) they are employer and employees; or
- (d) any person directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other; or
- (f) both of them are directly or indirectly controlled by a third persons; or
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.

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

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

- a) they are connected by blood relationship within the fourth degree of relationship; or
- b) they are married to one another or one is married to a person who is

connected within the fourth degree of relationship to the other; or

- c) one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.

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

(8) For the purposes of these regulations charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the Customs value in any case where –

- (a) the charges are distinguished from the price actually paid or payable for the goods; and
- (b) such goods are actually sold at the price declared as the price actually paid or payable; and
- (c) the buyer, if required, can demonstrate that –
 - (i) the financing arrangement was made in writing;
 - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

(9) The provisions of these regulations shall apply to the appraisal of goods imported into Samoa on or after the effective date.

(10) Imported goods will be appraised on the basis, and in the order, of the following –

- (a) the value for duty of imported goods shall be determined in accordance with Regulations 3 to 10;
- (b) the Customs value of goods shall if possible be appraised on the basis of the transaction value of the goods in accordance with conditions set out in Regulations 3;
- (c) where the value for duty of goods cannot be appraised in accordance with Regulation 3, it shall be appraised in the following order and on the following basis –
 - (i) the transaction value of identical goods that meet the requirements set out in Regulation 5;
 - (ii) the transaction value of similar goods that meet the requirements set out in Regulation 5;
 - (iii) the deductive value of goods as set out in Regulation 7;
 - (iv) the computed value of the goods as set out in Regulation 8.

(11) Upon receipt of a written request from the importer to the Comptroller, the order of consideration of the valuation basis provided for in paragraphs (iii) and (iv) of sub-regulation (10) (c)

shall be reversed and confirmed in writing by the Comptroller.

(12) Where the value for duty is not appraised on the basis of the methods referred to in paragraphs (i) to (iv) of sub-regulation (10) (c), the Customs value of those goods shall be appraised under Regulation 9.

(13) Information submitted by an importer, buyer or producer in regard to the appraisement of goods may not be rejected by Customs because of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles.

PART II

RULES ON CUSTOMS VALUATION

3. **Transaction Value as the primary basis of valuation** – (1) The Customs value of imported goods shall be their transaction value, that is, the price actually paid or payable for the goods when sold for export to Samoa, adjusted in accordance with Regulation 4, if:
- (a) there are no restrictions respecting the disposition or use of the goods by the buyer, other than restrictions that –
 - (i) are imposed by law; or
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods; or
 - (b) the sale of the goods or the price actually paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be determined with respect to the goods being valued; or

- (c) Where any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer is to accrue, directly or indirectly, to the seller, the price paid or payable for the goods includes the value of that part of the proceeds or can be adjusted in accordance with Regulation 4 of this Regulations; and
- (d) The buyer and seller of the goods are not related at the time the goods are sold for export or, where the buyer and seller are related at that time, the transaction value is acceptable for customs purposes under the provisions of sub-Regulation (2) of this Regulation -

(2) (a) In determining whether the transaction value is acceptable for the purposes of sub-regulation (1) of this Regulation, the fact that the buyer and the seller are related within the meaning of sub- Regulation (5) of part I shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to 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 sub-regulation (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 of identical goods or similar goods in respect of a sale of those goods for export to Samoa between a seller and buyer who are not related at the time of the sale; or
- (ii) the deductive value of identical or similar goods determined in accordance with Regulation 7; or
- (iii) the computed value of identical or similar goods determined in accordance with Regulation 8.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Regulation 4 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 sub-Regulation 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of sub-Regulation 2(b).

(3). Where sub-Regulation (2) of this Regulation applies, the importer shall, without limiting the generality of sub-Regulation (2), provide the following information:

- (a) the nature of the goods being valued;
- (b) the nature of the industry that produces the goods being valued;
- (c) the season in which the goods being valued are imported;
- (d) whether a difference in values is commercially significant;

- (e) the trade levels at which the sales take place;
- (f) the quantity levels of the sales;
- (g) any of the amounts referred to in Regulation 4;
- (h) the costs, charges or expenses incurred by a seller when the seller sells to a buyer to whom the seller is not related that are not incurred when the seller to a buyer to whom the seller is related;
- (i) any other information as may be required by the Comptroller;

(4) In any case where the Comptroller or proper officer is of the opinion that the relationship between the buyer and the seller of any goods influenced the price paid or payable for the goods, he shall inform the importer, in writing if so requested, of the ground on which he formed his opinion, and shall give the importer a reasonable opportunity to satisfy him that the relationship did not influence the price.

(5) Where, in the opinion of the Comptroller, the Customs value cannot be determined under this regulation or the Comptroller has reason to doubt the truth or accuracy of the declared Customs value and, after having sought further explanation or other evidence that that declared Customs value represents the total amount actually paid or payable for the imported goods, the Comptroller is still not satisfied that the Customs value of the goods can be determined under this Regulation, the Comptroller may determine the Customs value of the goods by proceeding sequentially through Regulations 5 to 9 of these Regulation under which the Customs value can, in the opinion of the Comptroller, be determined.

(6) Notwithstanding sub-regulation (5), on the written request of the importer to the Comptroller,

the order of consideration of the valuation basis provided for in Regulation 7 and 8 shall be reversed.

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

- (a) by adding thereto amounts, to the extent that each such amount is not otherwise included in the price actually paid or payable for the goods and is determined on the basis of sufficient information, equal to
 - i. commissions and brokerage in respect of the goods incurred by the buyer, other than fees paid or payable by the buyer to his agent for the service of representing him overseas in respect of the purchase of the goods being valued; and
 - ii. the packing costs and charges incurred by the buyer in respect of the goods, including the costs of cartons, cases, and other containers and coverings that are treated for Customs purposes as being part of the imported goods and all expenses of packing incidental to placing the goods in the condition in which they are shipped to Samoa; and
 - iii. the value of any of the following goods and services:

a. materials, component parts, and other goods incorporated in the imported goods:

b. tools, dies, moulds, and other goods utilized in the production of the imported goods:

c. materials consumed in the production of the imported goods:

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

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

iv. royalties and license fees including payments for patents, trademarks, and copyrights in respect of the imported goods that the buyer must pay, directly or

indirectly, as a condition of the sale of the goods for export to Samoa to the extent that such royalties and fees are not included in the price actually paid or payable, exclusive of charges for the right to reproduce the imported goods in Samoa; and

v. the value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue, directly or indirectly, to the seller; and

vi. the cost of transportation and insurance of, and the loading, unloading and handling charges, and other (direct or indirect) charges and expenses associated with the procurement, packaging and transportation of the imported goods to Samoa:

(2) Additions to the price actually paid or payable shall be made under this Regulation only on the basis of objective and quantifiable data.

(3) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Regulation.

5. Transaction value of identical goods as Customs value – (1) Subject to sub-Regulations (2) to (4), where the Customs value of imported goods cannot, in the opinion of the Comptroller, be determined under Regulation 3, the

Customs value of the goods shall be the transaction value of the identical goods in respect of a sale of those goods for export to Samoa if that transaction value is the Customs value of the identical goods and the identical goods were exported at the same substantially the same time as the good being valued and were sold under the following conditions:

- (a) to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
- (b) in the same or substantially the same quantities as the goods being valued.

(2) Where the Customs value of imported goods cannot be determined under sub-Regulation (1) of this Regulation because identical, goods were not sold under the conditions described in sub-Regulation (1) (a) and (b), there shall be submitted therefore identical goods sold under any of the following conditions:

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

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

- (a) commercially significant differences between the costs, charges, and expenses referred to in regulation 4 (1) (a) (vi) in respect of the

identical goods and those costs, charges, and expenses in respect of the goods being valued that are attributable to differences in distances and modes of transport:

- (b) where the transaction value is in respect of identical goods sold under the conditions described in any paragraph (a) to (c) of sub-regulation (2), differences in the trade levels of the buyers of the identical goods and the goods being valued or the quantities in which the identical goods and the goods being valued were sold or both, as the case may be,

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

- (4) Where, in relation to imported goods being valued, there are 2 or more transaction values of identical goods that meet all the requirements set out in sub-regulation (1) and (3) or where there is no such transaction value but there are 2 or more transaction values of identical goods sold under the conditions described in any of paragraphs (a) to (c) of sub-regulation (2) that meet all the requirements set out in this Regulation that are applicable by virtue of sub-regulation (2), the Customs value of the goods being value shall be determined on the basis of the lowest such transaction value.

6. Transaction value of similar goods as the Customs value – (1) Subject to sub-regulation (2) and sub-regulation (2) to (4) of Regulation 5, where the Customs value of imported goods cannot, in the opinion of the Comptroller, be determined under Regulation 5, the Customs value of the goods shall be the transaction value of similar goods in respect of a sale of those goods for export to Samoa if that transaction value is the Customs value of the similar goods and the similar goods were exported at the same or substantially the same time as the good being valued and were sold under the following conditions:

- (a) to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
- (b) in the same or substantially the same quantities as the goods being valued.

(2) Where the Customs value of imported goods cannot be determined under sub-regulation (1) of this Regulation because similar goods were not sold under the conditions described in sub-regulation (1), sub-regulations (2) to (4) of Regulation 5, shall apply to this regulation in respect of similar goods as if every reference in those sub-regulations to “identical goods” were references to “similar goods”.

7. Deductive value as Customs value – (1)
Subject to sub-regulations (5) and (6) of Regulation 3, where the Customs value cannot, in the opinion of the Comptroller, be determined under Regulation 6, the Customs value of the goods shall be the deductive value in respect of the goods.

(2). Where the goods being valued or identical goods or similar goods are sold in Samoa in the condition in which they were imported at the same or substantially the same time as the time of importation of the goods being valued, the deductive value of the goods being valued shall be the price unit in respect of sales described in sub-regulation (5) determined in accordance with that sub-regulation and adjusted in accordance with sub-regulation (6), at which the greatest number of unit of the goods being valued or identical goods or similar goods are so sold.

(3). Where the goods being valued or identical goods or similar goods are in Samoa in the condition in which they were imported before the expiration of 90 days after the importation of the goods being valued but are not so sold at the same or substantially the same time as the time of that importation, the deductive value of the goods being valued shall be the price per unit in respect of sales described in sub-regulation (5), determined in accordance with that sub-regulation and adjusted in accordance with sub-regulation (6), at which the greatest number of units of

the goods being valued or identical goods or similar goods are so sold at the earliest date after the importation of the goods being valued.

(4). Where the goods being valued or identical goods or similar goods are sold in Samoa in the circumstances described in sub-regulation (2) or sub-regulation (3), but the goods being valued, after being assembled, packaged, or further processed in Samoa, are sold in Samoa before the expiration of 90 days after the importation thereof and the importer of the goods being valued requests that this sub-regulation be applied in the determination of the Customs value of those goods, the deductive value of the goods being valued shall be the price per unit in request of sales described in sub-regulation (5), determined in accordance with that sub-regulation and adjusted in accordance with sub-regulation (6), at which the greatest number of units of the goods being valued are so sold.

(5). For the purposes of sub-regulations (2) to (4), the price per unit in respect of any goods being valued or identical goods or similar goods, shall be determined by ascertaining the unit price in respect of sales of the goods at the first level after their importation to persons who –

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

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

(6). For the purposes of sub-regulations (2) to (4), the price per unit in respect of any goods being valued or identical goods or similar goods, shall be adjusted but deducting there from an amount equal to the aggregate of –

- (a) an amount determined in accordance with sub-regulation (7), equal to –
 - (i) the amount of commission generally earned on a unit basis; or
 - (ii) the amount for profit and general expenses, including all costs of marketing the goods, considered together as a whole that is generally reflected on a unit basis

in connection with sales in Samoa of goods of the same class or kind as those goods.

- (b) reasonable costs, charges and expenses that are incurred in respect of the transportation and insurance of the goods within Samoa and the costs, charges, and expenses associated therewith to the extent that an amount for such costs, charges and expenses is not included in respect of general expenses under paragraph (a);
- (c) the costs, charges, and expenses referred to in Regulation 4 (1) (b) (i) incurred in respect of the goods, to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a);
- (d) any Customs duties or other taxes payable in Samoa by reason of the importation or sale of the goods, to the extent that an amount for such duties and taxes is not deducted in respect of general expenses under paragraph (a);
- (e) where sub-regulation (4) applies, the amount of the value added to the goods that are

attributed to the assembly, packaging, or further processing in Samoa of the goods, if that amount is determined, in the opinion of the Comptroller, on the basis of sufficient information.

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

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

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

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

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

- (a) the costs, charges, and expenses incurred in respect of, or the value of:
- (i) materials employed in producing the goods being valued; and
 - (ii) the production or other processing of the goods being valued,
determined in the manner prescribed, including, without limiting the generality of the foregoing:
 - (iii) the costs, charges, and expenses referred to in Regulation 4 (1) (a) (ii);
 - (iv) the value of any goods and services referred to in Regulation 4 (1) (a) (iii) determined and apportioned to the goods being valued as referred to in that Regulation, whether or not such goods and services have been supplied free of charge or at reduced cost:
 - (v) the costs, charges, and expenses incurred by the producer in respect of engineering, development work, art work, design work, plans, or sketches undertaken in Samoa that were supplied directly or indirectly, by the buyer of the goods being valued for use in connection with the production and the sale for export of those goods to be extent that such elements are charged to the producer of the goods, apportioned to the goods being valued as referred to in Regulation 4 (1) (a) (iii):
- (b) the amount, determined in accordance with the sub-regulation (4) for profit and general expenses, considered together as a whole, generally reflected in sales for export to Samoa of goods of the same class or kind as

the goods being valued, made by the producers from whom they buy the goods at the time the goods are sold to them.

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

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

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

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

9. Residual basis of valuation – (1) Where the Customs value of imported goods cannot, in opinion of the

Comptroller, be determined under the provisions of Regulation 3 through 8, inclusive, it shall be determined using reasonable means consistent with the principles and general provisions of these Regulations and of Article VII of the GATT 1994 and on information available in Samoa on the basis of a value derived from the methods of valuation set out in Regulations 3 to 8 interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at a Customs value of goods.

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

- (a) the selling price in Samoa of goods produced in Samoa; or
- (b) a basis which provides for the acceptance for customs purposes of the higher of 2 alternative values; or
- (c) the price of goods on the domestic market of the country of exportation; or
- (d) the cost of production, other than computed values that have been determined for identical or similar goods in accordance with Regulation 8; or
- (e) the price of goods for export to a country other than Samoa; or
- (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 Regulation and the method used to determine such value.

10. Determination of Customs value by Comptroller – (1) The Customs value of goods pursuant to

the Customs Act and these regulations shall be determined by the Comptroller and duty shall be payable in accordance with that determination unless, pursuant to this regulation, a different amount is proved to be the correct Customs value of the goods.

(2). If, on the basis of an objection received from the importer or for any other reason, the Comptroller is satisfied that any determination made under sub-regulation (1) in respect of any goods is inconsistent with these regulations or incorrect for any other reason, he may amend his determination in respect of that determination accordingly and duty shall be payable in accordance with that amended determination.

(3). If any importer disagrees with any determination by the Comptroller of the Customs value of any goods, he may object to that value by making an application and paying a fee of \$100 tala to the Comptroller, stating the ground of his objection and the amount that he considers should be the Customs value of the goods.

(4). An objection under this section shall be given in writing to the Comptroller within 14 days after any determination made under sub-regulation (1) or within such further time as may be allowed by the Comptroller.

(5). The Comptroller shall consider the objection and inform the importer in writing of his decision.

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

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

(8). Every such appeal pursuant to sub-regulation (7) shall be made by giving such notice of appeal within 28 days after the date on which the appellant was notified in writing under sub-regulation (5) of the decision

or within such further time as the Minister may allow application either before or after the expiration of those 28 days.

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

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

11. Supply of Information – (1) Upon the written request by the importer of any goods, the Comptroller shall give notice to that importer in writing of the Customs value of goods, and the basis of the determination of that Customs value including the provisions of these Regulations applying thereto.

(2). A notice under sub-regulation (1) will apply only to the imported goods being valued and will not serve as authority with respect to the valuation of any other goods.

12. Verification of information – (1) 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.

13. Incorrect and False information – (1) Every person who knowingly makes a false declaration or provides information required to be provided pursuant to these regulations, that is false or defective in any particular commits an offence.

(2). Every person who commits an offence against this Regulation is liable to the maximum fine available under the Customs Act.

(3). For the purposes of these regulations, every declaration, invoice, certificate, or written statement required or authorized by or under the Customs Act or regulations made there under, to be made or produced by the importer or any person authorized to make an entry shall be deemed to form part of that entry.

(4). For the purposes of these regulations, every amendment of an entry or declaration shall be deemed to form part of that entry, but not so as to relieve any person from any penalty incurred in respect of the entry before its amendment.

14. Importers to keep records – (1) Every person who imports goods, or causes goods to be imported, for sale or for any industrial, occupational, commercial, institutional or other like use, shall keep at his or place of business in Samoa, or at such other place in Samoa as may be approved by the Comptroller, such records in respect of those goods in such manner, and for such period of time not exceeding 10 years as may be prescribed.

(2). Where an officer of Customs so requests, a person who is required pursuant to sub-regulation (1) to keep any records shall:

- (a) promptly make those records available to the officer; and
- (b) answer truthfully any questions asked by the officer in respect of such records.

(3). Where any records required to be kept pursuant to sub-regulation (1) are kept on or in any mechanical or electronic device, including any computer, the owner of that device shall operate or cause the device to be operated, at a person's own expense, so as to make the records readily available to the officer.

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

(5). Every person who commits an offence against this regulation is liable to the maximum fine available under the Customs Act.

15. Comptroller may alter assessment – (1) If the Comptroller has reason to believe or suspect that the amount of duties declared by any person is less than the amount payable under the Customs Acts or regulations made there under, he may assess the duties payable at such amount as he thinks proper.

(2). Pursuant to sub-regulation (1), the Comptroller may from time to time and at any time may take such alterations in or additions to an assessment as the Comptroller thinks necessary in order to ensure the correctness thereof, notwithstanding the fact that the goods to which the assessment relates are no longer subject to the control of the Customs or that the duties originally assessed may have been paid.

(3). If any such alteration or addition has the effect of imposing any fresh liability or increasing any existing liability, notice shall be given to the Comptroller to the importer or owner concerned.

(4). Every assessment made by the Comptroller pursuant to these regulations shall be taken to be correct and any additional duties paid, unless the contrary is proved.

16. Production of Valuation Declaration on first entry – (1) Subject to such exemptions and conditions as may further be prescribed, on the first entry (other than an entry for removal) of any goods, the importer or such other person as may be prescribed or determined by the Comptroller shall make and produce to the Comptroller or other proper officer a declaration of the value of the goods imported in such form and manner as may be prescribed or determined.

(2). Every importer or such other person as may be prescribed shall provide such additional information as the Comptroller or proper officer requires which evidences the particulars of the goods and the price paid or payable for

those goods between the seller of the goods and the buyer of the goods.

(3). Unless the Comptroller otherwise directs in relation to any class or classes of goods or transactions, the Comptroller or other proper officer may retain the documents so produced, or a legible copy thereof made by carbon or other duplicating process made by or on behalf of the seller or consignor of the goods.

(4) Unless the Comptroller otherwise directs in relation to any class or classes of goods or transactions, every importer, or such other person as may be prescribed or determined by the Comptroller, who is required pursuant to the provisions of these regulations to make entry of any goods, shall keep all documents, or legible copies thereof, which evidence the particulars of the goods and the price paid or payable for those goods between the seller of the goods and the buyer of the goods, for a period not exceeding 7 years from the date on which such entry was required to be made under the provisions of the Customs Act.

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

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

Comptroller or other proper officer to readily ascertain the information contained therein.

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

17. Provisions for the valuation of imported goods for value added goods and services tax purposes –

For the purposes of subsection (2) of section 13 of the Value Added Goods and Services Tax Act 1993, the value of goods imported into Samoa shall be the sum of the amount of-

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

18. Confidentiality - (1) The Comptroller shall for the purposes of customs valuation, treat as strictly confidential all information which is provided to or obtained by the Comptroller.

(2) The Comptroller shall not disclose any information that sub-regulation (1) applies to, without the written permission of the person or government providing the information or from which the information is obtained, except to the extent that the information may be required to be disclosed in judicial proceedings.

19. Publication – (1) The Comptroller shall publish in the Savali a notice of judicial decisions and administrative rulings of general application giving effect to Samoa's obligations under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement).

20. Currency Conversation - (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 any Commercial Bank in Samoa and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of Samoa.

(2) The conversion rate to be used shall be that in effect at the time of importation.

21. Truth or accuracy of information – (1) Nothing in these Regulations shall be construed as restricting or calling into question the rights of the Comptroller to satisfy him or herself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART III PROVISION FOR THE VALUATION OF EXPORTED GOODS FOR CUSTOMS PURPOSES

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

PART IV REPEAL AND SAVINGS AND INTERPRETATIVE NOTES

23. Repeals and savings – (1) The Customs Valuation Regulations 1999 is repealed.

(2) Despite the provisions of these Regulations, all applications, prosecutions and other matters arising out of or under the provisions of the Customs Valuations Regulations 1999 which are not determined or otherwise dealt with under such Regulations at the date of the commencement of this Regulations shall be determined or otherwise dealt with under the provisions of the Customs Valuation Regulations 2011.

24. Interpretative Notes – (1) Subject to these regulations and to any other law, the interpretative notes set out in the Schedule have the force of law in Samoa

(2) If there is any inconsistency between these regulations and the interpretative notes in the Schedule, the regulations prevail.

SCHEDULE

INTERPRETATIVE NOTES

General Note

1. The primary basis for customs value under these Regulations is "transaction value" as defined in Regulation 3. Regulation 3 is to be read together with Regulation 4 which provides, *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. Regulation 4 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. Regulations 5 through 9 provide methods of determining the customs value whenever it cannot be determined under the provisions of Regulation 3.

2. Where the customs value cannot be determined under the provisions of Regulation 3 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 Regulations 5 or 6. 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. Regulations 7 and 8 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 Regulation 7 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 Regulation 7 if the importer so requests. Under Regulation 8 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 Sub regulation (6) of Regulation 3, to choose the order of application of the two methods.

4. Regulation 9 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Regulations.

Sequential Application of Valuation Methods

1. Regulations 3 through 9 define how the customs value of imported goods is to be determined under the provisions of these Regulations. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Regulation 3 and imported goods are to be valued in accordance with the provisions of this Regulation whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Regulation 3, it is to be determined by proceeding sequentially through the succeeding Regulations to the first such Regulation under which the customs value can be determined. Except as provided in sub regulation (6) of Regulation 3 it is only when the customs value cannot be determined under the provisions of a particular Regulation that the provisions of the next Regulation in the sequence can be used.

3. If the importer does not request that the order of Regulations 7 and 8 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 Regulation 8, the customs value is to be determined under the provisions of Regulation 7, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Regulations 3 through 8 it is to be determined under the provisions of Regulation 9.

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 these Regulations, 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 Regulation in question. For example, the determination of usual profit and general expenses under the provisions of Regulation 7 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 Regulation 8 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 sub regulation 1(a)(iii)(b) of Regulation 4 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 Regulation 3

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 Regulation 4, 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 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.

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.

Sub regulation 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.

Sub regulation 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 Regulation 3. 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.

Sub regulation 2

1. Sub regulations 2(a) and 2(b) provide different means of establishing the acceptability of a transaction value.
2. Sub regulation 2(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.
3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship

influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of the introductory part of these Regulations, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Sub regulation 2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Regulation 3. Where a test under sub regulation 2(b) is met, it is not necessary to examine the question of influence under sub regulation 2(a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in sub regulation 2(b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In sub regulation 2(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Sub regulation 2(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is 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 sub regulation 2(b) of Regulation 3.

Note to Regulation 5

1. In applying Regulation 5, 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 Regulation 5, the transaction value of identical imported goods means a customs value, adjusted as provided for in sub regulations 1(b) and 2, which has already been accepted under Regulation 3.
5. A condition for adjustment because of different commercial levels or different quantities is that such

adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence 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 Regulation 5 is not appropriate.

Note to Regulation 6

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

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence 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 Regulation 5 is not appropriate.

Note to Regulation 7

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.

<i>Sale quantity</i>	<i>Unit price</i>	<i>Number of sales</i>	<i>Total quantity sold at each price</i>
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*

<i>Sale quantity</i>	<i>Unit price</i>
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) *Totals*

<i>Total quantity sold</i>	<i>Unit price</i>
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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 sub regulation 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in sub regulation 1(a) (iii) of Regulation 4, should not be taken into account in establishing the unit price for the purposes of Regulation 7.

6. It should be noted that "profit and general expenses" referred to in sub regulation (6) of Regulation 7 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless the importer's figures are inconsistent with those obtained in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of sub regulation (6) (d) of Regulation 7 shall be deducted under the provisions of sub regulation 6(a)(i) of Regulation 7.

9. In determining either the commissions or the usual profits and general expenses under the provisions of sub

regulation 1 of Regulation 7, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Regulation 7, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of sub regulation (3) of Regulation 7, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method of Regulation 7 is used, deductions made for the value added by further processing shall be based on objective and quantifiable 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 Regulation 7 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Regulation 8

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine

the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

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

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

4. The "amount for profit and general expenses" referred to in sub regulation 2(b) of Regulation 8 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 competitiveness. 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 Regulation 20.

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

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

Note to Regulation 9

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

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

3. Some examples of reasonable flexibility are as follows:

(a) *Identical goods* - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Regulations 7 and 8 could be used.

(b) *Similar goods* - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods

being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Regulations 7 and 8 could be used.

- (c) *Deductive method* - the requirement that the goods shall have been sold in the "condition as imported" in sub regulation (6) of Regulation 7 could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

Note to Regulation 4

Sub regulation 1(a)(i)

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

Sub regulation 1(a)(iii)(b)

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

Sub regulation 1(a)(iii)(b)

1. Additions for the elements specified in sub regulation 1(a)(iii)(b) of Regulation 4 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 Regulation 4.

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 Regulation 4 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.

Sub regulation 1(a) (iv)

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

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

Sub regulation 2

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Regulation 4, the transaction value cannot be determined under the provisions of Regulation 3. 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 Regulation 18

For the purposes of Regulation 18, "time of importation" may include the time of entry for customs purposes.

Note to Regulation 10

1. Regulation 10 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 Regulation 10 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal.

Note to Part I "Introduction"

Sub regulation (5) Interpretation

For the purposes of sub regulation (5), the term "persons" includes a legal person, where appropriate.

Sub regulation (5)(e)

For the purposes of these Regulations, 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.