

Methodological recommendations

for using certain provisions of the Customs Code of Ukraine relating to the determination of the customs value of goods brought into the customs territory of Ukraine

1. General provisions

1.1. These Methodological Recommendations have been developed pursuant to the provisions of Section XI of the Customs Code of Ukraine of 11.07.02 No. 92-IV, which is based on the main provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 and the Explanatory Notes that are an inalienable part of the said Agreement.

1.2. The customs value of goods brought into the customs territory of Ukraine shall be determined in accordance with the requirements of Sections 46 and 47 of the Customs Code of Ukraine.

1.3. Articles 266 to 273 shall stipulate the manner in which the customs value of goods brought into the customs territory of Ukraine shall be determined. The methods for determining of the customs value of goods brought into the customs territory of Ukraine are listed in a consistent manner as regards their application. The main method for determining of the customs value of goods brought into the customs territory of Ukraine is contained in Article 267 stipulating that the goods brought into the customs territory of Ukraine must be valued in accordance with the provisions of the said Article if the conditions stipulated therein are met.

1.4. If the customs value cannot be determined in accordance with the provisions of Article 267 based on the price indicated in the contract under which the goods are imported, it shall be determined by sequentially applying the Articles until the first Article is applied pursuant to which the customs value can be determined. Only if the customs value cannot be determined in accordance with the provisions of a specific Article, the provisions of the following Customs Code Article may be applied in a consecutive order.

1.5. As an exception, on declarant's demand, the succession of applying only the fourth and fifth method of determining the customs value may be changed. If the declarant does not demand the reversal of the order of application of Articles 271 and 272, the usual order of succession shall be followed. If the declarant demands so, but later on it turns out to be impossible to determine the customs value in accordance with the provisions of Article 272, the customs value shall be determined pursuant to the provisions of Article 271, if it can be determined so based on the submitted documents.

1.6. If the customs value cannot be determined in accordance with the provisions of Articles 267 to 272, it shall be determined in accordance with the provisions of Article 273 using the backup method.

1.7. „The moment of crossing the customs border of Ukraine” shall mean the moment of bringing goods into the territory for customs purposes.

1.8. In accordance with Article 264, the declarant shall be entitled to challenge decisions concerning the determination of the customs value of goods approved by the customs body. Initially, a complaint may be lodged with a higher-ranking customs body, but the declarant shall be entitled to ultimately challenge such decision in court.

1.9. The declarant shall not be subject to a penalty or threatened with a penalty only because he decided to avail itself of the right to challenge the decision. Payment of ordinary legal costs shall not be considered a fine.

1.10. However, the provisions of the Customs Code of Ukraine based on the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 do not prevent the customs body from demanding full payment of fees and duties (obligatory payments) before challenging the decision of the customs body.

2. Application of the Generally Accepted Accounting Principles

2.1. To control the correctness of determining the customs value, information shall be used that has been prepared in a manner compatible with the Generally Accepted Accounting Principles adopted in a relevant country that are pertinent to a certain method of determining the customs value.

2.2. The term “generally accepted accounting principles” refers to a recognized consensus or significant official support in a country during a certain period of time pursuant to which economic resources must be accounted for as assets and liabilities, what changes in assets and liabilities must be accounted for, in what manner assets and liabilities and changes thereto must be measured, what information and in what manner must be disclosed and how financial statements must be prepared. These standards may be both broad benchmarks of general application and detailed practical methods and procedures.

2.3. For example, ordinary profits and general costs in accordance with the provisions of Article 271 will be determined using information prepared in a manner compatible with the generally accepted accounting principles in Ukraine. On the other hand, ordinary profits and general costs in accordance with the provisions of Article 272 will be determined using information prepared in a manner compatible with the generally accepted accounting principles of the country of their manufacture. As another example, the costs specified in

subparagraph b) of paragraph 3) of Article 267, added in the country of import, will be determined using information prepared in a manner compatible with the generally accepted accounting principles in Ukraine.

3. Explanations to Article 267

3.1. A price actually paid or payable for goods imported to Ukraine for a specific purpose is a general payment that is made or must be made by the purchaser to the seller of imported goods or for his benefit. Such payment must not necessarily take the form of a money transfer. Payment may be made by a letter of credit or negotiable instruments. Payment may be made directly or indirectly. As an example of an indirect payment, the purchaser may, in full or in part, settle seller's debentures.

3.2. An activity undertaken by the purchaser using his own funds, except the activity in respect of which adjustments are stipulated by Article 267, shall not be considered indirect payment to the seller, even though it may be considered profitable for the seller. The value of such activity shall not be added to the price actually paid or payable on determination of the customs value.

3.3. The customs value shall not include the costs or funds listed below provided they are separate from the price actually paid or payable for the imported goods:

- a) payment for the construction, erection, assembly, technical maintenance or technical assistance performed after bringing the imported goods into the territory of Ukraine, such as industrial installation of machines or equipment;
- b) transport costs after bringing the goods into the territory of Ukraine;
- c) customs duty and taxes payable in Ukraine.

3.4. The term "price actually paid or payable" refers to the price of imported goods. The flow of dividends or other payments from the purchaser to the seller that does not concern the imported goods shall not be part of the customs value of these goods.

3.5. The restrictions that do not make the price actually paid or payable unacceptable include restrictions that do not have a material impact on the value of goods. An example of such restrictions is a situation where the seller demands that the purchaser of vehicles do not sell them or put them on sale until a fixed date that is the beginning of a model year.

3.6. If the sale or the price is subject to some arrangements or conditions resulting in an inability to determine the value of the goods, the value of the transaction is not acceptable for customs purposes. Examples include the situations:

- a) where the seller established the price of imported goods provided that the purchaser also buys other goods in specified quantities;

- b) where the price of imported goods depends on the price or prices at which the purchaser of imported goods sells other goods to the seller of these goods;
- c) where the price is established based on the form of payment that does not concern the imported goods, for example, if the imported goods are semi-finished goods provided by the seller on condition that the seller receives a specified quantity of finished products.

3.7. However, conditions or considerations concerning the manufacture or sale of imported goods must not result in an unacceptability of the value of the transaction. For example, the purchaser's providing the seller with equipment and plans made in the country of import must not result in an unacceptability of the value of the transaction for the purposes of Article 267. Similarly, where the purchaser undertakes a certain activity relating to the sale of imported goods at its own cost, even if such activity has been the subject of an agreement with the seller, the value of such activity shall not be part of the customs value and such activity must not result in an unacceptability of the value of the transaction.

3.8. Article 267 stipulates different means of establishing the acceptability of the value of the transaction.

3.8.1. Paragraph 7) of part three of Article 267 stipulates that where the purchaser and the seller are interdependent, that is, are related persons, the circumstances of sale must be studied and the value of the transaction shall be accepted as the customs value provided such relations had no impact on the price. It is not stipulated that circumstances must be studied in all cases where the seller and the purchaser are related to each other. Such inquiry would be needed only where there are reasonable doubts regarding the acceptability of the price. If the customs body does not have any doubts regarding the acceptability of the price, it must be accepted without requesting further information from the declarant. For example, the customs body had studied the relations before or already has detailed information on the purchaser and the seller and may be convinced as a result of studying this information that these relations had no impact on the price of the goods brought into the customs territory of Ukraine.

3.8.2. If the customs body considers the value of the transaction unacceptable, it shall provide the declarant with an opportunity to submit such additional detailed information as may be required to study the circumstances of the sale. In this connection, the customs body must be prepared to study the relevant aspects of the transaction including the manner, in which the seller and the purchaser organize their trade relations, and the manner used to determine the price in question, to establish whether or not these relations had an impact on the price. If it can be shown that the purchaser and the seller, even though they are interdependent in accordance with the provisions of paragraph 5) of part three of Article 267, carry out the purchase and sale to each other, as if they were not interdependent, it would be a confirmation that such relations had no impact on the price. For example, if the price has been established in a manner compatible with the usual pricing practices in the industry in question or in a manner used by the seller to establish prices to purchasers that are not interdependent with the seller, it would be a confirmation that such relations had no impact on the price. Another example: if it has been proved that the price is acceptable for the purposes of covering all costs plus profit, which represents the overall profit of the firm generated over a representative period of time (for example, one year) to sell the goods of the

same class or type, it would be a confirmation that the mutual dependence had no impact on the price.

3.8.3. In accordance with the provisions of paragraph 7) of part three of Article 267, the declarant is provided with an opportunity to prove that the value of the transaction is approximated as much as possible to the “benchmark” value that had earlier been accepted by the customs body and, therefore, is acceptable in accordance with the provisions of Article 267. If the inspection results show that the value of the transaction is appropriate, there is no need to study the impact of the mutual dependence on the price in accordance with the provisions of paragraph 5) of part three of Article 267. If the customs body already has sufficient information to ascertain itself without requesting further detailed information that one of the comparisons stipulated in paragraph 7) of part three of Article 267 has been made, there are no reasons to request the declarant to show such comparisons. In paragraph 5) of part three of Article 267, the term “parties to a transaction that are not interdependent persons” means purchasers that are not related to the seller in any specific instance.

3.9. A number of factors shall be taken into consideration in determining that any value is “approximated as much as possible” to some other value. These factors include the nature of imported goods, the nature of the industry, and the season during which the goods are imported and whether or not the difference between values is commercially significant. Since these factors may differ in each specific case, it would be impossible in each case to apply a uniform standard like a fixed percentage. For example, a small difference in values in a case concerning a certain type of goods may be unacceptable, while a big difference in a case concerning another type of goods may be acceptable in determining whether or not the value of the transaction is approximated as much as possible to “benchmark” values mentioned in paragraph 7) of part three of Article 267.

3.10. For the purposes of Article 267, the term “persons” shall include legal entities, where appropriate.

3.11. For the purposes of determining whether or not the persons are interdependent, one person will be considered as controlling the other, if the former person in a legal or operational sense may impose restrictions on the other or direct it.

3.12. The term “purchase commission” shall mean payment made by the purchaser to his agent for the representation of his interests abroad to purchase the goods that are valued.

3.13. In the elements specified in subparagraph b) of paragraph 3) of Article 267, two factors shall be applied to imported goods – the value of the element itself and the manner in which this value must be distributed to the imported goods. The distributing of

these elements must be made in a rational manner in accordance with the circumstances and pursuant to the generally acceptable accounting principles.

3.13.1. As to the value of the element, where the purchaser acquires this element from the seller unrelated to the purchaser for a certain price, the value of this element is this price. If the element has been manufactured by the purchaser or by purchaser's related person, its value shall be its production costs. If the purchaser had used the element previously irrespective of whether or not it was purchased or manufactured by such purchaser, to determine the value of the element, the original value of the purchase or manufacture must be adjusted by way of reduction to take account of its use.

3.13.2. If the value of the element has been determined, this value must be distributed to the imported goods. To do this, various possibilities exist. For example, this value may be distributed to the first shipment, if the purchaser wishes to make one-time payment of the duty on the entire value. Another example: the purchaser may demand the value to be distributed to a certain number of units manufactured by the moment of the first shipment. Still another example: the purchaser may demand the value to be distributed to the entire anticipated production, if contracts have been entered into or certain firm obligations exist in respect to such production. The method of distribution to be used shall depend on the documents submitted by the purchaser.

3.13.3. To illustrate the above, the purchaser provides the manufacturer with a mould to be used in the manufacture of imported goods and enters into a contract with the manufacturer for a purchase of 10 thousand units. By the time of arrival of the first shipment containing 1000 units, the manufacturer has already manufactured 4000 units. The declarant may demand the customs body to distribute the value of the mould to 1000 units, 4000 units or 10000 units.

3.14. Additions to the elements defined in subparagraph d) of paragraph 4) of Article 267 must be based on objective and measurable data. To minimize the burden for the declarant and the customs body regarding the determination of values that must be added, the data available in the purchaser's accounting system must be used, if possible.

3.14.1. For the elements shipped by the purchaser that have been purchased or leased by the purchaser, the addition would be the value of the purchase or lease. No additions must be made for the elements that are owned by the state except for the costs related to obtaining their copies.

3.14.2. The easiness of calculating values that must be added would depend on the structure of a specific firm and its management structure as well as its accounting methods.

3.14.3. For example, a firm importing different goods from several countries accounts for the activities of its design center outside the importing country in a manner allowing a clear demonstration of the costs assigned to a specific good. In such cases, a relevant direct adjustment may be performed in accordance with the provisions of Article 267.

3.14.4. In another case, the firm may incur costs to support the design center outside Ukraine in the form of general overheads distributed to specific goods. In this case, a relevant adjustment may be performed in accordance with the provisions of Article 267 regarding the imported goods by distributing the costs of the design center to the entire production benefiting from the design center and adding such distributed value to the imports for each unit.

3.14.5. Variations of the above circumstances would certainly require taking into consideration different factors in determining the proper method of distribution.

3.14.6. In cases where the manufacture of the said element includes a number of countries and a certain period of time, this adjustment must be limited to a value actually added to this element outside Ukraine.

3.15. License fees, royalties and other payments referred to in paragraph 4) of part two of Article 267 may, *inter alia*, include payments concerning patents, trade marks and copyrights. However, the costs related to the right to reproduce imported goods in the importing country must not be added to the price actually paid or payable for the imported goods on determining their customs value.

3.15.1. Payments made by the purchaser for the right to distribute or resell imported goods must not be added to the price actually paid or payable for the imported goods, if such payments are not a condition of the export sale of the imported goods to the importing country.

3.16. If there are no objective and measurable data to take into consideration in determining the customs value in accordance with part two of Article 267, the value of the transaction may not be determined in accordance with the provisions of Article 1. An example of this is payment of royalties based on the price at the time of sale to the importing country of a liter of a specific good that was imported in kilograms and, after import, was converted to a solution. If royalties are partly based on the imported goods and partly, on other factors that have nothing in common with the imported goods (for example, where the imported goods are mixed with domestic ingredients and may no longer be identified separately, or where royalties may not be distinguished from special financial arrangements between the purchaser and the seller), it would be inappropriate to try making an addition to royalties. However, if the amount of royalties is based on the imported goods alone and is easily calculated, an addition may be made to the price actually paid or payable.

4. Explanations to Article 268

4.1. In applying Article 268, the customs body, where possible, shall use the sale of identical goods on the same commercial level and in approximately the same quantities as the

valuated goods. If no such goods have been identified, the sale of identical goods may be used that is occurring under any one of the following three conditions:

- a) the sale on the same commercial level but in different quantities;
- b) the sale on a different commercial level but in approximately the same quantities;
- c) the sale on a different commercial level and in different quantities.

4.2. After identifying a sale under any one of these three conditions, adjustments are made depending on the circumstances:

- a) for quantitative factors only;
- b) for commercial level factors only; or
- c) for both commercial level and quantitative factors.

4.3. The expression “and / or” provides flexibility in using the sale and permits making necessary corrections to any of the three conditions described above.

4.4. For the purposes of Article 268, the value of the transaction with identical imported goods shall mean the customs value that has already been accepted in accordance with Article 267 and adjusted in accordance with part three of Article 267.

4.5. An adjustment for different commercial levels or different quantities, whether it results in an increase or decrease in value, shall be performed only based on demonstrated evidence clearly establishing a justified and accurate nature of the adjustments, for example, current price lists containing prices concerning different levels and different quantities. For example, if valuated imported goods comprise a consignment of 10 units, and the only identical imported goods for which the value of transaction exists were sold in the quantity of 500 units, and it is recognized that the seller makes discounts for quantity, the necessary adjustments may be made by referring to the price list of the manufacturer and using the price applicable to a sale of 10 units. This does not require the sale to have been in the quantity of 10 units if, using sales of other quantities, it has been established that the price list is genuine. However, in the absence of such an objective denominator, the determination of the customs value in accordance with the provisions of Article 268 is not appropriate.

5. Explanations to Article 269

5.1. In applying Article 269, the customs body, where possible, shall use the sale of similar goods on the same commercial level and in approximately the same quantities as the valuated goods. If no such sale has been identified, the sale of similar goods may be used that is occurring under any one of the following three conditions:

- a) the sale on the same commercial level but in different quantities;
- b) the sale on a different commercial level but in approximately the same quantities;
- c) the sale on a different commercial level and in different quantities.

5.2. After identifying a sale under any one of these three conditions, adjustments are made depending on the circumstances:

- a) for quantitative factors only;
- b) for commercial level factors only; or
- c) for both commercial level and quantitative factors.

5.3. The expression “and / or” provides flexibility in using the sale and permits making necessary corrections to any of the three conditions described above.

5.4. For the purposes of Article 269, the value of the transaction with similar imported goods shall mean the customs value that has already been accepted in accordance with Article 267 and adjusted in accordance with part three of Article 267.

5.5. An adjustment for different commercial levels or different quantities, whether it results in an increase or decrease in value, shall be performed only based on demonstrated evidence clearly establishing a justified and accurate nature of the adjustments, for example, current price lists containing prices concerning different levels and different quantities. For example, if valuated imported goods comprise a consignment of 10 units, and the only similar imported goods for which the value of transaction exists were sold in the quantity of 500 units, and it is recognized that the seller makes discounts for quantity, the necessary adjustments may be made by referring to the price list of the manufacturer and using the price applicable to a sale of 10 units. This does not require the sale to have been in the quantity of 10 units if, using sales of other quantities, it has been established that the price list is genuine. However, in the absence of such an objective denominator, the determination of the customs value in accordance with the provisions of Article 269 is not appropriate.

6. Explanations to Article 271

6.1. The term “price of a unit of goods at which ... goods are sold in a largest batch” means the price at which the largest number of units is sold to persons unrelated to persons from whom they purchase such goods on the first commercial level after import on which such sale occurs.

6.2. For example, goods are sold pursuant to a price list providing more favorable unit prices if purchases are made in larger quantities.

<i>Sale quantity</i>	<i>Unit price</i>	<i>Number of sales</i>	<i>Overall quantity sold at each price</i>
1 – 10 units	100	10 sales including 5 units 5 sales including 3 units	65
11 – 25 units	95	5 sales including 11 units	55
over 25 units	90	1 sale 30 units	80

The largest number of units sold at a certain price is 80; therefore, the unit price in the largest batch is 90.

6.3. Another example: two sales occurred. During the first sale 500 units are sold at 95 monetary units each. During the second sale, 400 units are sold at 90 monetary units each. In this example, the largest quantity of sold units is 500; therefore, the unit price in the largest batch is 95.

6.4. The third example would be a situation where different quantities are sold at different prices.

a) Sales

<i>Sold 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) General indicators

<i>Overall sold quantity</i>	<i>Unit price</i>
65	90
50	95
60	100
25	105

In this example, the largest quantity of units sold at a certain price is 65; therefore, the unit price in the largest aggregate quantity is 90.

- (a) 6.5. Any sale in Ukraine in accordance with Article 267 to a person carrying out shipments directly or indirectly, free-of-charge or at a discounted price, to be used in connection with the manufacture and export sale of imported goods of any elements specified in paragraph 3 of part two of Article 267, shall not be taken into consideration when establishing a unit price for the purposes of Article 271.

- (b)

6.6. It should be noted that “profits and general costs” mentioned in Article 271 should be taken in their entirety. The figure to be used in this calculation must be determined based on information provided by the importer or on its behalf, unless the importer’s figures

are incompatible with the figures obtained in connection with sales in Ukraine of imported goods of the same class or type. If importer's data are incompatible with these figures, the amount of profit and general costs may be based on relevant information other than that provided by the importer or on its behalf.

6.7. "General costs" shall include direct and indirect costs related to the sale of the said goods.

6.8. Local taxes payable on sale of goods, for which no withholding is made in accordance with the provisions of paragraph 2) of part three of Article 271, shall be withheld in accordance with the provisions of paragraph 1) of part three of Article 271.

6.9. In determining commissions or ordinary profits and general costs in accordance with the provisions of parts one to three of Article 271, the issue of whether or not certain goods belong to "the same class or type" as other goods must be determined on a case-by-case basis with reference to relevant circumstances. Sales in Ukraine of the narrowest group or range of imported goods of the same class or type must be determined including the valuated goods, for which relevant information may be provided. For the purposes of Article 271, "goods of the same class or type" include goods imported from the same country as the valuated goods as well as goods imported from other countries.

6.10. For the purposes of part two of Article 271, "the earliest date" is a date before which sales of imported goods or identical or similar imported goods had been made in sufficient quantities to establish a unit price.

6.11. If the method is used specified in part four of Article 271, withholdings that are made for the value added in further processing are based on objective and measurable data relating to the value of such work. Accepted industrial formulas, recipes, construction methods and other industry practices must be the basis for calculations.

6.12. It is recognized that the valuation method laid down in part four of Article 271 would normally not be applied if, as a result of further processing, imported goods lose their identity. However, cases are possible where, even though imported goods lose their identity, the value added by processing may be easily identified without unjustified complexities. On the other hand, there may be cases where imported goods preserve their identity but constitute so marginal a percentage of goods sold in the importing country that the use of this valuation method would be unjustified. Given the above, each such situation must be considered on a case-by-case basis.

7. Explanations to Article 272

7.1. As a general rule, the customs value is determined in accordance with this Agreement based on information available in Ukraine. However, to determine the calculated value in accordance with the added value method, it may be necessary to consider production costs of the valuated goods and other information that should be obtained from outside the importing country. Moreover, in most cases the manufacturer of goods would be located

outside the jurisdiction of Ukrainian authorities. The use of the customs value determination method in accordance with Article 272 of the Customs Code would normally be restricted to cases where the purchaser and the seller are related to each other and the manufacturer is ready to provide Ukrainian authorities with required calculations of costs and allow the possibility for any further inspection, if necessary.

7.2. "Value" in accordance with Article 272 must be determined based on information about the production of the goods that are valued and supplied by the manufacturer or on its behalf. This information must be based on commercial accounts of the manufacturer provided that such accounts are compatible with the generally accepted accounting principles applied in the country where such goods are manufactured.

7.3. "Value" includes the value of the elements specified in subparagraphs a) and b) of paragraph 2) of part two of Article 267. For the purposes of Article 272 they also include the properly distributed value of any element specified in paragraph 3) of Article 267 that was directly or indirectly supplied by the purchaser to be used in connection with the manufacture of the imported goods. The value of the elements specified in subparagraphs a) of paragraph 3) of part two of Article 267 applied in Ukraine must be included only where such elements have been charged to the manufacturer. It must be understood that no funds or value of elements described in this passage must be counted twice in determining the value pursuant to the valuation method based on added value.

7.4. "Profits and general costs" mentioned in paragraphs 2) and 3) of Article 272 shall be determined based on information provided by the manufacturer or on its behalf, unless the manufacturer's figures are incompatible with the figures usually recorded in connection with sales of goods of the same class or type as the valued goods that are manufactured by manufacturers in the exporting country for their exports to Ukraine.

7.5. In this connection it should be noted that "profits and general costs" must be taken in their entirety. It means that if in a certain specific case manufacturer's profits are low and general costs of the manufacturer are high, manufacturer's profits and general costs, taken together, still can be compatible with those recorded in connection with sales of goods of the same class or type. Such a situation may occur, for example, if goods were launched in the market of Ukraine and the manufacturer were to agree to a zero or low profit to compensate for high general costs related to such market launch. If the manufacturer can prove that it receives low profits from sales of imported goods due to specific commercial circumstances, the figures of the manufacturer's actual profits must be taken into consideration provided the manufacturer presents valid commercial grounds to justify them and the manufacturer's pricing policy is in line with ordinary pricing policies in the industry. Such a situation may occur, for example, where manufacturers had to temporarily cut their prices due to an unanticipated downturn in demand or where they sell the goods to complement the range of products manufactured in the importing country and agree to a low profit to maintain their competitiveness. If the manufacturer's own data regarding profits and general costs are incompatible with those normally recorded in connection with sales of the goods of the same class or type as the valued goods that are manufactured by manufacturers in the exporting country for their exports to Ukraine, the amount of profits and general costs may be based on relevant information different from that provided by the goods manufacturer or on its behalf.

7.6. If information used for the purposes of calculating the value is other than that provided by the manufacturer or on its behalf, customs bodies must inform the importer, if the latter requires so, about the source of such information, the used data and calculations based on such data in accordance with the provisions of Article 263 of the Customs Code that require maintaining confidentiality of information.

7.7. The term “general costs” mentioned in paragraph 2) of Article 272 covers direct and indirect costs of production and export sales of goods that are not included in accordance with paragraph 1) of Article 272.

7.8. The fact that certain goods belong to “the same class or type” as other goods must be determined on a case-by-case basis with reference to relevant circumstances. In determining ordinary profits and general costs in accordance with the provisions of Article 272, export sales to the importing country of the narrowest group or range of goods must be studied, which includes the valuated goods, for which necessary information may be provided. For the purposes of Article 272 the “goods of the same class or type” must come from the same country as the valuated goods.

8. Explanations to Article 273

8.1. Customs values determined in accordance with the provisions of Article 273 must be based, to a certain extent, on previously determined customs values.

8.2. Valuation methods that are to be used in accordance with Article 273 must be the methods described in Articles 267 to 272, the justified flexibility in applying such methods, however, shall be in line with the objectives and provisions of Article 273.

8.3. Below are some examples of justified flexibility:

- a) *identical goods* – the requirement that identical goods must be exported at the same time or approximately at the same time as the valuated goods allows for some flexibility; identical imported goods manufactured in a country different from the exporting country of the valuated goods may be the basis for customs valuation; customs values of identical imported goods may be used that have already been determined in accordance with the provisions of Articles 271 and 272;
- b) *similar (analogous) goods* – the requirement that similar (analogous) goods must be exported at the same time or approximately at the same time as the valuated goods allows for some flexibility; analogous imported goods manufactured in a country different from the exporting country of the valuated goods may be the basis for customs valuation; customs values of analogous imported goods may be used that have already been determined in accordance with the provisions of Articles 271 and 272;
- c) *the method based on value deduction* – the requirement that the goods shall be sold in an “unchanged condition” contained in part 1 of Article 271 may be interpreted with some flexibility; the “90 days” requirement may also be applied using the flexible approach.

