

Draft

Regulation
On Interpretative Notes for Application of the Customs Code Provisions on Customs
Valuation

1. In applying Articles 259 to 273 of the Customs Code of Ukraine, Declarant and customs bodies shall comply with the provisions set out in Annex hereto.
2. The provisions of the Customs Code of Ukraine referred to in the first column of the Annex must be applied in light of the interpretative notes appearing in the second column.

ANNEX

| Customs Code Article | Interpretative Notes |
|----------------------|---|
| Article 266 | 1. Articles 267 to 273 of the Customs Code of Ukraine, inclusive, define how the customs value of imported goods is to be determined. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is transaction value method defined in Article 267 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled. |
| | 2. Where the customs value cannot be determined by the transaction value method under the provisions of Article 267, it is to be determined by proceeding sequentially through Articles 268 to 273 to the first such Article under which the customs value can be determined. Except as provided in Article 266 (4), it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used. |
| | 3. If the importer does not request that the order of Articles 271 and 272 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 272, the customs value is to be determined under the provisions of Article 271, if it can be so determined. |
| | 4. Where the customs value cannot be determined under the provisions of Articles 267 to 272, inclusive, it is to be determined under the provisions of Article 273, the Reserve Method. |
| | 1. For purposes of customs valuation under Articles 266 to 273, Customs bodies shall utilize information prepared in a manner consistent with "generally accepted accounting principles" in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the deductive value method of valuation of Article 271 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of Ukraine. On the other hand, the determination of usual profit and general expenses under the computed value method of Article 272 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in Article 267 undertaken in Ukraine would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of Ukraine. |
| | 2. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures. |
| Article 267 | 1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or |

Comment [BJO1]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 266. The reference is to the text circled in the attached document (double click on icon).



Comment [BJO2]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



| Customs Code Article | Interpretative Notes |
|----------------------|--|
| | indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller. |
| | 2. Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 267(2), are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value. |
| | 3. The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods: <ul style="list-style-type: none"> (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment; (b) the cost of transport after importation; (c) duties and taxes of Ukraine. |
| | 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. |
| Article 267 (3(B)) | Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year. |
| Article 267 (3(2)) | 1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include: <ul style="list-style-type: none"> (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 he will receive a specified quantity of the finished goods. |
| | 2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in Ukraine shall not result in rejection of the transaction value for the purposes of Article 267. Likewise, if the buyer undertakes on his 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. |

Comment [BJO3]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267 assist2.doc

| Customs Code Article | Interpretative Notes |
|----------------------|---|
| Article 267 (3(7)) | 1. Article 267 provides different means of establishing the acceptability of a transaction value. |
| | 2. Item 7 of part 3 of Article 267 provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration has no doubts about the acceptability of the price, customs should accept the price without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price. |
| | 3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 267 (3(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 him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced. |
| | 4. Item 7 of part 3 of Article 267 provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 267. Where such a test value is met, it is not necessary to examine the question of influence under item 5 part 3 of Article 267. If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in item 5 part 3 of Article 267 has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In item 5 part 3 of Article 267 the term "unrelated parties" means buyers who are not related to the seller in any particular case. |
| Article 267 (3(7)) | A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in |

Comment [BJO4]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267 related party

Comment [BJO5]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text that does not exist in the Customs Code, but which I have proposed. It is the proposed text concerning "circumstances of sale".

Comment [BJO6]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267 related party

Comment [BJO7]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267 related party3

Comment [BJO8]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text that does not exist in the Customs Code, but which I have proposed. It is the proposed text concerning "circumstances of sale".

Comment [BJO9]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text that does not exist in the Customs Code, but which I have proposed. It is the proposed text concerning "circumstances of sale".

Comment [BJO10]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon). This text is to be modified according to the proposed amendments to the Customs Code. ... [1]

Comment [BJO11]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon). ... [2]

| Customs Code Article | Interpretative Notes |
|----------------------|--|
| | determining whether the transaction value closely approximates to the "test" values set forth in item 7 part 3 of Article 267. |
| Articles 268 and 269 | <p>1. In applying either the method of valuation based on transaction value of identical goods under Articles 268 or the method of valuation based on transaction value of similar goods, the customs administration shall, wherever possible, use a sale of identical goods (if transaction value of identical goods is the method used) or similar goods (if transaction value of similar goods is the method used) 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 or similar goods that takes place under any one of the following three conditions may be used:</p> <p style="padding-left: 40px;">(a) a sale at the same commercial level but in different quantities;</p> <p style="padding-left: 40px;">(b) a sale at a different commercial level but in substantially the same quantities; or</p> <p style="padding-left: 40px;">(c) a sale at a different commercial level and in different quantities.</p> |
| | <p>2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:</p> <p style="padding-left: 40px;">(a) quantity factors only;</p> <p style="padding-left: 40px;">(b) commercial level factors only; or</p> <p style="padding-left: 40px;">(c) both commercial level and quantity factors.</p> |
| | <p>3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.</p> |
| | <p>4. For the purposes of Article 268, the transaction value of identical imported goods means a customs value, adjusted as provided for in part 1 of Article 268, which has already been accepted under Article 267.</p> |
| | <p>5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 268 is not appropriate.</p> |
| Article 271 | <p>1. In the definition of the deductive value method of valuation, 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.</p> |

Comment [BJO12]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267 related party3

Comment [BJO13]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 268. The reference is to the text circled in the attached document (double click on icon).



Article 268 adjustments

| Customs Code Article | Interpretative Notes | | | | | | | | | | | | | | | | | | | | | | | | | | |
|----------------------------|---|---|--|------------------------|--|------------|-----|---|-----|-------------|----|---------------------|-----|---------------|----|--|-----|----------------------------|-------------------|----|----|----|----|----|-----|----|-----|
| | <p>2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.</p> <table border="1" data-bbox="391 515 1013 795"> <thead> <tr> <th><i>Sale Quantity</i></th> <th><i>Unit Price</i></th> <th><i>Number of Sales</i></th> <th><i>Total Quantity Sold at each Price</i></th> </tr> </thead> <tbody> <tr> <td>1-10 units</td> <td>100</td> <td>10 sales of 5 units 5 sales of 3 units</td> <td>65</td> </tr> <tr> <td>11-25 units</td> <td>95</td> <td>5 sales of 11 units</td> <td>55</td> </tr> <tr> <td>over 25 units</td> <td>90</td> <td>1 sale of 30 units 1 sale of 50 units</td> <td>80</td> </tr> </tbody> </table> <p>The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.</p> | <i>Sale Quantity</i> | <i>Unit Price</i> | <i>Number of Sales</i> | <i>Total Quantity Sold at each Price</i> | 1-10 units | 100 | 10 sales of 5 units 5 sales of 3 units | 65 | 11-25 units | 95 | 5 sales of 11 units | 55 | over 25 units | 90 | 1 sale of 30 units 1 sale of 50 units | 80 | | | | | | | | | | |
| <i>Sale Quantity</i> | <i>Unit Price</i> | <i>Number of Sales</i> | <i>Total Quantity Sold at each Price</i> | | | | | | | | | | | | | | | | | | | | | | | | |
| 1-10 units | 100 | 10 sales of 5 units 5 sales of 3 units | 65 | | | | | | | | | | | | | | | | | | | | | | | | |
| 11-25 units | 95 | 5 sales of 11 units | 55 | | | | | | | | | | | | | | | | | | | | | | | | |
| over 25 units | 90 | 1 sale of 30 units 1 sale of 50 units | 80 | | | | | | | | | | | | | | | | | | | | | | | | |
| | <p>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.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <p>4. A third example would be the following situation where various quantities are sold at various prices.</p> <p>(a) <i>Sales</i></p> <table border="1" data-bbox="391 1176 678 1422"> <thead> <tr> <th><i>Sale quantity</i></th> <th><i>Unit price</i></th> </tr> </thead> <tbody> <tr> <td>40 units</td> <td>100</td> </tr> <tr> <td>30 units</td> <td>90</td> </tr> <tr> <td>15 units</td> <td>100</td> </tr> <tr> <td>50 units</td> <td>95</td> </tr> <tr> <td>25 units</td> <td>105</td> </tr> <tr> <td>35 units</td> <td>90</td> </tr> <tr> <td>5 units</td> <td>100</td> </tr> </tbody> </table> <p>(b) <i>Totals</i></p> <table border="1" data-bbox="391 1478 742 1635"> <thead> <tr> <th><i>Total quantity sold</i></th> <th><i>Unit price</i></th> </tr> </thead> <tbody> <tr> <td>65</td> <td>90</td> </tr> <tr> <td>50</td> <td>95</td> </tr> <tr> <td>60</td> <td>100</td> </tr> <tr> <td>25</td> <td>105</td> </tr> </tbody> </table> <p>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.</p> | <i>Sale quantity</i> | <i>Unit price</i> | 40 units | 100 | 30 units | 90 | 15 units | 100 | 50 units | 95 | 25 units | 105 | 35 units | 90 | 5 units | 100 | <i>Total quantity sold</i> | <i>Unit price</i> | 65 | 90 | 50 | 95 | 60 | 100 | 25 | 105 |
| <i>Sale quantity</i> | <i>Unit price</i> | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 40 units | 100 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 30 units | 90 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 15 units | 100 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 50 units | 95 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 25 units | 105 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 35 units | 90 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 units | 100 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <i>Total quantity sold</i> | <i>Unit price</i> | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 65 | 90 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 50 | 95 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 60 | 100 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 25 | 105 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <p>5. Any sale in Ukraine, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in part 2 of Article 267, should not be taken into account in establishing the unit price for the purposes of Article 271.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | |

Comment [BJO14]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267 assist

| Customs Code Article | Interpretative Notes |
|----------------------|---|
| | 6. It should be noted that "profit and general expenses" referred to in items 3-5 of part 2 of Article 271 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 his figures are inconsistent with those obtained in sales in Ukraine of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer. |
| | 7. The "general expenses" include the direct and indirect costs of marketing the goods in question. |
| | 8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of Article 271 shall be deducted under the provisions of part 2 of that same Article. |
| | 9. In determining either the commissions or the usual profits and general expenses under the provisions of Article 271, 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 Ukraine of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 271, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries. |
| | 10. For the purposes of Article 271, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price. |
| | 11. Where the method in of Article 271 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations. |
| | 12. It is recognized that the method of valuation provided for in Article 271 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. |
| Article 272 | 1. As a general rule, customs value is determined on the basis of information readily available in Ukraine. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside of Ukraine. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of Ukraine. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of Ukraine the necessary costings and to provide facilities for any |

Comment [BJO15]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 271. The reference is to the text circled in the attached document (double click on icon).



Article 271 unit price

Comment [BJO16]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 271. The reference is to the text circled in the attached document (double click on icon).



Article 271

Comment [BJO17]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 271. The reference is to the text circled in the attached document (double click on icon).



Article 271a

Comment [BJO18]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 271. The reference is to the text circled in the attached document (double click on icon).



Article 271a

Comment [BJO19]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 271. The reference is to the text circled in the attached document (double click on icon).



Article 271b

Comment [BJO20]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 271. The reference is to the text circled in the attached document (double click on icon).



Article 271b

| Customs Code Article | Interpretative Notes |
|----------------------|---|
| | subsequent verification which may be necessary. |
| 2. | The "cost or value" referred to in Article 272 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced. |
| 3. | The "cost or value" shall include the cost of elements specified in part 2 of Article 267. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 267, of any element specified in of Article 267 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in part 2 of Article 267 which are undertaken in Ukraine shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value. |
| 4. | The "amount for profit and general expenses" referred to in items 2-3 of part 1 of Article 272 is to be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Ukraine. |
| 5. | It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in Ukraine and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his 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 Ukraine and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Ukraine, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods. |
| 6. | Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the Customs authorities shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions on confidentiality of information in Article 263. |
| 7. | The "general expenses" referred to in item 2 of Article 272 covers the direct and indirect costs of producing and selling the goods for export which are not included under Article 272. |

Comment [BJO21]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 272. The reference is to the text circled in the attached document (double click on icon).



Article 272

Comment [BJO22]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 272b

Comment [BJO23]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 272c

Comment [BJO24]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 272d

Comment [BJO25]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 272. The reference is to the text circled in the attached document (double click on icon).



Article 272e

Comment [BJO26]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 272. The reference is to the text circled in the attached document (double click on icon). Please note also, however, that the text of Article 272 is to be changed, according to the proposed changes to the Customs Code.

| Customs Code Article | Interpretative Notes |
|----------------------|--|
| | 8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 272, sales for export to Ukraine of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 272, "goods of the same class or kind" must be from the same country as the goods being valued. |
| Article 273 | 1. Customs values determined under the provisions of Article 273 should, to the greatest extent possible, be based on previously determined customs values. |
| | 2. The methods of valuation to be employed under Article 273 should be those laid down in Articles 267 to 272, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 273. |
| | 3. Some examples of reasonable flexibility are as follows: (a) <i>Identical goods</i> - 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 271 and 272 could be used. (b) <i>Similar goods</i> - 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 271 and 272 could be used. (c) <i>Deductive method</i> - the requirement that the goods shall have been sold in the "condition as imported" in Article 271 could be flexibly interpreted; the "ninety days" requirement could be administered flexibly. |
| Article 267 (2(2a)) | The term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued. |
| Article 267 (2) | 1. There are two factors involved in the apportionment of the elements specified in part 2 of Article 267 to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. |
| | 2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is the above-mentioned cost. If the element was produced by the importer or by a person related to him, 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 |

Comment [BJO27]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 271. The reference is to the text circled in the attached document (double click on icon).



Article 271c

Comment [BJO28]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267h

Comment [BJO29]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267i.doc

Comment [BJO30]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267i.doc

| Customs Code Article | Interpretative Notes |
|----------------------|---|
| | 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, he 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 him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units. |
| Article 267 (2(1-5)) | 1. Additions for the elements specified in items 1-5 of part 2 of Article 267 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible. |
| | 2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them. |
| | 3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods. |
| | 4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside Ukraine in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 267. |
| | 5. In another case, a firm may carry the cost of the design centre outside the Ukraine as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 267 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 Ukraine. |
| Article 267 (2) | 1. The royalties and license fees referred to in part 2 of Article 267 may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in Ukraine 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 |

Comment [BJO32]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267j.doc

Comment [BJO31]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267j.doc

Comment [BJO34]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



267k

Comment [BJO33]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



267k

| Customs Code Article | Interpretative Notes |
|----------------------|--|
| | 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 Ukraine of the imported goods. |
| Article 267 (2) | Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 267, the transaction value cannot be determined under the provisions of that Article. As an illustration of this, a royalty is paid on the basis of the price in a sale in Ukraine of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made. |
| Article 267 (3) | 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. |

Comment [BJO35]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267i

Comment [BJO36]: Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267m

Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon). This text is to be modified according to the proposed amendments to the Customs Code.



Article 267 related
party4

Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 267. The reference is to the text circled in the attached document (double click on icon).



Article 267 related
party3

Note to Reviewer: Please include here the correct reference (part or clause or paragraph number) in Article 272. The reference is to the text circled in the attached document (double click on icon). Please note also, however, that the text of Article 272 is to be changed, according to the proposed changes to the Customs Code.



Article 272f