

DRAFT – November 12, 2012



Islamic Republic of Afghanistan

Ministry of Justice

(Draft)

Regulation on Customs Valuation

Published in the OFFICIAL GAZETTE No:

Kabul, _____, 201_

Chapter 1. General Provisions

Basis and Objectives

Article 1

This regulation has been formulated with a consideration of Article 24 of Customs Law. The regulation will help in establishment of a rational, fair and uniform system of determining value of goods and prevention of document and statements fabrication in determining of value at the customs.

Interpretative Notes

Article 2

Certain articles of this regulation are supplemented by one or more Interpretative Notes attached to this regulation. The articles of this regulation are to be understood and applied consistently with their respective Interpretative Notes.

Definitions

Article 3

Terms used in this regulation shall have the same meaning that is given in the Customs Law of Afghanistan, if any.

Sale

Article 4.

1. A *sale* consists in the transfer of ownership to goods from the seller to the buyer for a price.
2. For the purposes of the transaction value method described in Article 20 of this regulation, the fact that the goods which are the subject of a sale are declared for a customs designation or customs process shall be regarded as an adequate indication that they were sold for export to the customs territory of Afghanistan.

Related Parties

Article 5.

1. Two persons shall be considered “*related parties*” if:
 - (1) they are officers or directors of one another's businesses;
 - (2) they are recognized under the law of Afghanistan as partners in business;
 - (3) they are employer and employee;
 - (4) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
 - (5) one of them directly or indirectly controls the other;

- (6) both of them are directly or indirectly controlled by a third person;
- (7) together they directly or indirectly control a third person; or
- (8) they are members of the same family. Persons shall be considered members of the same family only if have one of the following relationships:

- husband and wife, parent and child,
- brother and sister (whether by whole or half blood),
- grandparent and grandchild,
- uncle or aunt and nephew or niece,
- parent-in-law and son-in-law or daughter-in-law,
- brother-in-law and sister-in-law.

2. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire shall not be considered related parties, unless their relationship also meets one of the criteria described in the previous paragraph.

Assists

Article 6

An “*assist*” means any of the following goods or services if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported goods for use in connection with the production or the sale for export to Afghanistan of the goods:

- (1) materials, components, parts, and similar items incorporated in the imported goods;
- (2) tools, dies, molds, and similar items used in the production of the imported goods;
- (3) materials consumed in the production of the imported goods;
- (4) engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in Afghanistan and are necessary for the production of the imported goods.

Generally Accepted Accounting Principles

Article 7

1. “*Generally Accepted Accounting Principles*” are any generally-recognized consensus or substantial authoritative support regarding:

- (1) Which economic resources and obligations should be recorded as assets and liabilities;
- (2) Which changes in assets and liabilities should be recorded;
- (3) How the assets and liabilities and changes in them should be measured;
- (4) What information should be disclosed and how it should be disclosed; and
- (5) Which financial statements should be prepared.

2. The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the imported goods is sought to be established, and the relevant country for the point in contention.

3. Customs shall not reject information submitted by an importer, buyer, or producer in regard to the valuation of imported goods because of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles.

Identical Goods

Article 8

1. “*Identical goods*” means goods that are:

- produced in the same country;
- the same in all respects, including physical characteristics;
- of the same quality and reputation.

Minor differences in appearance do not preclude goods that otherwise meet this definition from being regarded as identical.

2. Goods shall not be considered “identical goods” if they incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 21 point (1) of this regulation because such elements were undertaken in Afghanistan.

Similar Goods

Article 9

1. “*Similar goods*” means goods that are:

- produced in the same country and
- have like characteristics and component material which allow them to perform the same functions and to be commercially interchangeable.

2. The quality of the goods, its reputation, and the existence of a trademark will be factors considered to determine whether goods can be considered similar'.

3. Goods shall not be considered “similar goods” if they incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 21 point (1) of this regulation because such elements were undertaken in Afghanistan.

Goods of the Same Class or Kind
Article 10

“*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.

Sufficient Information
Article 11

“*Sufficient information*” means objective and quantifiable data that establishes the accuracy of prices or costs.

Invoice
Article 12

“*Invoice*” refers to the receipt issued by the selling company or a representative of the company. It indicates the cost, specifications, variety, quantity, weight, and amount of goods as well as the names of the seller and customer (buyer).

Chapter 2.

Declarant’s Rights and Obligations in Customs Valuation

Right to Written Explanation of Valuation Method
Article 13

1. Upon a written request by the declarant addressed to Customs where the declaration is made no later than 10 days of the date of notification of release of the goods, Customs shall provide the declarant, without charge, a written explanation as to how the customs value of such goods was determined. Such written explanation shall constitute a notification of a Customs decision for purposes of making an appeal pursuant to Article 18 of the Customs Law.
2. The explanation will apply only to the imported goods under valuation and will not serve as authority with respect to the valuation of importations of any other merchandise at the same or a different customs office.

Right to Written Reasons for Rejection of a Declared Transaction Value
Article 14

1. When Customs have grounds to reject the transaction value declared by the declarant, and that rejection increases the duty liability, Customs shall inform the declarant of the reasons for the rejection, which shall be given in writing if the declarant so requests.

2. The declarant shall have 10 days to respond in writing to Customs. Customs shall communicate the final decision and the grounds therefor in writing to the declarant. Such decision shall be subject to appeal pursuant to Article 18 of the Customs Law.

Right to Withdraw Goods under Incomplete or Provisional Declaration Procedures Article 15

Where Customs is unable to determine a final customs valuation of imported goods when presented for release, including for reasons of incomplete information or documents supplied by the declarant, Customs shall allow release of the goods in accordance with the incomplete and provisional declaration procedures defined under authority of Article 56A of the Customs Law.

Right to Protection of Confidential Information Article 16

Except as otherwise required by law, Customs shall not disclose any information submitted by the declarant, or otherwise obtained by Customs, concerning the price or cost of the goods or any assist; the shipping costs for the goods or any assist; the identity of the seller, exporter, buyer, consignee, or producer of the goods or any assist; or the customs value of the goods.

Right to Apply Computed Value before Deductive Value Article 17

The declarant may request the application of the computed value method before the deductive value method. The request must be made at the time the declaration for the goods is submitted to Customs. If the declarant makes the request, but the value of the imported goods cannot be determined using the computed value method, the goods will be valued using the deductive value method if it is possible to do so. If the deductive value cannot be determined, the appraised value will be determined as provided for in Article 48 of this regulation.

Obligation to Declare a Customs Value Article 18

1. Where customs valuation must be determined under the Customs Law, the declarant shall set out in the Customs declaration the transaction value of the imported goods, as defined in Article 20 of this regulation, and shall further declare:

- (1) whether the buyer and seller of the goods are related;
- (2) whether there are restrictions on the buyer's use or disposition of the goods of the kind defined in Article 26 point (2) of this regulation;
- (3) whether the sale or price of the goods is subject to conditions or considerations of the kind defined in Article 26 point (3) of this regulation; and
- (4) whether the sale involves any additions of the kind defined in Article 21 of this regulation.

2. In the cases defined in Article 26 where a transaction value cannot be determined for the goods, the declarant shall provide Customs with such other information as may be requested by Customs for the purposes of determining the customs value under the alternative customs valuation methods defined in this regulation.

Obligation to Provide Information

Article 19

1. The declarant shall provide Customs with a copy of the invoice on the basis of which the value of the imported goods is declared. This copy shall be retained by Customs.

2. The declarant shall be responsible for:

- (1) the accuracy and completeness of the information given in the declaration;
- (2) the authenticity of the documents produced in support of these particulars; and
- (3) the submission of any additional information or document necessary to establish the customs value of the goods.

Chapter 3

Primary Method of Valuation

Transaction Value Method

Article 20

The transaction value of imported goods is the price actually paid or payable for the goods when sold for export to the customs territory of Afghanistan, plus the following cost elements if they are not included in the price:

- (1) The costs of transport of the imported goods to the first port or place of entry in the customs territory of Afghanistan, plus any charges for loading, unloading and handling associated with the transport of the imported goods to such place and the cost of insurance;
- (2) Any packing costs and costs of containers incurred by the buyer for the imported goods; and,
- (3) Amounts equal to the additions listed in Article 21 if any are involved in the import transaction.

Additions to Transaction Value

Article 21

The following shall be added to the customs value determined under article 20:

- (1) The value, apportioned as appropriate, of any assist;
- (2) Any commissions and brokerage incurred by the buyer with respect to the imported merchandise, other than buying commissions;
- (3) Any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to Afghanistan;
- (4) The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

Exclusions from Transaction Value

Article 22

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:

- (1) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (2) the cost of transport after importation;
- (3) import duties and taxes on the imported goods.

General Rules for Related Party Transactions

Article 23

1. If the buyer and seller are related, the declared transaction value shall be used if Customs accepts either that the circumstances of the sale indicate that the relationship did not influence the price or that the declared transaction value closely approximates to one of the test values described in Article 24.
2. The fact that a buyer and seller are related shall not, by itself, constitute grounds for Customs to reject a declared transaction value.
3. The test values described in Article 24 shall be used only at the initiative of the declarant and for comparison purposes. A test value shall not be substituted for the declared value.

Test Values Used for Related Party Transactions

Article 24

1. Test values are:
 - (1) the transaction value of identical or similar goods in sales to unrelated buyers in Afghanistan;
 - (2) the deductive value of identical or similar goods determined under Article 38; and
 - (3) the computed value of identical or similar goods determined under Article 46

2. Each value referred to in subparagraphs (1) to (2) of paragraph 1 of this Article that is used for comparison relates to goods exported to Afghanistan at or about the same time as the imported goods.

Adjustments to Test Values

Article 25

In applying the test values, differences with respect to the sales involved will be taken into account if based on sufficient information supplied by the declarant or otherwise available to Customs and if the differences relate to:

- (1) commercial levels;
- (2) quantity levels;
- (3) the costs, commissions, values, fees, and proceeds described in Article 20 and 21; and
- (4) the 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.

Chapter 4

Alternative Valuation Methods

Cases when Alternative Valuation Method Are Used

Article 26

The transaction value method defined in Article 20 is the primary basis of customs valuation. Alternative valuation methods shall be applied by Customs only in the following cases, where a transaction value does not exist or cannot be used:

- (1) The transaction value method cannot be used where the imported goods are not the subject of an export sale.
- (2) The transaction value shall not be used where the buyer is subject to restrictions as to the disposition or use of the goods, other than restrictions which:
 - a. are imposed or required by law;
 - b. limit the geographical area in which the goods may be resold; or
 - c. do not substantially affect the value of the goods.
- (3) The transaction value shall not be used 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.
- (4) The transaction value shall not be used where sufficient information is not available to make the appropriate adjustments to the price paid or payable for the goods that are

described in Article 21 or for the costs of international transport, containers and packaging described in Article 20. Where Customs determines that sufficient information does not exist for such adjustments to price, it shall notify the declarant, and provide the declarant with an opportunity to respond, according to the procedure described in point (6) below.

- (5) The transaction value shall not be used if the buyer and seller are related and Customs determine that the declared transaction value is not acceptable under the provisions of Articles 23, 24, and 25.
- (6) Customs may choose not to accept a declared transaction value if, following the procedure set out in the following paragraph, they are not satisfied, on the basis of reasonable doubts, that the declared value represents the total amount paid or payable as referred to in Article 20. Where the Customs has such doubts they may ask the declarant to provide additional information in accordance with Article 19. If those doubts continue, Customs shall notify the declarant and provide him with an opportunity to respond in accordance with the procedure set out in Article 14.

Use of Alternative Valuation Methods

Article 27

If the transaction value is not available or cannot be used, for the reasons specified in Article 26, Customs shall value the imported goods on the basis, and in the order, of the following:

- (1) The transaction value of identical goods described in Articles 28 through 32;
- (2) The transaction value of similar goods described in Article 33 through 37, if the transaction value of identical goods cannot be determined;
- (3) Subject to the declarant's rights (see Article 17), the deductive value described in Articles 38 through 45, if the transaction value of similar goods cannot be determined;
- (4) The computed value described in Articles 46 - 47, if the deductive value cannot be determined; or
- (5) The fall back method described in Article 48, if the computed value cannot be determined.

Basic Rule for Transaction Value of Identical Goods

Article 28

The transaction value of identical goods is a transaction value of goods that:

- (1) are identical to the goods under valuation, were exported to Afghanistan at or about the same time as the goods under valuation were exported to Afghanistan, and
- (2) Were sold for export at the same commercial level and substantially the same quantity as the goods under valuation, subject to the adjustments described in Article 29.

Adjustments to Transaction Value of Identical Goods

Article 29

1. Where no sale is found of identical goods at the same commercial level and in substantially the same quantity as the sales of goods under valuation, then sales of identical merchandise at either a different commercial level, or in different quantities, or both, will be used, but adjusted to take account of that difference.

2. Where the costs and charges referred to in Article 20 paragraph (1) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

Two or More Transaction Value of Identical Goods

Article 30

If two or more transaction values of identical goods are found for the goods under valuation, Customs shall accept the lower or lowest of those values as the customs value of the goods.

Previously-Accepted Customs Values for Identical Goods

Article 31

For the purposes of Article 28, the transaction value of identical goods means a customs value, adjusted as provided for in Article 29, which has already been accepted under Chapter 3.

Identity of the Producer

Article 32

A transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found for identical goods produced by the same person as the goods being valued.

Basic Rule for Transaction Value of Similar Goods

Article 33

The transaction value of similar goods is a transaction value of goods that:

- (1) are similar to the goods under valuation,
- (2) were exported to Afghanistan at or about the same time as the goods under valuation were exported to Afghanistan, and
- (3) were sold for export at the same commercial level and substantially the same quantity as the goods under valuation, subject to the adjustments described in Article 34.

Adjustments to Transaction Value of Similar Goods

Article 34

1. Where no sale is found of similar goods at the same commercial level and in substantially the same quantity as the sales of goods under valuation, then sales of similar merchandise at either a different commercial level, or in different quantities, or both, will be used, but adjusted to take account of that difference.

2. Where the costs and charges referred to in Article 20 paragraph (1) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

Two or More Transaction Value of Similar Goods

Article 35

If two or more transaction values for similar goods are found for the goods under valuation, Customs shall accept the lower or lowest of those values as the customs value of the goods.

Previously-Accepted Customs Values for Similar Goods

Article 36

For the purposes of Article 33, the transaction value of similar goods means a customs value, adjusted as provided for in Article 34, which has already been accepted under Chapter 3.

Identity of the Producer for Transaction Value of Similar Goods

Article 37

A transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found for similar goods produced by the same person as the goods being valued.

Deductive Value Definitions

Article 38

1. “*Selected goods*” means the goods being valued, identical goods or similar goods.

2. The “*unit price in greatest aggregate quantity*” is that price at which the total volume sold is greater than the total volume sold at any other unit price. This determination is required only where the units have been sold in different quantities.

Basic Rule for Deductive Value
Article 39

The deductive value of the goods under valuation shall be determined by subtracting from the appropriate price basis defined in Article 40 the deductions defined in Article 41.

Price Basis for Deductive Value
Article 40

1. If the selected goods are sold in Afghanistan in the condition as imported at or about the date of importation of the goods under valuation, the price is the unit price at which the selected goods are sold in the greatest aggregate quantity at or about such date.

2. If the selected goods are sold in the condition as imported but not sold at or about the date of importation of the goods under valuation, the price is the unit price at which the selected goods are sold in the greatest aggregate quantity after the date of importation of the goods under valuation but before the close of the 90th day after the date of such importation.

3. If the selected goods were not sold in the condition as imported, the price is the unit price at which the goods under valuation, after further processing, are sold in the greatest aggregate quantity before the 90th day after the date of such importation. This provision will apply to the valuation of goods only if the importer so elects at the time of submission of the declaration.

Deductions from Price
Article 41

The price determined under Article 40 will be reduced by an amount equal to:

- (1) Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in Afghanistan of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the selected goods;
- (2) The usual costs and associated costs of transportation and insurance incurred with respect to shipments of the selected goods from the place of importation to the place of delivery in Afghanistan, if those costs are not included as a general expense under point (1) above;
- (3) The customs duties and other taxes currently payable on the merchandise concerned by reason of its importation, or measured by the value of, the merchandise for which vendors in Afghanistan ordinarily are liable; and
- (4) Only in the case of price determined under point 3) of Article 40, the value added by the processing of the goods after importation.

Profit and general expenses for Deductive Value
Article 42

1. The deduction made for profit and general expenses (taken as a whole) will be based upon the importer's profit and general expenses, unless the profit and general expenses are inconsistent with those reflected in sales in Afghanistan of imported goods of the same class or kind from all countries, in which case the deduction will be based on the usual profit and general expenses reflected in those sales, as determined from sufficient information. Any tax imposed on the importer with respect to the sale of imported merchandise will be treated as a general expense.

2. In determining deductions for commissions and usual profit and general expenses, sales in Afghanistan of the narrowest group or range of imported goods of the same class or kind, including the goods under valuation, for which sufficient information can be provided, will be examined.

Packing Costs for Deductive Value
Article 43

The price determined under Article 40 will be increased, but only to the extent that the costs are not otherwise included, by an amount equal to the packing costs incurred by the importer or the buyer with respect to the merchandise concerned.

Sales to Persons who Supply Assists for Deductive Value
Article 44

For purposes of determining deductive value, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned will be disregarded.

Sales to Related Parties in Deductive Value
Article 45

Only sales to unrelated persons can be taken into account when establishing the unit price in greatest aggregate quantity.

Basic Rule for Computed Value
Article 46

The computed value of the goods under valuation shall be determined as the sum of the following cost elements:

- (1) the cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

- (2) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to Afghanistan;
- (3) any assist, if its value is not included under points (1) and (2) of this Article;
- (4) the costs of transport of the imported goods to the first port or place of entry in the customs territory of Afghanistan, plus charges for loading, unloading and handling associated with the transport of the imported goods to such place and the cost of insurance; and,
- (5) any packing costs and costs of containers for the imported goods.

Special Rules for Computed Value

Article 47

The cost or value of materials under Article 46 of this Regulation will not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used.

Fall Back Method

Article 48

If the value of imported merchandise cannot be determined or otherwise used for the purposes of this regulation, the imported merchandise will be appraised on the basis of a value derived from the methods set forth in Chapter 3 and under points (1) through (4) of Article 27, reasonably adjusted to the extent necessary to arrive at a value. Only information available in Afghanistan will be used.

Valuation of carrier media bearing software

Article 49

1. Notwithstanding Article 20 of this regulation, in determining the customs value of imported carrier media bearing data or instructions for use in data processing equipment, only the cost or value of the carrier medium itself shall be taken into account. The customs value shall not, therefore, include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium.
2. For the purpose of this Article, the expression "carrier medium" shall not be taken to include integrated circuits, semiconductors and similar devices or articles incorporating such circuits or devices; the expression "data or instructions" shall not be taken to include sound, cinematic or video recordings.
3. To claim this special customs valuation treatment the declarant shall provide information in a form sufficient to allow Customs to differentiate the cost or value of the imported carrier media from the cost or value of the data and instructions it contains.
4. Notwithstanding provisions of paragraph 3 of this Article, where actual costs or values are not

available, Customs officials may accept a reasonable estimate of the cost or value of an imported carrier medium or of the cost or value of the data or instructions contained on the data or medium.

Treatment of Interest Charges

Article 50

1. Charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the customs value provided that:

- (1) the charges are distinguished from the price actually paid or payable for the goods;
- (2) the financing arrangement was made in writing;
- (3) where required, the buyer can demonstrate that

-such goods are actually sold at the price declared as the price actually paid or payable, and

-the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when the finance was provided.

2. These rules shall apply regardless of whether the finance is provided by the seller, a bank or another natural or legal person. It shall also apply, if appropriate, where goods are valued under a method other than the transaction value.

3. For purposes of this Regulation, the term 'interest' encompasses only those payments that are carried on the importer's books as interest expenses in conformance with generally accepted accounting principles.

Annex:
Interpretative Notes

Related parties
Article 5

For purposes of this definition, 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.

Transaction Value Method
Article 20

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. It includes all payments that the buyer actually made or will make as a condition of sale of the imported goods.

- (1) *The price for the goods may be paid by the buyer directly or indirectly to the seller. An example of an indirect payment would be a payment by the buyer to a third party to settle, in whole or in part a debt owed by the seller.*
- (2) *Customs shall not consider as indirect payments to the seller those activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in Article 21, even though such activities 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 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.*
- (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.*
- (5) *For purposes of Article 20, only the cost of those containers which are treated for tariff classification purposes as one with the goods shall be included in the customs value. Cost of packing shall include costs of labor and materials.*

Additions to Transaction Value: Assists
Article 21point (1)

1. Tools, Dies Molds and Similar Items:

- (1) *There are two factors involved in the apportionment of the cost or value of tools, dies, moulds and similar items used in the production of imported goods. There are: 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 Customs to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.*

2. Engineering, Development, Artwork, Design Work, and Plans and Sketches:

- (1) Additions for engineering, development, artwork, design work, and plans and sketches should be based on sufficient information. In order to minimize the burden for both the importer and Customs 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.*
- (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 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.*

Additions to Transaction Value: Selling Commissions

Article 21. (2)

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.

Additions to Transaction Value: Royalties and License Fees

Article 21. (3)

1. *Royalties and license fees may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.*
2. *Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.*

General Rules for Related Party Transactions

Article 23

1. Two means are provided to establish the acceptability of a transaction value between related parties:

- (1) *First, where the buyer and the seller are related, Customs shall examine the circumstances surrounding the sale and shall accept the transaction value 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 Customs has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, Customs 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.*
- (2) *Where the Customs 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 should be prepared to examine relevant aspects of the*

transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 5, 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.

2. Alternatively, the importer shall have an opportunity to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the Customs and is therefore acceptable. Where a test under Article 25 is met, it is not necessary to examine the question of whether the circumstances of the sale influenced the price under Article 23. If the Customs has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in Article 25 has been met, there is no reason for it to require the importer to demonstrate that the test can be met

Test Values and Adjustments **Articles 24 - 25**

1. In Article 24 the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

2. A number of factors must be taken into consideration in determining whether the declared transaction value "closely approximates" to a test 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 this subparagraph.

Cases when Alternative Valuation Method Are Used **Article 26 point (2)**

An example of a restriction that does "not substantially affect the value of the goods" is 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.

Cases when Alternative Valuation Method Are Used

Article 26point (3)

1. Some examples of sale conditions “for which a value cannot be determined with respect to the goods being valued” 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, Customs should not reject transaction value simply because the buyer has furnished the seller with engineering and plans undertaken in Afghanistan. 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.

Cases when Alternative Valuation Method Are Used

Article 26point (4)

As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a liter 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.

Use of Alternative Valuation Methods

Article 27

1. Articles 28 through 48 define how Customs shall determine the alternative customs value of imported good. These alternative methods of valuation are set out in a sequential order of application. The primary method for customs valuation is the transaction value method defined in Article 20 and imported goods are to be valued in accordance with the provisions of this section whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined by the transaction value method under Article 20, it is to be determined by proceeding sequentially through the alternative methods to the first method under which the customs value can be determined. Unless the declarant chooses to apply the computed value method before the deductive value method as allowed under Article 16, it is only when the customs value cannot be determined under the provisions of a particular method that the provisions of the next method in the sequence can be used.

3. If the declarant does not exercise his right under Article 16, the normal order of the sequence is to be followed. If the declarant does exercise that right but it then proves impossible to determine the customs value under the computed value method, the customs value is to be determined by the deductive value method, if it can be so determined.

Identity of the Producer

Article 32

1. In applying Articles 28 through 32, Customs 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:

- (1) a sale at the same commercial level but in different quantities;
- (2) a sale at a different commercial level but in substantially the same quantities; or
- (3) 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:

- (1) quantity factors only;
- (2) commercial level factors only; or
- (3) both commercial level and quantity factors.

3. 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 sufficient information that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities.

4. 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 Articles 28 through 32 is not appropriate.

Transaction Value of Similar Goods
Articles 33-37

The Interpretative Note(s) to Article 32 above concerning the transaction value of identical goods shall apply, mutatis mutandis, to Articles 33 through 37 on the transaction value of similar goods.

Price Basis for Deductive Value
Article 40

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

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.*

<i>(a) Sales</i>	
<i>Sale quantity</i>	<i>Unit price</i>

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

<i>(b) Totals</i>	
<i>Total quantity sold</i>	<i>Unit price</i>
<i>65</i>	<i>90</i>
<i>50</i>	<i>95</i>
<i>60</i>	<i>100</i>
<i>25</i>	<i>105</i>

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.

Deductions from Price

Article 41

1. The "profit and general expenses" referred to in point (1) 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 Afghanistan 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.

2. The "general expenses" referred to in point (1) include the direct and indirect costs of marketing the goods in question.

3. Local taxes payable by reason of the sale of the goods for which a deduction is not made under point (3) shall be deducted as general expenses under point (1).

4. In determining either the commissions or the usual profits and general expenses under the provisions of point (1), 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 Afghanistan 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.

5. Where the method in point (4) 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.

6. It is recognized that the method of valuation provided for in point (4) 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.

Basic Rule for Computed Value

Article 46

1. As a general rule, customs value is determined on the basis of information readily available in Afghanistan. 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 abroad. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of Afghanistan. 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 Customs the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "general expenses" referred to in point (2) of this Article covers the direct and indirect costs of producing and selling the goods for export which are not included under point (1).

3. The amount for profit and general expenses under point (2) of this Article will be based upon the producer's profit and general expenses, unless the producer's profit and general expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to Afghanistan. In that case, the amount under point (2) of this Article will be based on the usual profit and general expenses of such producers in those sales, as determined from sufficient information.

4. The amount for profit and general expenses will be taken as a whole. If the producer's profit figure is low and general expenses high, those figures taken together nevertheless may be consistent with those usually reflected in sales of imported merchandise of the same class or kind. Such a situation might occur, for example, if a product were being launched in Afghanistan and the producer accepted a nil or low profit to offset high general expenses associated with the launch.

5. 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 Afghanistan and accept a low profit to remain competitive.

6. 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 Afghanistan, 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.

7. 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 for purposes of determining a computed value, sales for export to Afghanistan 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.

8. Where the declarant makes a request for explanation of the valuation method pursuant to Article 12 of this regulation, and Customs has used information other than that supplied by or on behalf of the producer for the purposes of determining a computed value, Customs shall inform the declarant of the source of such information, the data used and the calculations based upon such data, subject to legal provisions in force concerning the protection of confidential information.

Fall Back Method Article 48

1. Customs values determined under Article 48 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 48 should be those laid down in Chapter 3 and Articles 28 through 47 but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 48.

3. Some examples of reasonable flexibility are as follows:

- (1) Identical goods - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 38-45 and Articles 46-47 could be used.

- (2) *Similar goods - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 38-45 and Articles 46-47 could be used.*
- (3) *Deductive method - the requirement that the goods shall have been sold in the "condition as imported" in Article 40 could be flexibly interpreted; the "90 days" requirement could be administered flexibly.*

Valuation of carrier media bearing software
Article 49

1. Where goods described in paragraph 2 below are declared for free circulation, and the declarant wishes to apply the customs valuation treatment provided in Article 49 of this regulation, the declarant shall:

- i. declare a customs value for the goods based on the cost or value of the carrier media, excluding the cost or value of the instructions or data, plus applicable transport and handling charges; and,*
- ii. provide, where requested by customs authorities, a commercial invoice that lists separately*
 - the cost or value of the carrier medium, and*
 - the cost or value of the data and the instructions contained on the carrier medium.*

2. For purposes of Article 49 of this regulation, goods shall be considered “carrier media containing data or instructions for use in data processing equipment” if classified under any of the following provisions of the tariff schedule of Afghanistan:

<i>Tariff Number</i>	<i>Tariff Description</i>
<i>8523.29.00</i>	<i>Others</i>
<i>8523.40.00</i>	<i>Optical media</i>

An imported good that is classified as part of a “set” pursuant to General Rule of Interpretation 3(b) shall likewise be considered “carrier media containing data or instructions for use in data processing equipment” if the good would be classified within one of the above-listed tariff provisions when separately imported.

3. If the seller acquired the carrier medium from an unrelated person at a given cost, the value of the carrier medium is that cost.

4. If the carrier medium was produced by the seller or by a person related to the seller, its value

would be the cost of producing it.

5. *Transport and handling charges incurred in the transport of a consignment of carrier media bearing data and instructions are to be regarded as applying to the carrier media and are to be included in the value for customs purposes.*

6. *Insurance charges may be regarded as applying only to the data or instructions and are not to be included in the value for customs purposes where the cost or value of the carrier instructions is shown separately on the invoice. If the invoice does not distinguish between the cost or value of the data or instructions and that of the carrier media, the insurance charges are to be included for customs purposes.*

7. *This regulation shall not affect the calculation and declaration of a statistical value, or the customs value of goods declared for export.*