

PROPOSED AMENDMENTS TO THE CUSTOMS LAW
May 2002

VALUE OF GOODS FOR CUSTOMS PURPOSES

Article 28

Application of customs value

The provisions of Article 28 to 39 of the Code shall determine the customs value of goods for the purposes of applying the Customs Tariff, as well as other provisions governing trade related fields.

Article 29

Definition of customs value -Transaction value method

- (1) The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the Republic of Macedonia adjusted in accordance with the provisions of Article 36 and 37 of the Code, provided :
 - a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which :
 - are imposed or required by law or other provisions of the Republic of Macedonia;
 - limit the geographical area in which the goods may be resold; or
 - do not substantially affect the value of the goods;
 - b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
 - c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will acquire directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 36 of the Code; and
 - d) that the buyer and seller are not related, or where the buyer and the seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2.
- (2)
 - a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related shall not in itself be ground 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 declarant or otherwise, the Customs authority has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the declarant and the declarant shall be given a reasonable opportunity to respond. If the declarant so requests, the communication of the grounds shall be in writing.
 - b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the declarant demonstrates that such value closely approximates to one of the following occurring at or about the same time :
 1. the transaction value in sales to unrelated sellers and buyers of identical or similar goods for export to the Republic of Macedonia;

2. the customs value of identical or similar goods as determined under the provisions of Article 33 of the Code;
3. the customs value of identical or similar goods as determined under the provisions of Article 34 of the Code;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 36 of the Code 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 subparagraph b) are to be used at the initiative of the declarant and only for comparison purposes. Substitute values may not be established under the said subparagraph.
 - (3) a) 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 and includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller. 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 instrument and may be made directly or indirectly.
 - b) Activities, including marketing activities, undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 36 of the Code, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller, and their cost shall not be added to the price actually paid or payable in determining the customs value of imported goods.

Article 30

Identical value method

- (1) a) If the customs value of the imported goods cannot be determined under the provisions of Article 29 of the Code, the customs value shall be the transaction value of identical goods sold for export to the Republic of Macedonia and exported at or about the same time as the goods being valued.
 - b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
- (2) Where the costs and charges referred to in Article 36 (1) e) of the Code are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

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

Article 31
Similar value method

- (1) a) If the customs value of the imported goods cannot be determined under the provisions of Articles 29 and 30 of the Code, the customs value shall be the transaction value of similar goods sold for export to the Republic of Macedonia and exported at or about the same time as the goods being valued.
- b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
- (2) Where the costs and charges referred to in Article 36 (1) e) of the Code are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.
- (3) If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 32
Possibility of changing the order of application of Article 33 and 34

If the customs value of the imported goods cannot be determined under the provisions of Articles 29, 30 and 31 of the Code, the customs value shall be determined under the provisions of Article 33 of the Code. If, the customs value cannot be determined under Article 33 of the Code, the customs value shall be determined under the provisions of Article 34 of the Code except that, at the request of the declarant, the order of application of Articles 33 and 34 of the Code shall be reversed.

Article 33
Deductive value method

- (1) a) If the imported goods or identical or similar imported goods are sold in the Republic of Macedonia in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following :

1. either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods in question) in connection with sales in the Republic of Macedonia of imported goods of the same class or kind;
 2. the usual costs of transport and insurance and associated costs incurred within the Republic of Macedonia;
 3. where appropriate, the costs and charges referred to in Article 36 (1) e) of the Code; and
 4. the import duties and other charges payable in the Republic of Macedonia by reason of the importation or sale of the goods.
- b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1 (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Republic of Macedonia in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.
- (2) If neither the imported goods nor identical nor similar imported goods are sold in the Republic of Macedonia in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Republic of Macedonia who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1 a).

Article 34

Computed value method

- (1) The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of :
- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
 - (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Republic of Macedonia;
 - (c) the cost or value of all other expenses referred to in Article 36 (1) e) of the Code.
- (2) It shall not be required or compelled any person not resident on the territory of the Republic of Macedonia 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 this Article may be verified in another country by the customs authority with the agreement of the producer and provided that customs authority give sufficient advance notice to the authorities of the country in question and the latter do not object to the investigation.

Article 35

Fall-back value method

- (1) Where the customs value of imported goods cannot be determined under Articles 29 to 34 of the Code, it shall be determined, on the basis of data available in the Republic of Macedonia, using reasonable means consistent with the principles and general provisions of:
 - the Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade of 1994
 - Article VII of the General Agreement on Tariffs and Trade of 1994
 - the provisions of Articles 28 to 38-h of this Code.
- (2) No customs value shall be determined under the provisions of this Article on the basis of :
 - a) the selling price in the Republic of Macedonia of goods produced in the Republic of Macedonia;
 - b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - c) the price of goods on the domestic market of the country of exportation;
 - d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 34 of the Code;
 - e) the price of the goods for export to a country other than Republic of Macedonia;
 - f) minimum customs values; or
 - g) arbitrary or fictitious values.
- (3) If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 36

Adjustment of price - elements included in the customs value

- (1) In determining the customs value under Article 29 of the Code, there shall be added to the price actually paid or payable for the imported goods:
 - a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 1. commissions and brokerage, except buying commissions,
 2. the cost of containers which are treated as being one, for customs purposes, with the goods in question,
 3. the cost of packing, whether for labor or materials;
 - b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
 1. materials, components, parts and similar items incorporated in the imported goods,
 2. tools, dies, moulds 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 undertaken elsewhere than in the Republic of Macedonia and necessary for the production of the imported goods;

- c) royalties and licene fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
 - d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
 - e)
 - 1. the cost of transport and insurance of the imported goods to the place of introduction into the customs territory of the Republic of Macedonia, and
 - 2. loading and handling charges associated with the transport of the imported goods to the place of introduction into the customs territory of the Republic of Macedonia.
- (2) Additions to the price actually paid or payable shall be made under this Article 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 Article.
- (4) The term 'buying commissions' means fees paid by an importer to his agent for the service of representing him in the purchase of the goods being valued.
- (5) Notwithstanding paragraph 1 c):
- a) charges for the right to reproduce the imported goods in the Republic of Macedonia shall not be added to the price actually paid or payable for the imported goods in determining the customs value; and
 - b) 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 Republic of Macedonia of the goods.

Article 37

Adjustment of price - elements excluded in the customs value

- (1) Provided that they are shown separately from the price actually paid or payable, the following shall not be included in the customs value:
- a) charges for the transport of goods after their arrival at the place of introduction into the customs territory of the Republic of Macedonia;
 - b) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation of imported goods such as industrial plant, machinery or equipment;
 - c) charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods, irrespective of whether the finance is provided by the seller or another person, provided that the financing arrangement has been made in writing and 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;
 - d) charges for the right to reproduce imported goods in the Republic of Macedonia;
 - e) buying commissions;

- f) import duties or other charges payable in the Republic of Macedonia by reason of the importation or sale of the goods.

Article 38
Reduction of prices

All reductions in price agreed prior to the import of the goods and effectuated in agreed delay, shall not be included in customs value, in accordance to Article 29 of the Code.

Article 38-a
Customs value of free consignments

The customs value of goods imported free of charge shall be determined under the provisions of Article 30 to 35 of the Code.

Article 38-b
Valuation of certain carrier media for use in ADP equipment

- (1) Notwithstanding Articles 29 to 38-h of the Code, 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 of imported carrier media bearing data or instructions shall not, therefore, include the cost or value of the data or instructions, provided that such cost or value is distinguished from the cost or value of the carrier medium in question.
- (2) For the purposes of this Article:
 - a) the expression 'carrier medium' shall not be taken to include integrated circuits, semiconductors and similar devices or articles incorporating such circuits or devices;
 - b) the expression 'data or instructions' shall not be taken to include sound, cinematographic or video recordings.

Article 38c
Obligation of the importer of related to Article 36

- (1) In the case of import of goods for which obligation under Article 36 (1) b), c) and d) of the Code is agreed, the importer is obliged to specify that in the customs declaration;
- (2) The importer is obliged to declare to the customs authority the resale, disposal or use of the imported goods, from which a payment of particular amount to the seller is arised in accordance with Article 36 (1) (d) of the Code, not later than 30 days following the payment.

Article 38-d
Apportion of costs

- (1) Where the consignment consists of more kinds of goods and more different rates of customs duty apply, buying costs for the goods expressed in total amount for the whole

consignment, as well as the transport costs, insurance costs and delivery costs, shall be calculated by the proportion of the value of each kind of goods.

- (2) By derogation of paragraph (1), customs authority may, at request of the declarant, add the costs referred to in paragraph (1) concerning more kinds of goods being part of one consignment to the value of the goods on which the highest customs rate is applied.

Article 38-e

Procedure in the case of doubt of the declared value

- (1) The customs authority may, in the course of conducting the customs procedure, ask the declarant all necessary documents and other evidence in order to determine the customs value in accordance to the Article 29 to 37 of the Code.
- (2) No one provision of Article 28 to 38-h shall be construed as restricting or calling into question the rights of customs authority to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.
- (3) If the invoice is not presented of justified reasons, or customs authority has reasonable doubt that the value of the goods referred to the invoice does not correspond to the provisions for transaction value of the Code, the customs value shall be determined in accordance with Article 30 to 35 of the Code.
- (4) Upon written request, the importer shall have the right to an explanation in writing from the customs authority of the country of importation as to how the customs value of the importer's goods was determined.

Article 38f

Currency conversion

Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that determined on the date which customs debt has incurred, in accordance to regulation governing foreign currency transactions.

Article 38-g

Withdrawal of goods before determination of the customs value

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 declarant shall nevertheless be able to withdraw them from customs, provided that, payment of a customs debt, in accordance to Article 172 of the Code, covering the ultimate payment of customs duties for which the goods may be liable is ensured.

Article 38-h

Exclusion of application of customs value

The provisions of Article 28 to 38-g of the Code shall be without prejudice to the specific provisions regarding the determination of the value for customs purposes of goods released for free circulation after being assigned a different customs-approved treatment or use.

Article 39
Regulation

Regulation for applying provisions of Article 28 to 38-h of the Code shall be laid down by the Government of the Republic of Macedonia.