

## Article 11

### Method of customs valuation on the basis of the transaction value with respective goods, or price actually paid or payable

- (1) The customs valuation of goods on the basis of the value of transaction with the respective goods, or price actually paid or payable when sold for export to the Republic of Moldova, in the transaction value are included the following components in case if they have not been previously included in the value of the imported goods:
- (a) expenses for conveyance of goods to an airport, or any other place of entrance of goods on the customs territory:
    - insurance expenses,
    - cost of transportation;
    - expenses for loading, unloading and transshipment of goods;
  - (b) expenses incurred by the buyer:
    - commission and brokerage remuneration, excluding commission for the goods' purchasing
    - cost of containers and/or other such multi-usable elements if under the Goods Description and Coding Systems they are considered as part of the goods to evaluate;
    - cost of packaging, including the cost of packaging materials and packaging works;
  - (c) "the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
    - (i) materials, components, parts and similar items incorporated in the imported goods;
    - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
    - (iii) materials consumed in the production of the imported goods;
    - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;"
  - (d) "royalties and license 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, **except the royalties and license fees paid by the buyer for the right of distribution and reproduction of cinematographic films;**"  
;
  - (e) 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  
  
Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data."
  - g) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.
- 2 Every adjustment to the price actually paid or payable has to be done in conformity with the provisions of the present article on the base of objective and measurable data.
- 3 At the determination of customs value it is not authorized any adjustment to the price actually paid or payable with the exception of those provided by the present article.
- 4 The above mentioned method cannot be used for the customs valuation of goods if:
- (a) there are restrictions of the buyer's rights to the goods under valuation, except for:
    - those established by legislation;
    - those related to a geographical region where the goods can be resold;
    - those that do not seriously affect the price of the goods;
  - (b) the sale and price of the transaction depend on observance of conditions that cannot be taken into account;
  - (c) data used by the declarant when stating the customs value are not proved by documents or do not contain quantitative data and are not trustworthy;

- (d) participants in the transaction are mutually dependent persons, with the exception of cases where the transaction value has to be acceptable for customs purposes under the provisions of paragraph 5. In these cases the mutual dependence of persons is understood as follows:
- one of the participants in the transaction (a natural person) or an official of one of the participants in the transaction is at the same time an official of another participant in the transaction;
  - the participants in the transaction are co-owners of the enterprise;
  - the participants in the transaction are linked by labor relations;
  - one of the participants in the transaction is an owner of a deposit (share) or a possessor of at least 5% of shares with a right to vote in the statutory capital of another participant in the transaction;
  - both participants in the transaction are under direct or indirect control of a third party;
  - the participants in the transaction control jointly a third party directly or indirectly;
  - one of the participants in the transaction is under direct or indirect control of another participant in the transaction;
  - the participants in the transaction or their officials are relatives.

5. In determining whether the transaction value is acceptable for the purposes of Article 11.2 (a,b,c), the fact that the buyer and the seller are related within the meaning of Article 11.4 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 Article 11.2 (a,b,c) whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
- (ii) the customs value of identical or similar goods as determined under the provisions of Article 15;
- (iii) the customs value of identical or similar goods as determined under the provisions of Article 16;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 11 and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(c) The tests set forth in paragraph 3(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 5(b) of the present article.”

6. “The persons shall be deemed to be related only if:

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

7. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this law if they fall within the criteria of paragraph 6 of the present article.