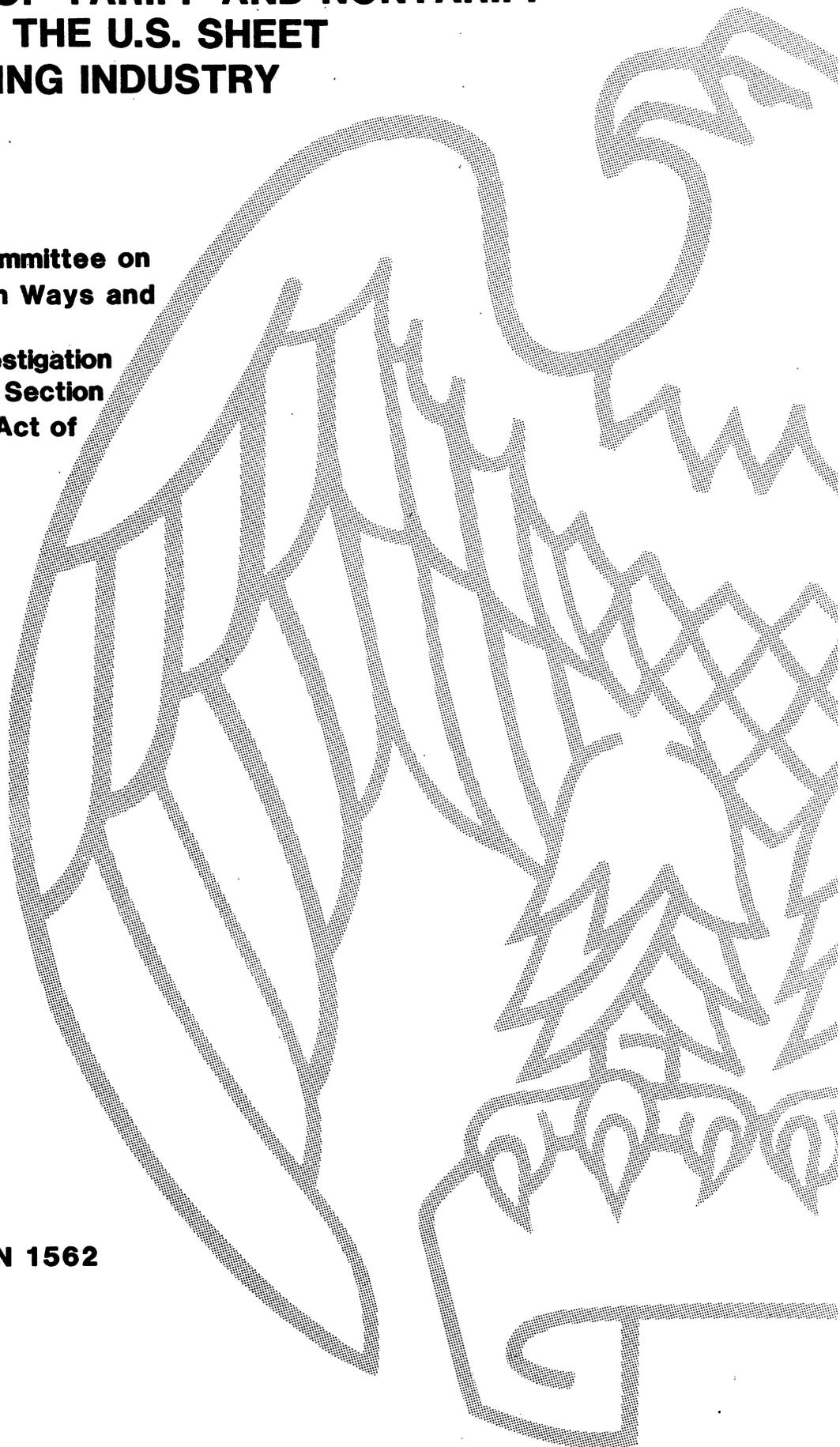


THE IMPACT OF TARIFF AND NONTARIFF BARRIERS ON THE U.S. SHEET VINYL FLOORING INDUSTRY

**Report to the Subcommittee on
Trade, Committee on Ways and
Means, U.S. House of
Representatives, Investigation
No. 332-179, Under Section
332(b) of the Tariff Act of
1930, as Amended**

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Preface

On January 31, 1984, on its own motion, the United States International Trade Commission instituted an investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) for the purpose of assessing the impact of tariff and nontariff barriers on the competitive position of the United States in the world trade of sheet vinyl flooring. The investigation was instituted following receipt of a request therefor dated December 20, 1983, from the subcommittee on Trade of the House Committee on Ways and Means. 1/ In accordance with the Subcommittee's request, the Commission's investigation was restricted to the use of nonproprietary data due to the small number of U.S. manufacturers of sheet vinyl flooring and the possibility of linking data to a particular manufacturer. The Commission's notice of investigation was published in the Federal Register on February 8, 1984. 2/

The information in this report was obtained from field work, questionnaires, the Commission's files, private individuals and organizations, the U.S. and foreign governments, and other sources. Written comments were solicited, but none other than those accompanying questionnaires were received. In addition to staff fieldwork, the primary source of information on market conditions in the United States and abroad, and the U.S. and foreign industries were the responses to questionnaires. Questionnaires and files maintained by the United States Trade Representative were used to collect information on nontariff barriers to U.S. exports. Questionnaires were sent to the 5 firms that produced sheet vinyl flooring in the United States during 1981-83, the 10 largest importers during the period, and 9 representative U.S. purchasers and distributors of sheet vinyl flooring.

1/ A copy of the request by the Subcommittee is reproduced in app. A.

2/ A copy of the Commission's notice of investigation is reproduced in app. B.

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Executive Summary

The products covered in this investigation are floor coverings produced and sold in sheet form that are made wholly or in chief value of vinyl plastics. Flooring that is wholly plastic consists of pure polyvinyl chloride (PVC) sheet; the remaining products consist of flooring made with a vinyl layer fused to a nonvinyl or partially vinyl backing and covered with a wear layer. Design patterns on this type of flooring are produced in two manners--rotogravure, in which the pattern is printed on the surface of the vinyl layer; and inlaid, in which pulverized vinyl is applied in patterns on the backing before being fused. Surface textures are created either through mechanical embossing, an impression process that can be used on any type of sheet vinyl flooring, or chemical embossing, which can be used only on rotogravure products. Chemical embossing is generally regarded as superior to mechanical embossing.

Rotogravure products are generally sold for residential use, both remodeling/repair and new construction. Inlaid is also sold for residential use. Rotogravure, inlaid and some pure PVC sheet are used in light commercial applications, such as office use. Heavy commercial usage is most often met with inlaid and pure PVC sheet and consists of high-traffic areas, public areas, and speciality uses such as hospital operating rooms and clean rooms.

There are four manufacturers of rotogravure sheet vinyl flooring in the United States; one of these also manufactures inlaid flooring. One U.S. producer has manufacturing subsidiaries in Canada, Australia, and Europe. Sheet vinyl flooring is produced in at least 14 countries. Of most importance in international trade are producers in Canada, the European Community (EC), Sweden, Japan and, to a lesser extent, the Republic of Korea (Korea) and Taiwan. There is also production in Brazil, Australia, and Yugoslavia. Rotogravure is produced in every producing country; PVC sheet, in Europe and Japan; and inlaid sheet, in Japan.

The highlights of the Commission's investigation into international trade in sheet vinyl floor coverings are as follows:

Markets

- o The United States, with estimated apparent consumption of 155 million square yards valued at \$552 million, in 1983, is the world's largest market for sheet vinyl flooring.

Estimated apparent U.S. consumption of sheet vinyl flooring in 1983 was up 13 percent in quantity and 17 percent in value over consumption in 1981. Imports increased from 8 million square yards valued at \$13 million, in 1981, to 14 million square yards, valued at \$21 million, in 1983, when they accounted for 9 percent of consumption by quantity and 4 percent by value. Rotogravure flooring accounted for 75 to 80 percent of the market (116 million to 124 million square yards in 1983), with inlaid accounting for most of the remainder. Residential sales accounted for 85 to 90 percent of the market (132 million to 140 million square yards in 1983), including 6 percent for manufactured housing and less than 10 percent for the do-it-yourself market; heavy commercial usage accounted for 5 to 7 percent, and light commercial, the remainder.

- o Europe is the second largest world market; the European industry is suffering from significant production overcapacity of rotogravure sheet.

Estimated consumption of all sheet vinyl flooring in Europe in 1983 was 100 million square yards, valued at \$350 million to \$400 million. There are 12 major European manufacturers of sheet vinyl flooring vying for a market that is smaller than the United States. Current European production is estimated to be operating at 50 percent of capacity. Imports from the United States account for very little of the European market.

- o The other developed countries constitute the remaining major markets for sheet vinyl flooring.

A country must have reached a certain level of industrial development before offering more than a limited market for sheet vinyl floor coverings, which are fairly expensive flooring options. Canada is the third largest market—served primarily by domestic and U.S. manufacturers. Apparent consumption of sheet vinyl flooring in Japan was an estimated 60 million square yards in 1982, nearly all of which was supplied by local manufacturers. The Australian market is estimated at 10 million square yards and is served by both domestic production and imports.

Customs treatment and barriers to trade

- o Overall, the United States offers the most liberal tariff treatment for imports of sheet vinyl flooring. The remaining developed country markets average lower tariff rates than do developing countries on imports of sheet vinyl floor coverings.

The U.S. column 1 rate of duty on imports of sheet vinyl floor coverings is 6.5 percent ad valorem; the LDDC rate or the negotiated column 1 rate is 5.3 percent ad valorem. The basis of customs valuation is generally free on board (f.o.b.) port of exportation. Imports under TSUSA item 728.2440, sheet vinyl floor coverings, are eligible for duty-free treatment under the Generalized System of Preferences, including imports from both Taiwan and Korea.

Developed country tariff rates on sheet vinyl flooring range from a low of 4.4 percent ad valorem for some sheet in Sweden to a high of 30 percent ad valorem for pure PVC sheet in Australia. Duty rates applied by Brazil, Korea, Mexico, and Taiwan range from a low of 30 percent for Korea to a high of 185 percent on some sheet for Brazil.

In addition to various country association duty-rate preferences offered by many countries, all the developed countries listed offer some manner of preferences for imports from developing countries, ranging from duty-free entry for the EC, Japan, and Sweden, to a reduction of 10 percentage points off the ad valorem rate for Australia. Japan and Australia, like the United States, extend these preferences to imports from both Korea and Taiwan. The remaining countries exclude imports from Taiwan.

Australia and Canada, like the United States, use f.o.b. value as the basis for computing duty, although Canada does not always include inland transportation in the country of export. The remaining countries use cost, insurance, freight (c.i.f.) value.

- o Duty is generally not a significant factor in determining trade in sheet vinyl flooring.

In general, the duty paid on imports is only a minor cost factor affecting the price. Price is reported to be less important than color, style, ease of maintenance, and durability in the ultimate consumer's purchase decision. Although tariffs do result in higher costs, unless they represent a large percentage of the total cost, as is the case in developing countries, they are less important than other price and nonprice factors. It should be noted, however, that the use of c.i.f. value as the basis for customs valuation tends to magnify an important cost factor--transportation cost--and, therefore, favors those producers that are closest to the market (usually domestic producers).

- o Of the various nontariff barriers to trade in sheet vinyl flooring, only total embargoes were product specific.

Absolute embargoes to imports of sheet vinyl flooring were reported by U.S. manufacturers to be in effect for Brazil, Colombia, India, Jamaica, Mexico, the Philippines, Trinidad, and Venezuela. No other product-specific discriminatory barriers were reported.

- o Although nontariff barriers were reported for 27 markets or potential markets, in general, those countries with the barriers most disruptive to trade are countries which offer minimal markets for sheet vinyl flooring.

Barriers most commonly reported for developed markets were primarily standards and customs regulations that U.S. exports had little difficulty in meeting. It is the developing countries that are reported to have the most trade-disruptive barriers, ranging from general policies designed to discourage imports to outright embargoes. However, nontariff barriers other than embargoes are far less important in affecting international trade in sheet vinyl flooring than are other competition factors, such as transportation costs and the distribution network.

Other factors of competition

- o The widespread use of a patented chemical embossing process for rotogravure sheet production resulted in limited international trade in these products. The expiration of the patents in various market countries has opened up these markets.

The chemical embossing process developed and patented by one U.S. manufacturer was widely licensed for use throughout the world. The terms of

these licenses resulted in relatively restricted markets and international trade for rotogravure products. During the period 1980 to the present, the patents for this process expired in all but four producing countries. The patents in three of the four remaining producing countries will expire in September 1984, and the fourth, in 1985. The expiration of the patent in the United States in December 1983 legally opened the U.S. market to imports of the products from Japan and most European countries. This was considered particularly important to the European producers in light of their unused capacity.

- o Certain distribution systems, such as the widespread use of distributors that sell only one manufacturer's sheet vinyl flooring in the United States, effectively limit import penetration.

Producers in the United States and Canada rely primarily on single-supplier distributors (captive suppliers) to sell the major portion of their production. Even without patent protection, this distribution systems renders quick penetration of the market impossible without purchasing an existing distribution network. Such an option is limited because of the limited number of existing networks, few if any of which may be for sale. Certain importers have employed one of two alternatives to buying a network. They build a new distribution network or they sell primarily to retail outlets on a price basis to enter the do-it-yourself residential market. However the first alternative is time consuming, and the second is limited because the do-it-yourself market for sheet vinyl flooring is limited.

Similarly, the Japanese distribution system, with its multitude of levels and frequent reliance on historical and social relationships, makes importing into that market very difficult.

- o Transportation costs are the primary nonproduction cost factor affecting international trade in sheet vinyl flooring.

Transportation accounts for 15 to 25 percent of the total delivered cost of sheet vinyl flooring at the first level of distribution. Ocean freight accounted for 7 to 10 percent of the landed cost of U.S. imports during 1981-83 and is estimated to be higher for U.S. exports. Transportation costs are the single most important nonproduction cost factor, resulting in an almost universal advantage to the closest (usually domestic) producer. This problem, along with that of tariff and nontariff barriers, is often solved by establishing foreign production facilities. The transportation cost penalty, along with the single supplier distribution system, will probably represent an obstacle to any great U.S. market penetration by European rotogravure producers. Similarly, the transportation cost adds a burden to almost all U.S. exports, except those to Canada. Transportation costs pose an approximately equal disadvantage for U.S. and Canadian producers in most of North America. Also, transportation cost is less a factor in competition between imports from Asia and the domestic product on the west coast, because the ocean freight costs for the imports roughly equal the inland transportation costs from domestic factories on the east coast.

o Exchange-rate fluctuations affect the U.S. industry's cost factors and competitive position.

In general, U.S. manufacturers reported that the strong U.S. dollar caused their exports to be more expensive in foreign markets, thus exacerbating the cost disadvantages they experience in foreign markets. Some industry representatives indicated that the same strength of the dollar resulted in imports into the United States that were less expensive, partially or wholly negating the transportation cost advantage enjoyed by domestic products over imports.

Description and Uses

Sheet vinyl floor coverings are floor coverings sold in sheet form of varying widths and lengths made either wholly or in chief value of vinyl plastics. Sheet vinyl flooring is generally manufactured in widths of 6 and 12 feet (2 and 4 meters abroad), but may also be produced in widths of 4, 9, and 14 feet. These floor coverings are manufactured in lengths up to 4,000 feet and are then cut for distribution to lengths ranging from 55 to 180 feet.

There are two basic types of sheet vinyl flooring--those made wholly of vinyl and those composed in chief value of vinyl. Flooring made wholly of vinyl is composed of a solid polyvinyl chloride (PVC) sheet which may contain a protective vinyl surface known as a wear layer. Such flooring is unbacked, and any pattern extends all the way through the thickness of the sheet.

Sheets made in part of vinyl are produced by fusing the vinyl layer to a variety of backings such as mineral felt, glass mesh and polyvinyl chloride, fibrous polyester glass and clay, or eurothene foam. Mineral felt is the most commonly used backing in the United States. The backing, the vinyl material, and the wear layer (generally of vinyl composition) are fused together by a process called calendaring, wherein two or more cylinders revolve in close proximity to one another in such a way that materials passing between the cylinders are glazed together. Calendaring can be accomplished with a combination of heat, pressure, and, sometimes, chemical agents.

Design patterns for vinyl floor coverings other than pure PVC sheet are produced through two techniques--rotogravure and inlay. Rotogravure, the principal method of producing patterns, is a printing process in which the image is etched onto the surface of a cylinder, creating minute cells of varying depth from which the ink is transferred to the print surface, either directly or by way of pressure from an impression roll and capsulating action. Inlaid flooring is made by a process in which a vinyl material is pulverized into a color powder or pieces, sifted through a metal stencil onto a treated backing, and then fused to the backing. The backing in this case may be temporary--used in the production process and then removed--or it may be permanent. As is the case for pure PVC sheet flooring, the design of inlaid flooring extends through the thickness of the sheet (except for any backing), whereas the design of the rotogravure flooring is on the surface only. This lends particular importance to the wear layer on the rotogravure flooring. Wear layers are of varying composition (usually vinyl plastics) and are produced by various methods. Both the formulas and methods of production are generally trade secrets.

The texture design of the surface is accomplished through embossing, either mechanically or chemically. Mechanical embossing can be used with any type of sheet vinyl flooring and consists of the creation of the texture through impression. Chemical embossing may be used only on rotogravure products. After printing, the vinyl layer is expanded, usually during calendaring or application of the wear layer. In chemical embossing, retardant chemicals are mixed in with certain of the inks used in the rotogravure, and the vinyl does not expand as much where these inks are printed, creating the textured surface. Chemical embossing allows for texturing that matches a more detailed pattern than is possible with

mechanical embossing. Furthermore, by varying the amount of retardant in different inks, chemical embossing can be used to create a number of different surface pattern depths on one sheet in a single operation. It should be noted that most chemical embossing done in the world today stems from the process developed, patented, and licensed by one U.S. flooring manufacturer.

The market for sheet vinyl flooring may be divided into two major segments, residential and commercial. Residential use is confined to homes, usually in kitchens, bathrooms, foyers or entranceways, and family or recreation rooms. A special submarket of the residential market is that for manufactured homes, which includes prefab or modular houses, mobile homes, and recreational vehicles. The commercial market may be divided further into light commercial and heavy commercial. An example of light commercial use is an office where traffic and wear is not a major problem. Light commercial use is similar to residential use in wear requirements. Heavy commercial use includes hospitals, airports, train and bus stations, schools, malls, and public areas of commercial buildings, such as lobbies and hallways, where traffic is heavy. Certain specialty markets, such as hospital operating rooms and clean rooms, are also included in the heavy commercial category. Nearly all these markets can be further classified as either new construction or remodel/replacement.

Typical products sold for residential use are rotogravure and inlaid, generally in widths of 6 and 12 feet. In the manufactured homes submarket, these products may also be sold in widths of 14 feet. Light commercial use is similar to residential and includes primarily rotogravure and inlaid, with a small amount of pure PVC sheet. Widths are again generally 6 and 12 feet. The use of rotogravure diminishes considerably in the heavy commercial markets; pure PVC and inlaid flooring are most commonly sold for these uses. Widths of 6 and 12 feet (particularly 12 feet) are common, along with 4-foot-wide pure PVC flooring used in special applications. Installation for commercial use most often includes heat or chemical sealing of the seams, which is not as common in residential installation.

Industry Profiles

The U.S. industry

There are currently four U.S. manufacturers of sheet vinyl flooring; these firms are located in Pennsylvania and New Jersey. A fifth, a smaller manufacturer located in the area of Miami, Fla., ceased production of sheet vinyl flooring in 1982. Of the four existing producers, two also import some sheet vinyl flooring, one has foreign subsidiaries manufacturing sheet vinyl flooring, and another is a subsidiary of a Swedish manufacturer. Two of the four manufacture other textile and nontextile floorings in the United States, and all four export sheet vinyl floorings to some extent.

Each producer maintains one facility in the United States for manufacturing sheet vinyl flooring. Estimated employment of production and related workers was less than 4,000 in each year during 1981-83. Industry sources estimate that the industry is currently operating at approximately 80 percent of capacity.

There is no U.S. production of solid PVC sheet flooring. Rotogravure products were produced by all the U.S. manufacturers during 1981-83, and all used some form of chemical embossing. One manufacturer also uses mechanical embossing. There is one U.S. producer of inlaid flooring; this firm is the largest manufacturer of such flooring in the world.

Foreign industries

Sheet vinyl flooring is produced in at least 14 countries throughout the world, but, with regard to importance in international trade, the primary producers are located in Canada, the European Community (primarily West Germany and the United Kingdom), Sweden, Japan, and, to a lesser extent, Korea and Taiwan. Sheet vinyl flooring is also produced in Brazil, Australia, and Yugoslavia. Of the three, only Yugoslavia exports, and that is to Europe alone. A more detailed discussion of the major industries follows.

Canada.--There are two producers of sheet vinyl flooring in Canada, one of which is a subsidiary of the largest U.S. producer. Both produce rotogravure flooring, and one produces inlaid. Production is concentrated in goods for the residential market, including the manufactured homes submarket. Both producers export to the United States. The Canadian industry is believed to be operating at or near capacity.

Europe.--There are 12 major producers of sheet vinyl flooring in Western Europe, located in Sweden, West Germany, the United Kingdom, the Netherlands, Belgium, Ireland, Switzerland, and France. At least three of these producers manufacture solid PVC sheet flooring, and most produce rotogravure using chemical embossing. No inlaid vinyl flooring is produced in Europe. The European industry suffers from chronic overcapacity and is estimated to be currently operating at about 50 percent of capacity. Exports and the development of potential export markets are particularly important to these manufacturers.

Japan.--There are eight producers of sheet vinyl flooring in Japan. Five produce solid PVC sheet flooring for commercial use, five produce rotogravure for residential use, and two produce inlaid sheet. This inlaid sheet is sold for domestic use only and is the only inlaid production in the world not connected to the U.S. manufacturer of inlaid sheet vinyl floor coverings. The four largest manufacturers of all types of sheet vinyl flooring together account for approximately 85 percent of production.

Republic of Korea.--There are at least three manufacturers of sheet vinyl flooring in Korea, with the two largest together accounting for about 95 percent of production. Production is limited to rotogravure sheet intended for the low end of the residential market.

Taiwan.--There are not more than four manufacturers of sheet vinyl flooring in Taiwan. Production is limited to rotogravure sheet for residential use. The industry is export oriented.

Other countries.--Sheet vinyl flooring is produced in Australia, Brazil, and Yugoslavia. In all cases, production is of rotogravure for residential use. The Australian producer is a U.S. subsidiary; production is intended for

the local market. Similarly, the Brazilian product is marketed only in Brazil. Sheet vinyl produced in Yugoslavia is marketed throughout Europe.

Market Profiles

For the most part, the major markets for sheet vinyl flooring are the developed countries. The United States is the single largest market for these products in the world, followed by Europe, Canada, Japan, and Australia. Because sheet vinyl flooring is a relatively expensive alternative to other textile and nontextile floor coverings, as well as the option of no floor covering at all, and requires a more complicated installation, the developing countries represent only limited potential markets. A more detailed discussion of the major markets follows.

United States

Table 1 shows estimated U.S. producers' shipments, exports, imports, and apparent consumption of sheet vinyl floor coverings during 1981-83. Estimated apparent U.S. consumption declined from 137 million square yards, valued at \$473 million, in 1981 to 128 million square yards, valued at \$458 million, in 1982 and then increased to 155 million square yards, valued at \$552 million, in 1983, for an overall increase of 13 percent in quantity and 17 percent in value. U.S. producers' shipments followed a similar pattern, declining from 1981 to 1982 and then rising to an estimated 150 million square yards, valued at \$565 million, in 1983, representing an overall increase of 7 percent in quantity and 13 percent in value. Exports, which accounted for 6 to 8 percent of producers' shipments, declined from an estimated 11 million square yards, valued at \$40 million, in 1981 to 9 million square yards, valued at \$34 million, in 1983. Canada was the largest export market, accounting for more than two-thirds of U.S. exports annually.

Imports rose from 8 million square yards, valued at \$13 million, in 1981 to 14 million square yards, valued at \$21 million, in 1983. In 1983, imports accounted for 9 percent of the quantity and 4 percent of the value of apparent consumption, up from 6 percent of the quantity and 3 percent of the value in 1981 and 1982. Canada was the single largest source of imports, accounting for nearly 60 percent of the value imported in 1983. West Germany, Sweden, and the United Kingdom were also major suppliers, together accounting for more than 34 percent of the value imported.

Rotogravure products accounted for approximately 75 to 80 percent of the U.S. market (116 million to 124 million square yards in 1983), with inlaid sheet accounting for most of the remainder. Sales of residential flooring account for 85 to 90 percent of the market (132 million to 140 million square yards in 1983). Included in this percentage are residential sales for manufactured housing, which account for approximately 6 percent of the market and sales to do-it-yourselfers which account for less than 10 percent of the market. Heavy commercial use accounts for 5 to 7 percent of the market, with light commercial use accounting for the remainder.

Table 1.--Sheet vinyl floor coverings: U.S. producers' shipments, exports, imports, and apparent consumption, 1981-83

| (Quantity in millions of square yards; value in millions of dollars) | | | | | |
|--|--------------------------------|-------------------|-------------------|--------------------------------|--|
| Year | Producers' shipments <u>1/</u> | Exports <u>1/</u> | Imports <u>2/</u> | Apparent consumption <u>3/</u> | Ratio of imports to apparent consumption (percent) |
| Quantity | | | | | |
| 1981--- | 140 | 11 | 8 | 137 | 6 |
| 1982--- | 130 | 10 | 8 | 128 | 6 |
| 1983--- | 150 | 9 | 14 | 155 | 9 |
| Value | | | | | |
| 1981--- | 500 | 40 | 13 | 473 | 3 |
| 1982--- | 480 | 34 | 12 | 458 | 3 |
| 1983--- | 565 | 34 | 21 | 552 | 4 |

1/ Estimated by the staff of the U.S. International Trade Commission on the basis of estimates supplied by the U.S. industry.

2/ Estimated on the basis of official statistics of the U.S. Department of Commerce.

3/ Estimated.

Source: Producers' shipments and exports, based on responses to the Commission's "Questionnaire for Producers"; imports, based on official statistics of the U.S. Department of Commerce.

Distribution of U.S. products tends to be tightly controlled. The four manufacturers rely on single-supplier wholesalers to distribute from 75 to 100 percent of their production. 1/ No more than 10 percent of any manufacturer's production is sold directly to retailers, and most of that is sold through home centers. 2/ The remainder is distributed directly to contractors and manufactured homes producers. Importers tend to distribute primarily through wholesalers other than single-supplier distributors, home centers, retail flooring dealers, and contractors. In addition, some home centers import directly.

Canada

Because there are only two Canadian manufacturers, one of which is a U.S. subsidiary, confidentiality restrictions prohibited the collection of data concerning the size of the Canadian sheet vinyl flooring market. The Canadian

1/ Single supplier distributors or wholesalers are "captive" distributors that handle the sheet vinyl flooring products of one and only one producer.

2/ Home centers are retail stores, usually chains and often discount chains, that sell a combination of goods such as hardware, lumber, and home and garden products and furnishings.

market is reported to be similar in composition to the U.S. market, consisting primarily of rotogravure flooring for residential use. The two domestic firms and imports from the United States are believed to supply the bulk of consumption. The distribution of sheet vinyl flooring in Canada is said to parallel that in the United States, relying heavily on single-supplier (captive) distributors.

Europe

Consumption of sheet vinyl flooring in Europe totaled an estimated 100 million square yards, in 1983, valued between \$350 million and \$400 million. The bulk of the market is believed to be rotogravure for residential use, with the largest portion of the remainder being pure PVC sheet for commercial use. As indicated previously, the European industry is operating well below capacity and as a result is highly competitive. Imports account for very little of European consumption, although any inlaid flooring could be presumed to be supplied from the United States.

The primary method of distribution in Europe is reportedly through wholesalers other than single supplier distributors, allowing sales by more than one manufacturer through a single wholesaler. Such a distribution pattern is another manifestation of the keen competitive situation.

Japan

Estimated apparent consumption of sheet vinyl flooring totaled nearly 60 million square yards in Japan in 1982. Approximately 76 percent of consumption was accounted for by rotogravure sheet for residential use, 21 percent was PVC sheet for commercial use, and the remainder was inlaid sheet. Domestic production accounted for about 95 percent of consumption. U.S. products accounted for the bulk of Japanese imports of sheet vinyl flooring.

The distribution system in Japan is a complex, multilevel set of wholesalers and distributors that is often more reliant on historical social relationships than economic factors in determining sources and purchasing. Furthermore, distributors are reluctant to carry imported lines, fearing interrupted or delayed delivery. These factors tend to contribute significantly to the low import penetration in the sheet vinyl market.

Australia

Approximately 10 million square yards of sheet vinyl flooring was sold in Australia in 1983. The market is primarily rotogravure for residential use and inlaid for residential and commercial use. This market maintains a high potential for growth. Once supplied primarily from the United States and Europe, the market in Australia since 1981 has tended to rely on local production and a greater volume of imports from Asian producers.

Korea

Apparent consumption of sheet vinyl flooring in Korea in 1982 was an estimated 6 million square yards. Domestic production accounted for approximately 95 percent of consumption, and imports from the United States, for 95 percent of the remainder. The domestic product is residential rotogravure, with imports being primarily inlaid for commercial use and some pure PVC commercial sheet.

Taiwan

An accurate estimate of the Taiwan sheet vinyl flooring market is not available. However, imports accounted for an estimated 67,000 square yards, valued at \$143,000, in 1982 and 73,000 square yards, valued at \$157,000, in 1983. Imports from the United States accounted for three-quarters of the total, with imports from Japan accounting for most of the remainder.

Other markets

Although there certainly are now, and have been, opportunities for the sale of sheet vinyl flooring in most countries throughout the world, according to industry sources, these markets are severely limited in most cases. In newly industrializing countries, the market for these goods is just developing, but in most cases, imports are restricted in order to protect developing domestic producers of sheet vinyl flooring or similar competing products such as vinyl tile (see nontariff barriers section). Therefore, although there is a market for sheet vinyl flooring in countries such as Brazil, India, Mexico, the Philippines, and Saudi Arabia, they are not currently open to imports from the United States.

Customs Treatment and Barriers to Trade

U.S. customs treatment

The following tabulation show the current rate of duty which applies to imports from those countries having most-favored-nation status (column 1), the negotiated column 1 rate which will apply to such imports on or after January 1, 1987 and currently applies to imports from least developed developing countries (LDDC), and the rate applicable to imports from Communist countries or areas (column 2) for TSUSA item number 728.2440, which covers all types of sheet vinyl floor coverings imported into the United States:

| <u>TSUSA item No.</u> | <u>Description</u> | <u>Col. 1 rate</u> | <u>Negotiated rate</u> | <u>Col. 2 rate</u> |
|-----------------------|----------------------|--------------------|------------------------|--------------------|
| 728.2440 | Sheet vinyl flooring | 6.5% ad val. | 5.3% ad val. | 40% ad val. |

Imports under TSUS item 728.24 (which includes statistical item 728.2440) are currently eligible for duty-free entry under the U.S. Generalized System of Preferences (GSP). The rates of duty shown above are lower than most other

countries' present rates (see "Foreign customs treatment" below). Only Japan and Sweden (for certain products) approach this rate.

Foreign customs treatment

Sheet vinyl floor coverings are provided for under headings 39.02, 48.12 and 59.10 of the Customs Cooperation Council Nomenclature (CCCN) and item 93.902 of the Canadian Tariff Schedule. Heading 39.02 covers polymerisation and copolymerisation products, which includes sheets made of polyvinyl chloride (i.e., solid sheet vinyl flooring) and sheet vinyl flooring having other than textile or paper backings. Heading 48.12 covers floor coverings prepared on a base of paper or paperboard, whether or not cut to size. Heading 59.10 covers materials prepared on a textile base in a similar manner to linoleum, whether or not cut to shape or of a kind used as floor coverings; and floor coverings consisting of a coating applied to a textile base, cut to shape or not. Finally, the Canadian provision 93.902 divides its coverage into two categories, one covering foamed and expanded products (93.902-75), and the other, all other sheet vinyl flooring products (93.902-81).

These products are dutiable at a wide range of rates throughout the world. Tables 2 and 3 list the Canadian and the three CCCN provisions by major world markets and their current rates of duty. Table 2 shows the most-favored-nation rate of duty (applicable to U.S. goods) by markets, and table 3 shows preferential treatment with respect to duty rates given by the subject countries.

All the countries shown in the first table except Brazil and Mexico maintain a Generalized System of Preferences, though the various Governments calculate the basis of preference differently and apply the preferential treatment to differing sets of nations. The only two producing countries that export sheet vinyl flooring and are likely to qualify for GSP treatment are Korea and Taiwan. The United States, Japan, and Australia extend GSP benefits to imports from both Taiwan and Korea. Canada, the EC, and Sweden do not extend such benefits to imports from Taiwan. In addition to GSP systems, some countries have other special arrangements with nations located in the same region or with nations to which the country maintains special ties, such as former colonial relationships. Brazil and Mexico recognize the Latin American Integration Association (LAIA), while the EC and Sweden belong to the European Free Trade Association (EFTA). The EC and Sweden have further agreements with closely related countries. The EC's Lome Convention provides the best duty rate to any country or countries exporting to the EC. Nations that receive this special treatment are the nations of the old colonial empires. Canada provides for special treatment to British Commonwealth members.

Except in those cases where the duty rates are much greater than the average developed country tariff rate, as is usually found for developing countries, tariffs appear to exercise little effect on international trade in sheet vinyl flooring. The U.S. tariff is small compared with factors such as transportation costs, patent licensing, historical supplier relationships, and product quality in affecting imports. Similarly, duty rates applied to U.S. exports by other developed countries appear less important than various other factors, such as transportation costs, in determining trade. According to some sources, the importance of preferential treatment to trade in sheet vinyl

Table 2.--Sheet vinyl floor coverings: Current rates and negotiated rates of duty, by types, and by selected countries

| (Percent ad valorem) | | |
|----------------------|---|----------------------|
| Country | Current rate of duty applicable to imports from most favored nation's | Negotiated duty rate |
| Australia: | | |
| 39.02----- | 30.0% | - |
| 48.12----- | 20.0% | - |
| 59.10----- | 20.0% | - |
| Brazil: | | |
| 39.02----- | 170.0% | - |
| 48.12----- | 185.0% | - |
| 59.10----- | 185.0% | - |
| Canada: | | |
| 93.902-75----- | 14.7% | 12.5% |
| 93.902-81----- | 15.0% | 12.5% |
| EC: | | |
| 39.02----- | 14.7% <u>1/</u> | 12.5% |
| 48.12----- | 12.1% | 11.0% |
| 59.10----- | 6.7% <u>2/</u> | 5.3% |
| Japan: | | |
| 39.02----- | 5.3% | 4.9% |
| 48.12----- | 4.9% | 4.2% |
| 59.10----- | 6.6% | 5.3% |
| Mexico: | | |
| 39.02----- | 25.0% | - |
| 48.12----- | 50.0% | - |
| 59.10----- | 50.0% | - |
| Republic of Korea: | | |
| 39.02----- | 30.0% | - |
| 48.12----- | 30.0% | - |
| 59.10----- | 40.0% | - |
| Sweden: | | |
| 39.02----- | 12.5% | 12.0% |
| 48.12----- | 4.4% | 3.8% |
| 59.10----- | 7.5% | 5.6% |
| Taiwan: <u>3/</u> | | |
| 39.02----- | 45.0% | - |
| 48.12----- | 50.0% | - |
| 59.10----- | 50.0% | - |

1/ Except Greece, 18.8 percent ad valorem.

2/ Except Greece, 8.9 percent ad valorem.

3/ Duty rate is assessed at 110 percent of the c.i.f. value.

Table 3.--Sheet vinyl floor coverings: Preferential tariff treatment offered by selected countries

| Country and item No. | Preferential treatment | Duty rate |
|--------------------------|---|---------------------------|
| | | <u>Percent ad valorem</u> |
| Australia: | | |
| 39.02----- | GSP <u>1/</u> (rate based on f.o.b. disembarkation.) | 20. |
| 48.12, 59.10----- | GSP (rate based on f.o.b. disembarkation.) | 10. |
| Brazil: | | |
| 59.10----- | Latin American Integration Association (LAIA) <u>2/</u> | Various. |
| Canada: | | |
| 93.902-75----- | British Commonwealth Generalized Preferential Treatment (GPT) <u>3/</u> | 14.1. 9.0. |
| | United Kingdom and Ireland. | 14.1. |
| 93.902-81----- | British Commonwealth GPT <u>3/</u> | 15.0. 10.0. |
| | United Kingdom and Ireland. | 15.0. |
| EC: | | |
| 39.02, 48.12, 59.10----- | Cooperation agreements with mediterranean countries. | Various. |
| | European Free Trade Association <u>4/</u> | Free. |
| | Lome Convention II | Various. |
| | GSP <u>5/</u> | Free. |
| Japan: | | |
| 39.02, 48.12, 59.10----- | GSP | Do. |
| Mexico: | | |
| 39.02, 48.12, 59.10----- | LAIA | Various. |
| Sweden: | | |
| 39.02, 48.12, 59.10----- | Special agreement with EC | Free. |
| | EFTA | Do. |
| | GSP | Do. |

1/ Generalized System of Preference (developing countries except imports from Taiwan under 39.02).

2/ Mexico and South America, except French Guiana, Guyana, and Surinam.

3/ Eligible developing countries.

4/ Austria, Switzerland, Norway, Sweden, Finland, Iceland.

5/ For item No. 59.10, the EC imposes an annual duty-free quota of 11 metric tons per country (see EC publication L362, p. 154, col. 7).

flooring is also questionable. For example, Taiwan and Korea are the only exporting producers that generally receive GSP treatment, and exports from these countries are to date minor for most markets. However, according to some U.S. exporters, all other factors being equal, the special treatment accorded eligible imports from developed countries by developed markets, such as the EFTA, could place U.S. products at a slight cost disadvantage to competitive imported products in those countries' markets.

Customs valuation systems and bases

In order to ascertain the dutiable value, customs must apply a specific valuation technique, which generally consists of two steps: first, an appropriate transaction price, cost of production, or other value is established for the merchandise to be valued; then the value so established is adjusted, if necessary, by adding dutiable charges not included and subtracting nondutiable charges in order to arrive at the value defined by the specific standard employed by the country.

The principal types of valuation techniques used by various countries are as follows:

1. Valuation based on an import transaction price (usually the invoice price);
2. Valuation based on a transaction price in the domestic market of the exporting country (this method is frequently used when there is question about the true invoice price and there is no like product in the importing country);
3. Valuation based on a transaction price in the domestic market of the importing country (this method is frequently used when there is question about the true invoice price and there is a like product in the importing country);
4. Valuation based on cost of production data; and
5. Official valuation.

Place is particularly important in a valuation standard because of the wide range of values that can result from a given transaction, depending on the place specified. Alternate choices in use in various countries include the factory or warehouse of the exporter, the principal market(s) of the exporting country, the port of exportation, and the port of entry. Determination of the price of goods at the factory or warehouse or at a principal market in a foreign country places considerable burden on custom officials who are in a poor position to dispute declarations made regarding inland transportation and commission costs in the country of export. Thus, in general, two approaches are applied to determine the customs value--f.o.b. (free on board) port of export or c.i.f. (cost, insurance, freight) port of entry. Under the f.o.b. valuation method, the costs of producing the goods, inland transportation, and insurance charges to the port of export (and frequently, loading costs associated with placing the goods on board the carrier) are reflected. The c.i.f. method reflects all of the above plus the cost of international transportation and insurance incurred to get the goods to the port of debarkation.

From a producer's point of view, the c.i.f. method of valuation favors the nearby supplier and conversely, discriminates against the distant supplier. Transportation costs are charges over which the producer has little or no direct control. He can reduce or eliminate such costs only by shifting production facilities closer to the market. In the case of sheet vinyl flooring, transportation costs represent a significant percentage of total costs, and therefore the effect of any tariff rate is magnified to a greater than average extent when the tariff is applied to the c.i.f. value.

The following tabulation shows a list of the major markets for sheet vinyl floor coverings and the general type of valuation basis currently applied:

| Market | F.o.b. | C.i.f. |
|-------------------------|--------|--------|
| Australia----- | X | |
| Canada----- | X | |
| European Community----- | | X |
| Japan----- | | X |
| Sweden----- | | X |
| Taiwan----- | | X |
| Republic of Korea----- | | X |
| United States----- | X | |

The following is a brief description of each major market's customs laws and regulations with respect to valuation methods used to determine the dutiable value of imported goods. Appendix C contains excerpts of each country's customs laws dealing with this issue or related information. ^{1/}

United States.--Title II of The Trade Agreements Act of 1979 (Public Law 96-39 of July 26, 1979), states that the primary method used to determine dutiable value of imported goods is the transaction value for the goods. If the transaction value cannot be used, four alternative methods are considered. The secondary bases of value, listed in order of precedence for use, are as follows:

1. Transaction value of "identical merchandise;"
2. Transaction value of "similar merchandise;"
3. Deductive value; and
4. Computed value.

(The order of precedence of the last two values can be reversed if the importer so requests.)

^{1/} No excerpt is provided for Sweden because a written English translation was not available.

The transaction value of imported goods is the price actually paid or payable when they are exported directly to the United States, plus amounts for the following items if not included in the price:

1. The packing costs incurred by the buyer;
2. Any selling commission incurred by the buyer;
3. The value of any assist 1/;
4. Any royalty or license fee that the buyer is required to pay as a condition of the sale; and
5. The proceeds, accruing to the seller, of any subsequent resale.

The amounts to be disregarded in determining the transaction value are as follows:

1. Transportation, insurance, and other expenses related to international shipment of the goods;
2. Any decrease in the price actually paid or payable that is made between the buyer and seller "after the date of importation" into the United States;
3. Costs associated with the assembly, technical assistance, and so forth after importation into the United States; and
4. Customs duties and other Federal taxes, including Federal excise tax for which the seller is liable.

The transaction value method cannot be used if any of the following limitations are present:

1. Restriction on the disposition or use of the merchandise is applied;
2. Conditions exist for which a value cannot be determined;
3. Proceeds accrue to the seller; or
4. Related-party transactions occur where the value of the goods does not reflect the true value.

When the transaction value cannot be determined, the customs value is based on the "identical goods" method. If an identical goods transaction is not found or acceptable, then a similar goods method is used. The value would be a previously accepted customs value.

Besides the data common to all three transaction values, certain factors apply specifically to the "identical" and "similar" methods of valuation. These factors concern the exportation date, the quantity of sales, and the order of precedence of identical and similar goods.

The date of export for either of the two methods to apply must be at about the same time as the goods being valued; the transaction must be at approximately the same level of distribution and quantity size. To be considered "identical goods," the goods must be identical in all respects to

1/ Assists are goods or services that the buyer of imported merchandise provides, directly or indirectly, free of charge or at a reduced cost, for use in the production of or sale of merchandise for export to the United States.

the goods being appraised, produced in the same country of export, and produced by the same manufacturer; otherwise, the goods are considered to be "similar." ^{1/}

The order of precedence recognizes that more than one transaction value may be applicable. If this is the case, acceptable sales at the same level of distribution and quantity take precedence over sales at different levels and/or quantities. The order of precedence can be summarized as follows:

1. Identical goods produced by the same person;
2. Identical goods produced by another person;
3. Similar goods produced by the same person; and
4. Similar goods produced by another person.

If two or more transaction values can be found, the lowest value will be used as the appraised value of the goods being imported.

When none of the above methods can be applied, the "deductive value" is calculated on the basis of the resale price in the United States after the importation of the goods, with certain deductions. Generally, the deductive value is calculated by starting with a unit price and making the following additions and deductions:

- additions-----All containers and packing charges.
 deductions-----1. Commissions, profits, and general expenses;
 2. Transportation/insurance costs
 (international and inland within the
 United States);
 3. Customs duties and Federal taxes; and
 4. Value of further processing after
 importation.

(If an assist is involved in the sale, that sale cannot be used in determining the deductive value).

The last basis of valuation is the "computed valuation" method which consists of the sum of the following items:

1. Materials, fabrication, and other processing used in production of the imported goods;
2. Profit and general expenses;
3. Any assist; and
4. Packing costs.

Finally, if none of the previous five valuation methods can be used, the customs value must be based on a value derived from one of the five previous methods, with some reasonable adjustment as necessary. Only data available in the United States will be used in this case.

^{1/} If goods meeting all three criteria cannot be found, the identical goods are goods satisfying the first two criteria but produced by a different manufacturer.

Canada (current) 1/--The value for duty of floor products imported into Canada by Canadian purchasers is the greater of two methods--the fair market value or the Canadian selling price.

The fair market price is the price at the time when, and at the place from which, the imported goods are shipped directly to Canada. The value of the good is based on "like goods" sold to purchasers located at that place with whom the seller deals at arm's length and at approximately the same level of distribution and in the same or about the same quantities in the ordinary course of trade under competitive conditions. If like goods cannot be considered because no such goods are sold by the seller in the country of export, the value for duty purposes is determined on the basis of sales of "similar products" in the country of export by other sellers located in that country. The "time" of direct shipment to Canada is determined by the bill of lading; if there were no sales at the time when the goods were shipped to Canada, the most recent sales prior to the time of shipment that fairly reflect the market value in the country of export are used. The "place" of direct shipment to Canada is generally the point of embarkation, where the goods begin their continuous journey to Canada. The bill of lading is the most significant document used for the purpose of determining the place, if it specifies a point in Canada as the ultimate destination. If there were no buyers of the type of goods in the country of export, sales to the purchasers located nearest to the country of export are used to determine the fair market value. No discounts or deductions are permitted that are not shown, allowed, and deducted on invoices covering sales for consumption in the country of export.

The second method of valuation, the "Canadian selling price," provides that the dutiable value is determined by the price at which the goods were sold to the buyer in Canada, exclusive of all charges incurred after shipment from the country of export. Inland transportation, insurance, and handling charges are considered dutiable if they are incurred prior to the "time and place of direct shipment to Canada" and if these charges are reflected in the invoice. As in the fair market method, no discounts or deductions are allowed that are not shown, allowed, and deducted, on invoices covering sales for consumption in the country of export.

Canada (1985 proposed). 2/--The draft Customs Act of Canada states that the primary basis for customs value is the "transaction value," which is the price paid or payable, adjusted for certain factors. If the transaction value cannot be used as the value for duty purposes (as in the case where a special relationship between the buyer and seller influences the price), one of five alternative valuation methods would be used.

The primary method for customs valuation is the transaction value, as stated above, which bases dutiable value on the selling price in the export transaction--i.e., the price of the goods adjusted by the following additions if paid by the buyer and not already included in the price:

1/ The following describes the customs valuation system for flooring products imported into Canada until Jan. 1, 1985.

2/ The following describes the customs valuation system under draft legislative that is proposed to take effect on January 1, 1985.

1. Commissions and brokerage fees;
2. Packing costs and charges incurred to place the goods into containers and on board the carrier; and
3. Assists (whether or not provided free of charge or at a reduced cost); assists generally include goods consumed in the production of the imported goods and services connected to the production and sale of the imported goods (e.g., royalties, license fees, inland transportation after shipment to Canada, technical assistance, and so forth).

The transaction value method can be used only if the following conditions are met:

1. There are no restrictions on the use or disposition of the goods by the buyer;
2. The sale is not subject to a condition or consideration for which a value cannot be determined;
3. No part of the proceeds of any subsequent resale, use, or disposition of the goods accrues to the vendor unless an adjustment can be made to the price paid or payable to account for the value of such proceeds; and
4. The buyer and seller are not related or, if related, the relationship does not influence the price of the goods.

When the transaction value cannot be determined, the dutiable value may be based on the transaction value of "identical goods" sold for export at the same or approximately the same time as the goods being appraised. Identical goods are described in the legislation as goods which are the same in all respects, produced in the same country as those goods to be valued, and, when possible, produced by the same company.

The third method of valuation is based on "similar goods;" the fourth method, "the deductive method," is based on the price per unit at which the greatest number of units is sold in the Canadian market. The last method, the "computed value," is based on the costs of production, general profits and expenses equal to those reflected in the country of export, and any other expenses, such as packing and container expenses. (For a detailed discussion and reference to the draft Canadian Customs Laws, see app. C of this report.)

European Community.--The Common Customs Council Regulation No. 1224/80 of May 28, 1980, states that the primary basis for customs valuation is the transaction value, which is the price actually paid or payable for the imported goods when exported to the customs territory of the EC, adjusted for additional charges incurred by the buyer and not included in the price actually paid or payable. If the transaction value cannot be applied as the value for duty purposes, one of five alternative methods is used.

The transaction value can be applied only if the following conditions are met:

1. There are no restrictions as to the disposition or use of the goods by the buyer, other than restrictions which:
 - a. Are imposed or required by law or public authorities in the Community,
 - b. Limit the geographical area in which the goods may be resold, or
 - c. Do not substantially affect the value of goods;
2. That the sale is not subject to conditions for which a value cannot be determined;
3. That no part of a proceed from any resale by the buyer accrues to the seller; and
4. That the transaction is at arm's length.

In the transaction valuation method applied by the EC, the price actually paid or payable is the total payment made by the buyer to the seller. Activities provided by the buyer, such as marketing activities, are not considered part of the dutiable value (excluding certain adjustments provided for under Art. 8), though they might be regarded as of benefit to the seller. The transaction value does not include charges for construction, assembly, noncustoms duties, and other taxes payable in the European Community related to the importation.

When the transaction value cannot be determined, the dutiable value is based on the transaction value of "identical goods" sold for export to the European Community and exported at or about the same time as the goods being valued. This method considers the level of distribution and effect of quantity where possible. Furthermore, adjustments are made to account for significant differences between the goods being valued and the identical goods based on differing distances and modes of transport. If there is more than one transaction value for the identical goods, the lowest value is used to determine the customs value. If there are no identical goods to be valued, another producer's transaction may be used.

The third method of valuation, "similar goods," applies if the preceding methods fail. The same considerations generally apply to the similar goods method as applied in the identical goods method discussed above.

The fourth method of valuation is based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantities at or about the time of importation of the goods being valued. This unit price is subject to the following deductions:

1. Commissions, profit, and general expenses related to sales in the Community of imported goods of the same class or kind;
2. Transportation and insurance cost incurred inside the Community; and
3. Customs duties and other taxes payable in the Community associated with the importation.

The fifth method of valuation, "computed value," is generally based on the cost of production of the imported goods, and an amount for profit and expenses equal to those profits and expenses incurred by producers in the country of export.

Finally, where the customs value of imported goods cannot be determined using the above methods, the value is determined using "reasonable means" consistent with article VII of the General Agreement on Tariffs and Trade (GATT) and on the basis of data available in the EC.

Sweden. 1/--The customs law of Sweden states that the primary basis for customs value is the "transaction value", which is the invoice price paid or payable, adjusted for any commission or brokerage fees, "packing" or "packaging" costs associated with the importation of the goods, and the cost of transportation and insurance to deliver the goods to Sweden. Thus, the transaction value is c.i.f. port of debarkation. If the transaction value cannot be applied as the value for duty purposes, one of five alternative methods are used.

The transaction value is used only if there are no limitations placed by the seller on the use or disposition of the goods and if the transaction is considered an arm's-length transaction (i.e., the buyer and seller are not related or, if related, the relationship does not influence the price of the goods). If transaction value is applied, the additions cited in the above paragraph are added to the price of the goods (if not already reflected in the invoice), but the following are not considered as part of the transaction value:

1. Inland transportation in Sweden;
2. Construction, installation, or assembly costs; and
3. Technical assistance.

When the transaction value cannot be determined, the dutiable value may be based on the "identical product" method. In this method of valuation, Sweden adjusts the price paid for an identical good imported to reflect transportation differences. The identical goods can originate from any country (Sweden does not limit the production of such articles to the country where the goods under consideration were produced). Transportation adjustments are divided into two types--distance and mode. The value of the identical good is determined at the same level of distribution, if possible. Furthermore, if more than one value can be determined, due to a number of identical product examples, the lowest value is applied.

The third method of valuation is determined based on a "similar product" imported into Sweden. The same considerations as were cited above under the discussion of the identical product method are used in this method.

The fourth method is the "Swedish sales price" (wholesale level pricing). Deductions for inland transportation, distribution markups, customs expenses (not duty, but rather expenses associated with processing paperwork, and so forth), taxes, and costs related to the importation of the goods are made in order to properly reflect the time cost of the product and other dutiable expenses.

The fifth method is the "computed value," which is based on the costs of production. Finally, if all else fails, Sweden applies what is known as "terms of reasonableness" in accord with article VII of the GATT codes.

1/ This information was obtained from Swedish publication SFS 1980:749,¹⁸ Forordning om Tullvarde, Sept. 25, 1980.

Japan.--The customs value in Japan is the price paid or payable by the buyer for the imported goods (transaction value, excluding any charges reduced or refunded in the country of export), plus the cost of transportation, insurance, freight, and other expenses incurred in transporting the goods to the port of importation. Where problems exist with regard to the determination of the transaction value, the customs value is determined to be the transaction value of "identical or similar" goods (identical goods are used in the determination of value, if possible; if not, the similar goods method is applied); or in a last effort, the customs value is determined by the domestic selling price of the imported goods, identical goods, or similar goods as prescribed by the law. Finally, if none of the above methods can be applied, the customs value is to be the value calculated under the provisions of a Cabinet Order as corresponding to the customs value calculated under the provisions of the methods described above.

When the first method, the transaction value method, is used, commissions and expenses incurred by the buyer are added to the customs value. These charges include brokerage commissions (except buying commissions) and the cost of containers and packing of the goods. Assists and value of the use of patents, trademarks, and so forth, for which the buyer must pay are also included as part of the customs' value. If any of the following circumstances exist in the transaction, the secondary methods are used to determine the value:

1. If there are restrictions as to the disposition or use of the imported goods by the buyer (excluding restrictions as to the geographical area in which the goods may be resold by the buyer and such other restrictions as are prescribed by a Cabinet Order);
2. If the condition exists which makes it difficult to determine the customs value, as in the case where the price is related to price or quantity of other than the imported goods;
3. If the value of any part of the proceeds of a resale or use accrues directly or indirectly to the seller is unknown; or
4. If the buyer and seller are related and the relationship is considered to have influenced the transaction value.

Australia.--The customs value of imported goods includes all costs associated with the contract of sale between the buyer and seller. In general, the total amount involved by, or on behalf of, the seller to the buyer, excluding any actual overseas freight and insurance, is taken to represent the terms of the contract of sale. The basis of customs valuation in Australia is f.o.b. port of export and covers the costs of the goods, inland transportation to port of export, placement of goods on board a carrier, placement of goods in containers, and any costs associated with transferring the goods across the border of the country from which they are being exported. (See app. C of this report for excerpts from two Australia Customs Service publications for more information).

Korea.--The Korean Customs Act states that the dutiable value of the imported goods is the price fulfilling each of the following requirements:

1. The price on the date of the import declaration, provided that the time elapsed from the day the goods are loaded on the carrier at the port of embarkation and the time that they are imported into Korea is within a certain period of time as determined by the ordinance of the Ministry of Finance and that the price has not fluctuated considerably during that time;
2. The price is an "open market" (arm's-length) price; and
3. The price is the delivered value at the port of debarkation (including freight, insurance, and other charges associated with delivery to Korea from the port of export).

The value of duty includes neither duties nor other charges which are reduced or exempted by the exporting country at the time of export.

When no arm's length transaction occurs, the dutiable value is determined on the basis of the following items:

1. The price, authorized as dutiable value, at which goods of "identical category and quality" have recently arrived in Korea;
2. The price applied either by an overseas Customs official or by the Chief of the Korean mission overseas; or
3. Identical goods price, adjusted for difference in value due to quality, capacity, time of importation, and any other factors.

When the above provisions cannot be used to determine the value, the dutiable value is the domestic wholesale price of goods of identical category and quality at the time of importation, minus taxes, other charges, and normal costs and/or profits. The ratio of normal costs and/or profits is prescribed by the ordinance of the Ministry of Finance.

When the declared value of the imported goods either hinders or is likely to hinder the development of a domestic industry, or is not deemed proper, the Director-General of the Office of Customs Administration may suspend normal valuation methods, and the dutiable value is then determined by the ordinance of the Ministry of Finance. (Furthermore, in the case of an urgent need to discourage the importation of a particular good, the duty rate may be raised up to 40 percent of the present value.)

Taiwan.--The Customs Law of Taiwan states that the dutiable value of imported goods is determined and calculated on the basis of the goods' "true c.i.f. price" plus 10 percent. However, to simplify duty assessment, the Customs Office prepares a "duty-paying value table" of various goods to serve as a basic reference for duty assessment. Where the imported goods do not appear on this list and the value declared seems questionably low, the Customs Office may determine an appropriate value by referring to identical goods recently imported. If no identical goods can be found, Taiwan would use the

wholesale market value at the port of importation. If this fails, the prevailing value either in Taiwan or abroad is used to determine the value.

Nontariff barriers

Conditions that may adversely affect international trade, and therefore be considered nontariff barriers to trade, may be classified into three categories on the basis of how they affect imports versus domestic products: (1) those that are nondiscriminatory, applying equally to imports and domestic products, such as many standards; (2) those that discriminate between domestic products and imports, but apply equally to all imports (this category covers most barriers), and (3) those that apply unequally to various imports depending upon the source country. None of the last category of barrier was discovered with regard to U.S. exports of sheet vinyl flooring. Furthermore, with the exception of outright embargoes or the technical equivalents of embargoes, no nontariff barriers relating specifically to sheet vinyl flooring were discovered. However, a number of more general barriers operated on U.S. exports of sheet vinyl flooring. Table 4 gives a compilation of the various barriers to international trade for 27 countries (including the EC) as reported by the U.S. manufacturers of sheet vinyl flooring. Absolute embargoes on imports of sheet vinyl flooring were reported for Brazil, Colombia, India, Jamaica, Mexico, the Philippines, Trinidad, and Venezuela. ^{1/} These embargoes are generally accomplished through a licensing requirement--import licenses are denied for products that are to be embargoed. Often this is to protect a fledgling sheet vinyl flooring producer (Brazil) or producers of competitive products such as vinyl tile (India, Mexico, and the Philippines).

The nontariff border charges on imports fall into the second category of barriers, those that affect all imports equally. Table 5 shows additional import charges on imports of sheet vinyl flooring for various countries. In view of the total embargoes on imports of sheet vinyl flooring into Brazil and Mexico, those additional import charges are as academic as the tariff rates.

Standards are the most common example of nondiscriminatory barriers cited, but, unless a particular country's standards are deliberately formulated to prevent imports, they do not generally represent important barriers to trade, according to industry sources. Various health and safety standards and industrial standards were reported for all the major markets for U.S. exports of sheet vinyl flooring; however, the U.S. product generally has little trouble meeting such standards.

As may be noted from table 4, those countries employing the types of nontariff barriers that are most disruptive to trade in sheet vinyl flooring are also countries which do not currently offer major markets for such products. In the general experience of the U.S. industry, the developed countries (the major markets) generally have barriers that are more annoying

^{1/} Although other barriers were listed for these countries, they are necessarily subordinate to a full embargo. Furthermore, the existence of an embargo limits the opportunity to gain information on barriers that would be evident in absence of the embargo; therefore, the list of barriers for these countries may be incomplete.

Table 4.—Sheet vinyl floor coverings: Nontariff barriers to trade, by selected countries and by types, 1981-83.—Continued

| Barriers | Country | | | | | | | | | | | | | | | | | | |
|---|-----------|--------|--------------------|-------|--------|--------|-----------|--------|----------|-------|---------|-------------------|--------|-------------|-------------|----------|---------|-----------|--|
| | Australia | Canada | European Community | Japan | Sweden | Taiwan | Argentina | Brazil | Colombia | India | Jamaica | Republic of Korea | Mexico | New Zealand | Philippines | Trinidad | Uruguay | Venezuela | |
| Standards: | | | | | | | | | | | | | | | | | | | |
| Health and safety standards | X | | X | | X | | | | | | | | | | | | | | |
| Industrial standards | X | X | X | X | X | X | | | | | | | | | | | | | |
| Requirements on weights and measures | X | | | X | | X | | | | | | | | | | | | | |
| Labeling and container requirements | X | X | X | X | X | X | | | | | | | | | | | | | |
| Marking requirements | X | X | X | X | X | X | | | | | | | | | | | | | |
| Packaging requirements | X | | | X | | X | | | | | | | | | | | | | |
| Customs procedures and administrative practices: | | | | | | | | | | | | | | | | | | | |
| Antidumping practices | | X | | | | | | | | | | | | | | | | | |
| Customs valuation | X | X | X | X | X | X | | | | | | | | | | | | | |
| Documentation requirements | X | X | X | X | X | X | | | | | | | | | | | | | |
| Administrative difficulties | | | | X | | X | | | | | | | | | | | | | |
| Merchandise classification problems | X | X | X | X | X | X | | | | | | | | | | | | | |
| Regulations on samples, returned goods, and reexports | | X | | | | | | | | | | | | | | | | | |
| Discriminatory ocean freight rates | | | | | | X | | | | | | | | | | | | X | |

Source: Compiled from responses to the U.S. International Trade Commission's "Questionnaire for Producers."

Table 5.--Sheet vinyl floor coverings: Additional import charges by selected countries and by tariff item numbers

| Country | Description | Additional import charges Percent |
|-------------------------|---|--------------------------------------|
| Australia: | | |
| 39.02, 48.12, 59.10. | General charge based on f.o.b. disem- barkation. | 10.0 |
| Brazil: | | |
| 39.02----- | Industrialized product tax based on c.i.f. | 12.0 |
| 48.12----- | do----- | 15.0 |
| Mexico: | | |
| 39.02, 48.12, 59.10. | Export development tax based on the customs valuation. | 2.5 |
| | Customs improvement tax based on the duty collected. | 3.0 |
| | VAT based on all charges plus the value of the item. | 15.0 |
| Republic of Korea: | | |
| 39.02, 48.12, 59.10. | VAT based on c.i.f.----- | 10.0 |
| | Defense tax----- | 2.5 |
| Taiwan: | | |
| 39.02----- | Harbor tax----- | 4.0 |
| | Commodity tax on plastics----- | 15.0 |
| 48.12----- | Harbor tax----- | 4.0 |
| | Commodity tax on plastics----- | 5.0 |
| 59.10----- | Harbor tax----- | 4.0 |

Source: U.S. Department of Commerce and country tariff schedules.

than disruptive. In fact, except for total embargoes, nearly all the nontariff barriers reported by the industry were of minor importance in affecting international trade compared with other competitive factors, such as closed distribution systems and process patents.

Other Factors of Competition

Overview

The primary competitive factors in international trade in sheet vinyl flooring may be subdivided into two categories: those which directly affect costs and thereby price, and those which are not primarily price oriented. According to industry sources, sales of sheet vinyl flooring to the ultimate consumer depend first on style and color, second on ease of maintenance and durability, and third on price. In some commercial applications, durability will overshadow the other factors. Similarly, price gains a greater importance in the do-it-yourself residential market. In general, PVC sheet offers the greatest durability, with inlaid a close second and rotogravure third. Conversely, rotogravure flooring offers the greatest variety of styles

and colors; inlaid is second in this category. In general, rotogravure products are less costly to produce than either inlaid or pure PVC sheet vinyl floorings.

Two price factors (transportation costs and exchange-rate fluctuations) and two nonprice factors (distribution systems and chemical embossing patents and licenses) have had the greatest competitive effect on international and domestic trade in sheet vinyl flooring.

Transportation costs.--Sheet vinyl floor coverings are low-valued goods in relation to weight. Transportation costs are estimated to account for 15 to 25 percent of the delivered cost of sheet vinyl flooring to the first level of distribution. Ocean freight alone averaged 7 to 10 percent of the landed cost (exclusive of duty) of imports in the United States during 1981-83. Because the United States has generally higher outgoing freight rates, U.S. exports are presumed to carry an even higher ocean freight cost burden. The net result in international trade is that transportation costs almost always favor the closer producer, which is usually the domestic producer, or the closest foreign source in countries without domestic production. One modifying factor with respect to competition between Asian producers and the rest of the world is that outgoing Asian freight rates are lower than their incoming rates and generally lower than other countries' outgoing rates, giving a transportation cost advantage to the Asian producer. Freight rates for the United States and Europe tend to be roughly comparable.

Exchange-rate fluctuations.--A number of industry representatives have noted that the generally strong U.S. dollar has resulted in more expensive U.S. sheet vinyl flooring exports. Certain industry sources indicated that many of the current difficulties associated with exporting stem from this situation. In addition, the strong dollar was cited as resulting in less costly U.S. imports. According to these sources, a large devaluation of a country's currency against the dollar can go a long way in negating any extra production costs, transportation costs, and duties applicable to imports from that country.

Distribution systems.--In those countries where distribution is primarily through single supplier distributors, such as the United States and Canada, industry sources indicated that it is very difficult for importers to penetrate the market on a broad basis without either setting up their own captive distribution network (very costly and time consuming) or buying an existing network (few available). The net result is that imports tend to end up competing in small market niches not occupied by domestic producers or with products not manufactured locally. The complex nature of the Japanese distribution system similarly tends to limit import penetration and is far more difficult to avoid or negate.

Chemical embossing patents and licenses.--The chemical embossing process used by most rotogravure sheet producers in the world was patented and licensed by one U.S. producer. The licensing agreements prohibited sales that would compete with the U.S. producers' sales, and divided the world markets. Because most licensees found it uneconomical to set up two types of chemical embossing processes or run a mechanical embossing along with a chemical embossing process in order to export to proscribed areas, the licensing agreements tended to limit international trade in rotogravure sheet products

to that which was produced on existing mechanical embossing equipment or by previously existing chemical embossing methods. Products of the latter type were few inasmuch as the patented chemical embossing method was generally considered superior to any alternative.

During 1980-87, the patents and accompanying licenses for this embossing process have expired or are due to expire in 30 countries, including the major producing and market countries. Of primary importance to international trade in these products are the following expirations: Australia and Great Britain, September 1980; Brazil, April 1981; Sweden, September 1981; West Germany, September 1982; Japan and the United States, December 1983; Canada, July 1984; France, the Netherlands, and Switzerland, September 1984; and Belgium, August 1985.

Major factors of competition

The following is an analysis by markets of the importance of each of these factors in affecting trade in U.S.-produced sheet vinyl flooring.

United States.--U.S. producers, importers, and purchasers surveyed by the Commission were nearly unanimous in declaring U.S. residential sheet vinyl flooring as having an overall competitive advantage in the U.S. market over imports from all countries during 1981-83. Price was the only factor where imports were generally believed to prevail in the residential market. The same pattern held true for the commercial market with the exception of PVC sheet from Sweden, West Germany, the United Kingdom, and, to a lesser extent, Japan. Such sheet was often rated as having a competitive advantage over U.S. commercial flooring. Durability and favorable warranties were the most often cited factors for this advantage. In this instance, the foreign product advantage is not unexpected, since it generally involved a comparison between pure PVC sheet, known to be the most durable product, and rotogravure sheet, usually less durable.

In any event, the U.S. product and industry was almost always rated superior to the foreign product in delivery time, availability, servicing and training, financing, and design, as well as having an advantage due to historical supplier relationships. Most purchasers of imported sheet vinyl flooring surveyed by the Commission indicated that they had initially tried to purchase domestic sheet vinyl flooring but could not for a number of reasons (i.e., the existence of another distributor with exclusive rights in the area or a lack of certain cutting facilities necessary to process the domestic product for retail sale).

The competitive advantage of the U.S. product in the U.S. market existed largely because of three of the reasons listed previously--captive suppliers, transportation costs, and the chemical embossing patents and licenses. Prior to the expiration of the embossing patent in the United States in December 1983, most rotogravure imports were limited. The expiration of this patent in the United States legally opened the U.S. market for residential rotogravure to the Japanese and most European producers. In July 1984, the expiration in Canada also freed that country's licensees. The European rotogravure producers have a strong incentive to attempt to gain market share in the United States in order to increase production. The chief Canadian exporter to

the United States needs U.S. sales to counterbalance a softening Canadian market. Asian producers view the U.S. market as an excellent place to expand sales. Taiwan and Korea, in particular, could use greater U.S. sales to promote their fledgling industries.

With the loss of patent protection, the chief obstacle to imports is the captive distribution system that accounts for the bulk of U.S. sales. For a European producer that needs fast sales, the best way to gain entry into the U.S. market would be to purchase an existing distribution system. This is how the Swedish producing subsidiary entered the market, as well as one importer of West German flooring. However, this option is necessarily limited, since none of the current U.S. producers have offered their networks for sale. Another method, that which is being followed by the Canadian supplier, is to build up one's own distribution network. This is a slower method that does not allow an immediate challenge to U.S. producers across the breadth of the market; therefore, this supplier is also concentrating an aggressive marketing effort on one market segment, manufactured homes, where only two U.S. manufacturers compete. Finally, there is a third method favored by many Asian producers (with the exception of Japanese producers of PVC sheet), which is to take advantage of their generally lower production costs to attack the lower end of the U.S. residential market by selling directly to home centers or other mass marketers. This method concentrates on the do-it-yourself market segment in order to gain market share. Although this method was successful in allowing import penetration by vinyl tile from Taiwan, it faces more limited prospects in sheet vinyl flooring, because the do-it-yourself market for sheet vinyl flooring is more limited. Many U.S. consumers who would not hesitate to attempt to install floor tile by themselves would balk at attempting the installation of a 12-foot sheet floor covering. The do-it-yourself market represents less than 10 percent of the sheet vinyl flooring market, and although it is expected to grow at a rate greater than the average for all sheet vinyl flooring in the near future, it is unlikely to become a major market segment.

The European product faces the greatest transportation cost penalty--so large that some industry sources question whether rotogravure imports from Europe can be priced low enough to overcome the nonprice advantages held by U.S. manufacturers without pricing below cost. A currency devaluation against the dollar could accomplish this task for producers in affected countries, but probably not for European products as a whole. However, just as the competitive situation in Europe appears to demand a European attempt to capture a share of the U.S. rotogravure market, domestic concern over such an attempt guarantees vigilance by the industry in watching for possible less-than-fair-value sales.

Transportation costs loom less important for imports from Canada and the Far East. The relative placement of the Canadian producer (Quebec) and the U.S. producers (New Jersey and Pennsylvania) results in a canceling of the transportation cost advantage for much of the U.S. market. Similarly, on the west coast the advantages of the outgoing freight rates from Asia tend to cancel the overland transportation cost from the domestic suppliers.

Canada.--The Canadian market for sheet vinyl flooring experiences competitive effects similar to these discussed for the United States. With the expiration of the embossing patent in Canada, the same situation as described for the United States prevails with regard to European imports, with

the exception that the Canadian market is smaller and therefore is proportionally less attractive. U.S. manufacturers tend to treat Canada as an extension of the U.S. market, maintaining single-supplier distributors similar to those in the United States. In addition, one U.S. manufacturer has a producing subsidiary in Canada, one method of avoiding disadvantages inherent in exporting sheet vinyl flooring.

Europe.--As indicated previously, the overcapacity of rotogravure production has created a fiercely competitive climate in Europe. Therefore, there is very little possibility of any great volume of U.S. export sales other than speciality sales of products such as inlaid sheet. The transportation cost penalty to U.S. exports of rotogravure is overwhelming in the residential market, and most U.S. rotogravure cannot compete against European PVC sheet in the commercial market. The strong U.S. dollar only exacerbates the problem.

Japan.--The nearly impenetrable Japanese distribution system, along with the production cost difference and the transportation cost penalty, combines to close Japan to nearly all U.S. exports, particularly, rotogravure sheet. There is a small market for U.S. inlaid products that do not compete on a cost basis.

Australia.--Once a good export market for U.S. sheet vinyl flooring products, much of the Australian market has been largely captured by domestic production. One U.S. producer has a producing subsidiary in Australia. There also has been increasing pressure from imports from Asian suppliers. Along with the relatively high duty rates for a developed country, the primary cause for this market loss is the transportation cost penalty. U.S. exports suffer both against Australian products and against imports from Asian producers (because of their more favorable freight rates as well as the fact that they are closer to the Australian market). European producers can be expected to exploit this market to any extent possible.

Appendix A

Request by the Subcommittee on Trade of the Committee on Ways and Means

SAM M GIBBONS, FLA. CHAIRMAN
SUBCOMMITTEE ON TRADE

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BARBER S. CONABLE, JR., N.Y.

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C. 20515

SUBCOMMITTEE ON TRADE

December 20, 1983

DAN ROSTENKOWSKI, ILL. CHAIRMAN
COMMITTEE ON WAYS AND MEANS

JOHN J. SALMON, CHIEF COUNSEL
A. L. SINGLETON, MINORITY CHIEF OF STAFF

DAVID B. ROHR, SUBCOMMITTEE STAFF DIRECTOR

The Honorable Alfred E. Eckes
Chairman
U.S. International Trade Commission
701 E Street, N.W.
Washington, D.C. 20436

Dear Mr. Chairman:

The purpose of this letter is to request that you conduct an investigation under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332) but restricted to the use of non-proprietary company data. The objective is to evaluate the impact of tariffs on the competitive position of the U.S. in the world trade of vinyl floor coverings, TSUSA 725.24.

Specifically, you should analyze the comparative tariff levels, the base on which tariffs are computed, customs valuation systems and non-tariff barriers to U.S. exports. Also, please examine what factors are influencing the market on vinyl floor coverings to include domestic and third country markets. Because of the small number of U.S. manufacturers of vinyl flooring, and the possibility of linking data to a particular manufacturer, it is requested that you not require the submission or use of proprietary company data.

Sincerely,


Sam M. Gibbons
Chairman

SMG/RYN

Appendix B
Notice of Investigation

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

(332-179)

**The Impact of Tariff and Nontariff Barriers on the U.S. Sheet
Vinyl Flooring Industry****AGENCY:** United States International Trade Commission.**ACTION:** Institution of an investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) for the purpose of assessing the impact of tariff and nontariff barriers on the competitive position of the United States in the world trade of sheet vinyl flooring.**EFFECTIVE DATE:** January 31, 1984**FOR FURTHER INFORMATION CONTACT:** Mark D. Estes, General Manufactures Division, Office of Industries, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202-724-0977.**BACKGROUND AND SCOPE OF INVESTIGATION:** The Commission instituted the investigation on its own motion following receipt of a request therefor dated December 20, 1983, from the Subcommittee on Trade of the House Committee on Ways and Means. In accordance with the Subcommittee's request, the Commission will investigate the impact of tariffs on the competitive position of the United States in world trade in vinyl floor coverings of the kind described in item 728.2440 of the Tariff Schedules of the United States Annotated (TSUSA).

In its report the Commission will analyze the comparative tariff levels, the base on which tariffs are computed, customs valuation systems, and non-tariff barriers to U.S. exports. The Commission will also examine the factors that are influencing domestic and foreign markets for vinyl floor coverings.

TSUSA item 728.2440 covers sheet vinyl flooring, and the Commission's investigation will focus on this product. The investigation will not cover vinyl tile, vinyl asbestos tile, and other vinyl floor coverings.

At the Subcommittee's request the Commission's investigation will be restricted to the use of nonproprietary company data due to the small number of U.S. manufacturers of sheet vinyl flooring and the possibility of linking data to a particular manufacturer.

The Commission expects to complete its study by August 20, 1984.

WRITTEN SUBMISSIONS: While there is no public hearing scheduled for this study, written submissions from interested parties are invited. Although the Commission is not actively seeking proprietary company data, commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR

201.6). All written submissions, except for confidential business information, will be made available for inspection by interested parties. To be ensured of consideration by the Commission, written statements should be received by the close of business on May 18, 1984. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission.



Kenneth R. Mason
Secretary

Issued: February 2, 1984

Appendix C**Customs Laws, and Additional Information Dealing With Valuation
Systems of Selected Countries**

**Excerpt From "Australia's Customs Valuation and Import Documentation"
(February 1984)**



Australia's Customs Valuation System and Import Documentation

Issued by the Australian Customs Service
Department of Industry and Commerce
Canberra A.C.T. Australia
February 1984

SYSTEM OF VALUATION

The system of customs valuation applying to goods imported into Australia is based on the GATT Agreement on Customs Valuation as are the valuation systems used by most major trading nations.

METHODS OF VALUATION

2. The system provides several methods of valuing goods for customs purposes. The primary method is the establishment of the customs value on the basis of the price actually paid or payable for the imported goods.

3. To be acceptable for the purposes of this primary method, the price must satisfy a number of conditions. The principal condition is that it has not been influenced by a relationship between the buyer and the seller. Sufficient and reliable information as to the price must also be available to Customs Officers.

4. An acceptable price may be subject to a number of adjustments. These may involve the addition of, for example, selling commissions or royalties, which are not already included in the price.

5. If the price paid or payable is not acceptable as a basis for the customs value, the goods must be valued by reference to several alternative methods. These must be attempted in the following order except that (c) and (d) may be reversed at the request of the importer—

- (a) the price paid for identical imported goods; or
- (b) the price paid for similar imported goods; or
- (c) a deductive value, based on the sale price in Australia of the imported goods or of identical or similar imported goods, less post-importation and other non-dutiable charges; or

- (d) a value computed from the actual cost of production of the imported goods; or
- (e) a fall-back method based essentially on flexible application of the earlier methods.

6. Overseas freight and insurance costs are excluded from the customs value of imported goods. These are the costs, charges and expenses of transporting the goods from the place of export to Australia. The place of export is the point where the goods are—

- (a) placed on board a ship or aircraft; or
- (b) placed in a container, as defined in the Customs Convention on Containers; or
- (c) conveyed across the border of the country from which they were exported to Australia;

whichever of those events occurs first.

7. The cost of inland freight and insurance up to the place of export of the goods to Australia are included in the customs value if they are paid by the buyer in Australia to, or for the benefit of, the seller in relation to the sale of the goods.

8. The cost of outside packages and labour in packing are included in the customs value of the goods they contain. Containers, as defined in the Customs Convention on Containers are not treated as outside packages.

IMPORT DOCUMENTATION

9. Australian Customs does not require the seller to complete a special form of invoice. Normal commercial documentation is acceptable, for example, invoices, bills of lading, and receipts.

10. It is expected that these documents will contain the following basic information required by Customs for valuation purposes—

**Excerpt From Australian Customs Service Valuation Guide
(July 1, 1981)**

VALUATION GUIDE - SECTION 4 - PAPER No. 1MEANING OF FOBQUESTION:

What interpretation is placed on the term FOB for the purposes of customs valuation?

ANSWER:

The customs value of imported goods includes any transport and associated costs, other than actual overseas freight and insurance, which the buyer must pay to the seller as a condition of the transaction for the goods.

In this context, "overseas freight and insurance" means the costs, charges and expenses of or associated with the transport to Australia from parts beyond the seas and insurance of imported goods after the goods have been

- (a) placed on board a ship or aircraft;
- (b) placed in a container of the type specified in Customs Regulation 1A; or
- (c) conveyed across the border of the country from which they were exported to Australia

whichever of those events occurs first.

EXPLANATION:

It is upon the actual terms of the contract of sale between buyer and seller and the payment between those parties that the whole question of dutiability or otherwise of transport and associated costs is determined.

In general the total amount invoiced by or on behalf of the seller to the buyer excluding any actual overseas freight and insurance will be taken to represent the terms of the contract of sale. Where any further clarification is required the final recourse will be to the surrounding contract documentation between the parties and the terms of sale stipulated therein.

The essential question then is what amount must the buyer pay to the seller in terms of the transaction. Where for example, there are two components in the amount paid to the seller, one for goods and the other for perhaps inland freight, as part of the one transaction both form part of the customs value.

Analysis of Present Canadian Customs Valuation Methods

Value for Duty

The combined effect of sections 36(1) and 41(1) of the Act is that the value for duty of goods imported into Canada is the greater of two amounts, namely, (a) the fair market value of the goods and (b) the Canadian selling price of the goods, all as discussed below. (see exhibit 39: sections 36(1) and 41(1) of the Act).

Fair Market Value

Subject to certain principles which are discussed in part below section 36(1) of the Act provides that for value for duty purposes the fair market value of goods imported into Canada is the fair market value, at the time when and place from which the imported goods were shipped directly to Canada, of like goods when sold:

- (a) to purchasers located at that place with whom the vendor deals at arm's length (i.e. purchasers who are independent of the vendor) and who are at the same or substantially the same trade level as the importer; and
- (b) in the same or substantially the same quantities for home consumption in the ordinary course of trade under competitive conditions.

The Act, Departmental Memoranda and case law have established certain principles which are relevant to the

application of the fair market value formula discussed above. These principles include the principles set out below all of which are relevant for the purposes of our comments.

- (i) Departmental Memorandum D 34-62 provides that if the value for duty of imported goods cannot be determined under the provisions of the Act by reason of the fact that like or similar goods are not sold by the vendor in the country of export, the value for duty of the goods is determined, unless otherwise prescribed, on the basis of sales of like or similar goods in the country of export by other vendors located in the country of export (see exhibit 40).
- (ii) Departmental Memorandum D46-24 provides that for Canadian customs valuation purposes the time of direct shipment, for goods carried by an independent transportation company, is that time when the goods commence their continuous journey to Canada which is normally marked on the bill of lading (see exhibit 41: paragraph 4).
- (iii) If there were no sales at the time when the goods were shipped to Canada, one considers the most recent sales prior

to the time of shipment that fairly reflect the market value of the goods at the time of shipment (see exhibit 39: section 36(2) (a) of the Act).

- (iv) Departmental Memorandum D 46-24 provides that for Canadian customs valuation purposes the place of direct shipment to Canada is that place where the goods begin their continuous journey to Canada. With respect to goods carried by an independent carrier, the place of direct shipment to Canada is the place where the goods are entrusted in the care of a transportation firm or forwarding agent who accepts responsibility for delivering the goods to a specified point in Canada or to an intermediate point from which the goods will be shipped to Canada and where they will remain for no other reason than trans-shipment. Generally the bill of lading is the most significant document for the purposes of determining the place of direct shipment to Canada and will be viewed as substantiating the place of direct shipment to Canada only if it specifies a point in Canada as the ultimate destination (see exhibit 41: paragraph 2).

- (v) If there were no purchasers located at the place from which the goods were shipped to Canada, one considers sales to the purchasers located nearest thereto (see exhibit 3: section 36(2) (b) of the Act).
- (vi) If the quantity of goods shipped to Canada is larger than the largest quantity sold in the country of export for home consumption, one considers such largest quantity. However, if the quantity of goods shipped to Canada is smaller than the smallest quantity sold in the country of export for home consumption, one considers the amount which the Minister prescribes such smaller amount would have been sold in the country of export for home consumption. (see exhibit 39: section 36(2) (e) of the Act).
- (vii) If there are no qualifying sales to purchasers in the country of export who are at the same or substantially the same trade level as the importer, one considers qualifying sales, if any, to purchasers in the country of export who are at the trade level nearest and subsequent to that of the importer (see exhibit 39: section 36(3) of the Act).

- (viii) In determining fair market value no discount or deduction is allowed that is not shown, allowed and deducted on invoices covering sales for home consumption in the country of export, in the ordinary course of trade (see exhibit 39: section 41(4) of the Act). Departmental Memorandum D46-35 provides that collectors of customs and excise are being instructed that the provisions of section 41(4) of the Act are to be strictly enforced in respect of cash discounts (see exhibit 42.)
- (ix) In determining fair market value, one cannot consider a sale by a vendor to a purchaser in the country of export for home consumption, if the vendor did not sell like goods to other persons in the country of export who are independent of the purchaser (see exhibit 39: section 36(2) (d) of the Act).
- (x) In Jim Morrison Ltd. and the Deputy Minister of National Revenue for Customs and Excise and Gordon Hooper Limited, Appeal No. 1106, the Tariff Board held that the fair market value of golf shoes imported into Canada by a Canadian distributor of golf shoes was properly determined on the basis of the

sale price charged by the United States exporter to the sole United States distributor of golf shoes who was located in Hawaii. All other persons who purchased golf shoes from the exporter for home consumption were retailers of golf shoes. The Minister argued that sales of golf shoes to the Hawaiian distributor should be ignored for the purposes of determining the fair market value of the imported golf shoes in that they were insignificant in relation to the exporter's total operations and were not sales in the ordinary course of trade. Sales to the Hawaiian distributor represented less than 3% of the exporter's global sales. The Tariff Board concluded that the circumstances surrounding sales of golf shoes to the Hawaiian distributor were commercially normal and thereby rejected the argument of the Minister (See exhibit 43).

- (xi) In Semet-Solvay Company Limited and Minister of National Revenue (Customs and Excise) and Kaiser Steel Corporation 1959 EX. C.R. 172 the Exchequer Court of Canada considered the predecessor to section 36(1) of the Act and held the Tariff Board erred in law in

construing the predecessor to section 36(1) of the Act as requiring the Tariff Board to select one of a range of prices for coke as the fair market value of coke imported into Canada. The United States' vendor sold coke to purchasers located in various parts of the United States. All domestic sales were made F.O.B. Detroit and on the same contractual terms. However, the actual sale price for coke depended on the competition prevailing at the point to which the coke was shipped. The Court concluded that, "while the fair market value may well have been the same as one of these prices it was not necessarily one of them but rather that amount which, in the judgment of the Board, most nearly represented the fair market value having regard to the several prices with the volume of sales made at each of them individually and in groups and the varying weight to be attached to each of them as indications of fair market value in view of such volume and any special circumstances or features influencing the vendor to sell or the purchaser to buy at each of such prices." (see Thurlow J., at p. 188). The prices paid in the several sales of coke F.O.B. Detroit for home consump-

tion constituted the best evidence of the fair market value of coke. On the basis of the evidence the Tariff Board could have selected one price within the range as the fair market value of coke. However, as indicated above, the Tariff Board erred in concluding that it had no course but to adopt one of the prices as the fair market value of the coke. In the result the Court referred the matter to the Tariff Board for re-hearing (see exhibit 44).

It is important to note that the provisions of section 36(1) of the Act are not identical to the provisions of its predecessor. In particular the predecessor to section 36(1) of the Act did not require that fair market value be determined on the basis of domestic sales to purchasers located at the place from which the goods were shipped directly to Canada (see exhibit 45).

- (xii) If the vendor sells goods in the country of export for home consumption at a common delivered price freight may not be deducted from the domestic invoice price in calculating the fair market

value of the goods for Canadian customs purposes (see exhibit 46).

Canadian Selling Price

Section 41(1) of the Act provides that the Canadian selling price is the amount for which the goods were sold to the purchaser in Canada exclusive of all charges thereon after their shipment from the country of export.

Departmental Memorandum D46-24 provides that certain charges such as inland freight and insurance, handling and haulage which are declared on the Canadian customs invoice as export charges will be dutiable as part of the Canadian selling price provided they are incurred on the goods prior to the time and place of direct shipment to Canada (as discussed on pages 30 and 31) and further provided they are invoiced to the purchaser in Canada by the vendor of the goods (see exhibit 41: paragraphs 2, 3, 4 and 5).

Like the determination of fair market value, in determining the Canadian selling price no discount or deduction is permitted that is not shown, allowed and deducted on invoices covering sales for home consumption in the country of export, in the ordinary course of trade (see exhibit 39: section 41(1) of the Act).

Draft Legislation to Implement the 1985 Canadian Customs Valuation System

**REVISED DRAFT AMENDMENTS TO
THE CUSTOMS ACT: VALUE FOR DUTY**

**ÉBAUCHE RÉVISÉE DE LA LOI MODI-
FIANT LA LOI SUR LES DOUANES**

**Proposed legislation to imple-
ment the International Agree-
ment on Customs Valuation**

**Propositions législatives pour la
mise en œuvre de l'accord inter-
national sur la valeur en douane**

December 1981

Décembre 1981



**Department of Finance
Canada**

**Ministère des Finances
Canada**

Proposed Amendments to the *Customs Act*
Respecting the Valuation for Duty of
Imported Goods

Avant-projet sur les modifications à apporter
à la *Loi sur les douanes* au sujet de
l'évaluation en douane des marchandises
importées

1. Sections 35 to 44 of the *Customs Act*
are repealed and the following substituted
therefor:

1. Les articles 35 à 44 de la *Loi sur les
douanes* sont abrogés et remplacés par ce qui
suit :

Determination
of value for
duty

“35. (1) The value for duty of imported
goods shall be determined in accordance
with sections 36 to 44.1. 5

«35. (1) La valeur en douane des mar-
chandises importées est déterminée confor- 5
mément aux articles 36 à 44.1. Détermination
de la valeur en
douane

Definitions

(2) In this section and sections 36 to
44.1,

(2) Les définitions qui suivent s'appli- 10
quent au présent article et aux articles 36
à 44.1. Définitions

“computed
value”
«valeur
restituée»

“computed value” means, in respect of
goods, the value of the goods determined 10
in accordance with section 41;

«importer» Importer au Canada. 10 «importer»
“import”

“country of
export”
«pays
d'exportation»

“country of export” means, in respect of
goods, the country from which the goods
are shipped directly to Canada;

«marchandises de même nature ou de
même espèce» En matière d'évaluation
de marchandises importées, celles qui :
a) d'une part sont classées dans un
groupe ou une gamme de marchandi- 15
ses importées produites par une bran-
che de production particulière ou un
secteur particulier d'une branche de
production qui comprend des mar-
chandises identiques et semblables 20
aux marchandises à évaluer;

“deductive
value”
«valeur de
référence»

“deductive value” means, in respect of 15
goods, the value of the goods determined
in accordance with subsection 40(2);

b) d'autre part, en cas d'application :
(i) de l'article 40, ont été produites
dans n'importe quel pays et export- 25
ées de n'importe quel pays, 25
(ii) de l'article 41, ont été produites
dans le même pays que les mar-
chandises à évaluer et exportées du
pays de production et d'exportation
de celles-ci. 30

“goods of the
same class or
kind”
«marchandises
de même
nature...»

“goods of the same class or kind”, in rela-
tion to goods being appraised, means
imported goods that 20

«marchandises identiques» En matière
d'évaluation de marchandises, les mar-
chandises importées qui concurremment :
a) sont les mêmes à tous égards que
les marchandises à évaluer, notam- 35
ment quant aux caractéristiques phy-
siques, à la qualité et à la réputation,
abstraction faite des différences
mineures d'aspect qui n'affectent pas
leur valeur, 40
b) ont été produites dans le même
pays que les marchandises à évaluer,
c) ont été produites par ou pour le
producteur des marchandises à éva-

(a) are within a group or range of
imported goods produced by a par-
ticular industry or industry sector
that includes identical goods and
similar goods in relation to the goods 25
being appraised, and

(b) for the purposes of
(i) section 40, were produced in any
country and exported from any
country, and 30

(ii) section 41, were produced in
and exported from the same coun-
try as the country in and from
which the goods being appraised
were produced and exported; 35

“identical
goods”
«marchandises
identiques»

“identical goods”, in relation to goods
being appraised, means imported goods
that

(a) are the same in all respects,
including physical characteristics, 40
quality and reputation, as the goods
being appraised, except for minor dif-
ferences in appearance that do not
affect the value of the goods,

(b) were produced in the same country as the country in which the goods being appraised were produced, and (c) were produced by or on behalf of the person by or on behalf of whom the goods being appraised were produced,

but does not include imported goods where engineering, development work, art work, design work, plans or sketches undertaken in Canada were supplied, directly or indirectly, by the purchaser of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

"import" means import into Canada;

"person" includes any corporation wherever and however incorporated, a partnership and an association;

"prescribed" means prescribed by regulation of the Governor in Council;

"price paid or payable", in respect of the sale of goods for export to Canada, means the aggregate of all payments made or to be made, directly or indirectly, in respect of the goods by the purchaser to or for the benefit of the vendor;

"produce" includes grow, manufacture and mine;

"similar goods", in relation to goods being appraised, means imported goods that

- (a) closely resemble the goods being appraised in respect of their component materials and characteristics,
- (b) are capable of performing the same functions as, and of being commercially interchangeable with, the goods being appraised,
- (c) were produced in the same country as the country in which the goods being appraised were produced, and
- (d) were produced by or on behalf of the person by or on behalf of whom the goods being appraised were produced,

luer ou la personne pour qui ces dernières ont été produites,

à l'exclusion des marchandises importées qui incorporent ou comportent des travaux d'ingénierie, d'étude, d'art, d'esthétique industrielle, plans ou croquis exécutés au Canada et fournis, directement ou indirectement, sans frais ou à un coût réduit, par l'acheteur des marchandises en vue de leur production et de leur vente à l'exportation.

«marchandises semblables» En matière d'évaluation de marchandises, les marchandises importées qui concurremment :

- a) ressemblent beaucoup, quant à leurs matières et composants et à leurs caractéristiques, aux marchandises à évaluer,
- b) sont en mesure d'accomplir les mêmes fonctions que les marchandises à évaluer et leur sont commercialement interchangeables,
- c) ont été produites dans le même pays que les marchandises à évaluer,
- d) ont été produites par ou pour le producteur des marchandises à évaluer ou la personne pour qui ces dernières ont été produites,

à l'exclusion des marchandises importées qui incorporent ou comportent des travaux d'ingénierie, d'étude, d'art, d'esthétique industrielle, plans ou croquis exécutés au Canada et fournis, directement ou indirectement, sans frais ou à un coût réduit, par l'acheteur des marchandises en vue de leur production et de leur vente à l'exportation.

«pays d'exportation» En matière de marchandises, le pays d'où elles sont expédiées directement au Canada.

«personne» S'entend également des sociétés, quel qu'en soit le lieu ou le mode de constitution, des sociétés de personnes et des associations.

«prescrit» ou «réglementaire» Établi par règlement pris par le gouverneur en conseil.

«prix payé ou à payer» En cas de vente de marchandises pour l'exportation au

«marchandises semblables» "similar..."

«pays d'exportation» "country of..."

«personne» "person"

«prescrit» ou «réglementaire» "prescribed"

«prix payé ou à payer» "price paid or..."

"import" «importer»

"person" «personne»

"prescribed" «prescrit»

"price paid or payable" «prix payé ou...»

"produce" «produire»

"similar goods" «marchandises semblables»

but does not include imported goods where engineering, development work, art work, design work, plans or sketches undertaken in Canada were supplied, directly or indirectly, by the purchaser of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

"sufficient information" «renseignements...»

"sufficient information", in respect of the determination of any amount, difference or adjustment, means objective and quantifiable information that establishes the accuracy of the amount, difference or adjustment;

"transaction value" «valeur transactionnelle»

"transaction value" in respect of goods, means the value of the goods determined in accordance with subsection 37(4).

Goods deemed to be identical goods or similar goods

(3) For the purposes of this section and sections 36 to 44.1, where there are no identical goods or similar goods, as the case may be, in relation to goods being appraised but there are goods that would be identical goods or similar goods, as the case may be, if they were produced by or on behalf of the person by or on behalf of whom the goods being appraised were produced, those goods shall be deemed to be identical goods or similar goods, as the case may be.

Related persons

(4) For the purposes of sections 36 to 44.1, persons are related to each other if

- (a) they are individuals connected by blood relationship, marriage or adoption within the meaning of subsection 251(6) of the *Income Tax Act*;
- (b) one is an officer or director of the other;
- (c) each such person is an officer or director of the same two corporations, associations, partnerships or other organizations;
- (d) they are partners;
- (e) one is the employer of the other;

Canada, la somme de tous les versements effectués ou à effectuer par l'acheteur directement ou indirectement au vendeur ou à son profit, en paiement des marchandises.

«produire» A, entre autres, le sens de cultiver, fabriquer et extraire.

«renseignements suffisants» Renseignements objectifs et quantifiables permettant, quand il s'agit de déterminer un montant, une différence ou un ajustement, de les chiffrer avec exactitude.

«valeur reconstituée» En matière de marchandises, la valeur de celles-ci déterminée conformément à l'article 41.

«valeur de référence» En matière de marchandises, la valeur de celles-ci déterminée conformément au paragraphe 40(2).

«valeur transactionnelle» En matière de marchandises, la valeur de celles-ci déterminée conformément au paragraphe 37(4).

«produire» "produce"

«renseignements suffisants» "sufficient..."

«valeur reconstituées» "computed..."

«valeur de référence» "deductive..."

«valeur transactionnelle» "transaction..."

(3) Pour l'application du présent article et des articles 36 à 44.1, à défaut de marchandises identiques ou semblables, selon le cas, aux marchandises à évaluer, sont considérées comme semblables ou identiques les marchandises qui l'auraient effectivement été si elles avaient été produites par ou pour le producteur des marchandises à évaluer.

Assimilation à des marchandises identiques ou semblables

(4) Pour l'application des articles 36 à 44.1, sont liées entre elles les personnes suivantes :

Personnes liées

- a) les personnes physiques liées par les liens du sang, du mariage ou de l'adoption au sens du paragraphe 251(6) de la *Loi de l'impôt sur le revenu*;
- b) le dirigeant ou l'administrateur et celui qui est dirigé ou administré;
- c) les dirigeants ou administrateurs communs de deux sociétés, associations, sociétés de personnes ou autres organisations;
- d) les associés;

- (f) they directly or indirectly control or are controlled by the same person;
- (g) one directly or indirectly controls or is controlled by the other;
- (h) any other person directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of each such person; or
- (i) one directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of the other.

- e) l'employeur et son employé;
- f) les personnes qui, directement ou indirectement, contrôlent la même personne ou sont contrôlées par la même personne;
- g) deux personnes dont l'une contrôle l'autre directement ou indirectement;
- h) plusieurs personnes dont une même personne en possède, détient ou contrôle directement ou indirectement au moins 10 cinq pour cent des actions ou parts émises et assorties du droit de vote;
- i) la personne qui possède, détient ou contrôle directement ou indirectement au moins cinq pour cent des actions ou parts émises et assorties du droit de vote d'une autre personne.

Primary basis of appraisal

36. (1) The value for duty of goods shall be appraised on the basis of the transaction value of the goods in accordance with the conditions set out in section 37.

36. (1) La valeur en douane des marchandises est déterminée sur la base de leur valeur transactionnelle lorsqu'elle répond aux exigences visées à l'article 37.

Base principale de l'évaluation

Subsidiary bases of appraisal

(2) Where the value for duty of goods is not appraised in accordance with subsection (1), it shall be appraised on the basis of the first of the following values, considered in the order set out herein, that can be determined in respect of the goods and that can, under sections 38 to 41, be the basis on which the value for duty of the goods is appraised:

(2) Lorsque la valeur en douane des marchandises n'est pas déterminée par application du paragraphe (1), elle est déterminée en utilisant les valeurs ci-après qui peuvent constituer la base de l'évaluation par l'application des articles 38 à 41, prises dans l'ordre où elles s'appliquent :

Bases secondaires de l'évaluation

- (a) the transaction value of identical goods that meets the requirements set out in section 38;
- (b) the transaction value of similar goods that meets the requirements set out in section 39;
- (c) the deductive value of the goods; and
- (d) the computed value of the goods.

- a) la valeur transactionnelle de marchandises identiques répondant aux exigences visées à l'article 38;
- b) la valeur transactionnelle de marchandises semblables répondant aux exigences visées à l'article 39;
- c) la valeur de référence des marchandises;
- d) la valeur reconstituée des marchandises.

Request of Importer

(3) Notwithstanding subsection (2), on the written request of the importer of any goods being appraised made prior to the commencement of the appraisal of those goods, the order of consideration of the values referred to in paragraphs (2)(c) and (d) shall be reversed.

(3) Nonobstant le paragraphe (2), à la demande écrite de l'importateur des marchandises à évaluer présentée avant le début de l'évaluation, l'ordre d'applicabilité des valeurs visées aux alinéas (2)c) et d) est inversé.

Demande de l'importateur

1980-81-82

*Détermination de la valeur en douane*Residual basis
of appraisal

(4) Where the value for duty of goods is not appraised on the basis of any of the values referred to in paragraphs (2)(a) to (d), the value for duty of those goods shall be appraised under section 42.

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Transaction
value as
primary basis of
appraisal

37. (1) Subject to subsection (6), the value for duty of goods is the transaction value of the goods if the goods are sold for export to Canada and the price paid or payable for the goods can be determined and if

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(a) there are no restrictions respecting the disposition or use of the goods by the purchaser thereof, other than restrictions that

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- (i) are imposed by law,
- (ii) limit the geographical area in which the goods may be resold, or
- (iii) do not substantially affect the value of the goods;

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(b) the sale of the goods by the vendor to the purchaser or the price paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be determined;

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(c) where any part of the proceeds of any subsequent resale, disposal or use of the goods by the purchaser thereof is to accrue, directly or indirectly, to the vendor, the price paid or payable for the goods includes the value of that part of the proceeds or such price is adjusted in accordance with subparagraph (5)(a)(v); and

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(d) the purchaser and the vendor of the goods are not related to each other at the time the goods are sold for export or, where the purchaser and the vendor are related to each other at that time,

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- (i) their relationship did not influence the price paid or payable for the goods, or
- (ii) the importer of the goods demonstrates that the transaction value of the goods meets the requirement set out in subsection (3).

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Procedure in
application of
paragraph
(1)(d)

(2) In the application of paragraph (1)(d), where the purchaser and the vendor of goods being appraised are relat-

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Dernière base
de l'évaluation

(4) En cas d'inapplicabilité des alinéas (2)a) à d), la valeur en douane des marchandises est déterminée par l'application de l'article 42.

5 Valeur
transactionnell
servant de base
principale
d'évaluation

37. (1) Sous réserve du paragraphe (6), la valeur en douane des marchandises est leur valeur transactionnelle si elles sont vendues pour l'exportation au Canada et le prix payé ou à payer est déterminable et si les conditions suivantes sont réunies :

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a) il n'existe pas de restriction concernant la cession ou l'utilisation des marchandises par l'acheteur, autre qu'une restriction qui :

- (i) soit est imposée par la loi,
- (ii) soit limite la zone géographique dans laquelle les marchandises peuvent être revendues,
- (iii) soit n'affecte pas substantiellement la valeur des marchandises;

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b) la vente des marchandises à l'acheteur ou le prix payé ou à payer pour celles-ci n'est pas subordonné à des conditions ou à des prestations dont la valeur n'est pas déterminable;

25

c) aucune partie du produit de toute revente, disposition ou utilisation ultérieure des marchandises par l'acheteur ne revient directement ou indirectement au vendeur, sauf s'il a été tenu compte de cette ristourne dans le prix payé ou à payer ou si ce prix est ajusté conformément au sous-alinéa (5)a)(v);

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d) l'acheteur et le vendeur ne sont pas liés au moment de la vente des marchandises pour l'exportation ou, s'ils le sont,

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- (i) soit que le lien qui les unit n'a pas influencé le prix payé ou à payer,
- (ii) soit que l'importateur démontre que la valeur transactionnelle des marchandises à évaluer répond aux exigences visées au paragraphe (3).

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Procédure
relative à
l'application
l'alinéa (1)d)

(2) En application de l'alinéa (1)d), lorsque l'acheteur et le vendeur des marchandises à évaluer sont liés au moment de

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ed to each other at the time the goods are sold for export and the officer who is appraising the value for duty of the goods has grounds to believe that the requirement set out in subparagraph (1)(d)(i) is not met, the officer shall notify the importer of the goods of such grounds and, on the written request of the importer, the notification shall be in writing.

Requirement for accepting transaction value where purchaser and vendor related

(3) For the purposes of subparagraph (1)(d)(ii), the transaction value of goods being appraised shall, taking into consideration any relevant factors including, without limiting the generality of the foregoing, such factors and differences as may be prescribed, closely approximate one of the following values that is in respect of identical goods or similar goods exported at the same or substantially the same time as the goods being appraised and is the value for duty of the goods to which it relates:

- (a) the transaction value of identical goods or similar goods in a sale of those goods for export to Canada between a vendor and purchaser who are not related to each other at the time of the sale;
- (b) the deductive value of identical goods or similar goods; or
- (c) the computed value of identical goods or similar goods.

Determination of transaction value

(4) The transaction value of goods shall be determined by ascertaining the price paid or payable for the goods when the goods are sold for export to Canada and adjusting the price paid or payable in accordance with subsection (5).

Adjustment of price paid or payable

(5) The price paid or payable in the sale of goods for export to Canada shall be adjusted

- (a) by adding thereto amounts, to the extent that each such amount is not already included in the price paid or payable for the goods, equal to
 - (i) commissions and brokerage in respect of the goods incurred by the purchaser thereof, other than fees paid or payable by the purchaser to his agent for the service of representing him abroad in respect of the sale,

la vente des marchandises pour l'exportation, le fonctionnaire qui évalue la valeur en douane des marchandises, ayant des motifs de croire qu'il n'est pas satisfait aux exigences visées au sous-alinéa (1)d)(i), doit aviser l'importateur des marchandises de ces motifs et sur demande par écrit de celui-ci, il doit l'aviser par écrit.

(3) Pour l'application du sous-alinéa (1)d)(ii), la valeur transactionnelle des marchandises à évaluer doit, compte tenu des facteurs pertinents, notamment des facteurs et différences réglementaires, être très proche de l'une des valeurs ci-après prise comme valeur en douane d'autres marchandises identiques ou semblables qui ont été exportées au même moment ou à peu près au même moment que les marchandises à évaluer :

- a) la valeur transactionnelle de marchandises identiques ou semblables vendues pour l'exportation au Canada par un vendeur à un acheteur avec qui il n'est pas lié au moment de la vente;
- b) la valeur de référence de marchandises identiques ou semblables;
- c) la valeur reconstituée de marchandises identiques ou semblables.

Caractère acceptable de la valeur transactionnelle dans le cas où le vendeur et l'acheteur sont des personnes liées

(4) Dans le cas d'une vente de marchandises pour l'exportation au Canada, la valeur transactionnelle est le prix payé ou à payer, ajusté conformément au paragraphe (5).

Détermination de la valeur transactionnelle

(5) Dans le cas d'une vente de marchandises pour l'exportation au Canada, le prix payé ou à payer est ajusté

Ajustement du prix payé ou à payer

- a) en y ajoutant, dans la mesure où ils n'y ont pas déjà été inclus, les montants représentant :

- (i) les commissions et les frais de courtage relatifs aux marchandises et supportés par l'acheteur, à l'exclusion des honoraires versés ou à verser par celui-ci à son mandataire à l'étranger à l'occasion de la vente,

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(ii) the packing costs and charges incurred by the purchaser in respect of the goods, including the cost of cartons, cases and other containers and coverings that are treated for customs purposes as being part of the imported goods and all expenses of packing incident to placing the goods in the condition in which they are shipped to Canada, 5 10

(iii) the value of any of the following goods and services, determined in the manner prescribed, that are supplied, directly or indirectly, by the purchaser of the goods free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, apportioned to the imported goods in a reasonable manner and in accordance with generally accepted accounting principles: 15 20

(A) materials, components, parts and other goods incorporated in the imported goods, 25

(B) tools, dies, moulds and other goods utilized in the production of the imported goods,

(C) any materials consumed in the production of the imported goods, 30 and

(D) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Canada and necessary for the production of the imported goods, 35

(iv) royalties and licence fees, including payments for patents, trademarks and copyrights, in respect of the goods that the purchaser of the goods must pay, directly or indirectly, as a condition of the sale of the goods for export to Canada, exclusive of charges for the right to reproduce the goods in Canada, 40 45

(v) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods by the purchaser thereof that accrues or is to accrue, directly or indirectly, to the vendor, and 50

(ii) les coûts et frais d'emballage relatifs aux marchandises et supportés par l'acheteur, y compris le prix des cartons, caisses et autres emballages considérés à des fins douanières comme faisant partie intégrante des marchandises importées, et les frais accessoires de conditionnement de celles-ci en vue de leur expédition au Canada, 5 10

(iii) la valeur, déterminée de façon réglementaire et imputée d'une manière raisonnable et conforme aux principes de comptabilité généralement acceptés aux marchandises importées, des marchandises et services ci-après, fournis directement ou indirectement par l'acheteur des marchandises, sans frais ou à coût réduit, et utilisés lors de la production et de la vente pour l'exportation des marchandises importées : 15 20

(A) matières, composants, pièces et autres marchandises incorporés dans les marchandises importées, 25

(B) outils, matrices, moules et autres marchandises utilisés pour la production des marchandises importées,

(C) matières consommées dans la production des marchandises importées,

(D) travaux d'ingénierie, d'étude, d'art, d'esthétique industrielle, plans et croquis exécutés à l'extérieur du Canada et nécessaires pour la production des marchandises importées, 35

(iv) les redevances et les droits de licence relatifs aux marchandises, y compris les paiements afférents aux brevets d'invention, marques de commerce et droits d'auteur, que l'acheteur est tenu d'acquitter directement ou indirectement en tant que condition de la vente des marchandises pour l'exportation au Canada, à l'exclusion des frais afférents au droit de reproduction de ces marchandises au Canada, 40 45 50

(v) la valeur de toute partie du produit de toute revente, disposition ou

(vi) the cost of transportation of, the loading, unloading and handling charges and other charges and expenses associated with the transportation of, and the cost of insurance relating to the transportation of, the goods to the place within the country of export from which the goods are shipped directly to Canada;

(b) by deducting therefrom amounts, to the extent that each such amount is included in the price paid or payable for the goods, equal to

(i) the cost of transportation of, the loading, unloading and handling charges and other charges and expenses associated with the transportation of, and the cost of insurance relating to the transportation of, the goods from the place within the country of export from which the goods are shipped directly to Canada, and

(ii) any of the following costs, charges or expenses if the cost, charge or expense is identified separately from the balance of the price paid or payable for the goods:

(A) any reasonable cost, charge or expense that is incurred for the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after the goods are imported, and

(B) any duties and taxes paid or payable by reason of the importation of the goods or sale of the goods in Canada, including, without limiting the generality of the foregoing, any duties or taxes levied on the goods under the *Customs Tariff*, the *Excise Tax Act*, the *Excise Act*, the *Anti-Dumping Act* or any other law relating to customs; and

(c) by disregarding any rebate of, or other decrease in, the price paid or payable for the goods that is effected after the goods are imported.

(6) Where there is not sufficient information to determine any of the amounts

utilisation ultérieure par l'acheteur des marchandises, qui revient ou doit revenir, directement ou indirectement, au vendeur,

(vi) les coûts de transport des marchandises jusqu'à l'endroit situé dans le pays d'exportation d'où elles sont expédiées directement au Canada, les frais de chargement, de déchargement, de manutention et autres frais connexes à ce transport ainsi que les coûts d'assurance relatifs à ce transport;

b) en en retranchant, dans la mesure où ils ont été inclus, les montants représentant :

(i) les coûts de transport des marchandises depuis l'endroit situé dans le pays d'exportation d'où elles sont expédiées directement au Canada, les frais de chargement, de déchargement, de manutention et autres frais connexes à ce transport ainsi que les coûts d'assurance relatifs à ce transport,

(ii) les frais suivants lorsqu'ils sont identifiés comme constituant un élément à part du prix payé ou à payer :

(A) les coûts et frais raisonnables de construction, d'installation, d'assemblage ou d'entretien des marchandises après leur importation, ou des services d'assistance technique dont elles font l'objet après leur importation,

(B) les droits et taxes payés ou à payer en raison de l'importation ou de la vente des marchandises au Canada et, notamment, les droits ou taxes perçus sur ces marchandises en vertu du *Tarif des douanes*, de la *Loi sur la taxe d'accise*, de la *Loi sur l'accise*, de la *Loi antidumping* ou de toute autre Loi concernant les douanes;

c) en ne tenant aucun compte de toute remise ou réduction du prix payé ou à payer effectuée après l'importation des marchandises.

(6) En l'absence de renseignements suffisants pour déterminer les montants qui

Effect of absence of sufficient information

Effet de l'absence de renseignements suffisants

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Détermination de la valeur en douane

required to be added to the price paid or payable, in respect of any goods being appraised, the value for duty of the goods shall not be appraised under this section.

doivent être ajoutés au prix payé ou à payer pour les marchandises à évaluer, la valeur en douane des marchandises ne doit pas être déterminée en application du présent article.

Transaction value of identical goods as value for duty

38. (1) Subject to subsections (2) to (5), where the value for duty of goods is not appraised under section 37, the value for duty of the goods is, if it can be determined, the transaction value of identical goods, in a sale of those goods for export to Canada, if that transaction value is the value for duty of the identical goods and the identical goods were exported at the same or substantially the same time as the goods being appraised and were sold under the following conditions:

- (a) to a purchaser at the same or substantially the same trade level as the purchaser of the goods being appraised; and
- (b) in the same or substantially the same quantities as the goods being appraised.

Where identical goods sold under different conditions

(2) Where the value for duty of goods being appraised cannot be determined under subsection (1) because identical goods were not sold under the conditions described in paragraphs (1)(a) and (b), there shall be substituted therefor, in the application of subsection (1), identical goods sold under any of the following conditions:

- (a) to a purchaser at the same or substantially the same trade level as the purchaser of the goods being appraised but in quantities different from the quantities in which those goods were sold;
- (b) to a purchaser at a trade level different from that of the purchaser of the goods being appraised but in the same or substantially the same quantities as the quantities in which those goods were sold; or
- (c) to a purchaser at a trade level different from that of the purchaser of the goods being appraised and in quantities

38. (1) Sous réserve des paragraphes (2) à (5), la valeur en douane des marchandises, dans les cas où elle n'est pas déterminée par application de l'article 37, est, si elle est déterminable, la valeur transactionnelle de marchandises identiques vendues pour l'exportation au Canada, et exportées au même moment ou à peu près au même moment que les marchandises à évaluer, pourvu que cette valeur transactionnelle soit la valeur en douane des marchandises identiques et que la vente de celles-ci et la vente des marchandises à évaluer, concurremment :

- a) soient réalisées approximativement au même niveau commercial;
- b) portent sur une quantité égale ou sensiblement égale.

(2) En l'absence d'une vente de marchandises identiques répondant aux conditions fixées aux alinéas (1)a) et b), la valeur en douane des marchandises est, pour l'application du paragraphe (1), déterminée par référence à des marchandises identiques dont la vente est, par rapport à celle des marchandises à évaluer, réalisée :

- a) soit au même niveau commercial ou approximativement au même niveau commercial mais pour une quantité différente;
- b) soit à un niveau commercial différent mais pour une quantité égale ou sensiblement égale;
- c) soit à un niveau commercial différent pour une quantité différente.

5

Fixation de la valeur en douane fondée sur la valeur transactionnelle de marchandises identiques

Cas de marchandises identiques vendues dans des conditions différentes

different from the quantities in which those goods were sold.

Adjustment of transaction value of identical goods

(3) For the purposes of determining the value for duty of goods being appraised under subsection (1), the transaction value of identical goods shall be adjusted by adding thereto or deducting therefrom, as the case may be, amounts to account for

(a) commercially significant differences between the costs, charges and expenses referred to in subparagraph 37(5)(a)(vi) in respect of the identical goods and those costs, charges and expenses in respect of the goods being appraised that are attributable to differences in distances and modes of transport; and

(b) where the transaction value is in respect of identical goods sold under the conditions described in any of paragraphs (2)(a) to (c), differences in the trade levels of the purchasers of the identical goods and the goods being appraised or the quantities in which the identical goods and the goods being appraised were sold or both, as the case may be.

Effect of absence of sufficient information

(4) Where there is not sufficient information to determine any amount referred to in subsection (3) or the adjustment therefor in relation to the transaction value of identical goods, the value for duty of the goods being appraised shall not be appraised on the basis of that transaction value under this section.

Selection of lowest transaction value of identical goods

(5) Where, in relation to goods being appraised, there are two or more transaction values of identical goods that meet all the requirements set out in subsections (1) and (3) or, where there is no such transaction value but there are two or more transaction values of identical goods sold under the conditions described in any of paragraphs (2)(a) to (c) that meet all the requirements set out in this section that are applicable by virtue of subsection (2), the value for duty of the goods being appraised shall be determined on the basis of the lowest such transaction value.

(3) Pour l'application du paragraphe (1), la valeur transactionnelle de marchandises identiques est ajustée en y ajoutant ou en retranchant, selon le cas, les montants représentant, à la fois :

Ajustement de la valeur transactionnelle de marchandises identiques

a) les différences notables du point de vue commercial, découlant de différences dans les distances et les modes de transport, entre les marchandises identiques et les marchandises à évaluer qui concerne les coûts et frais visés à l'alinéa 37(5)a)(vi);

b) les différences entre les marchandises identiques et les marchandises à évaluer découlant, dans les situations visées aux alinéas (2)a) à c), soit du facteur niveau commercial, soit du facteur quantité, soit de l'un et l'autre facteur.

(4) En l'absence de renseignements suffisants pour déterminer les montants visés au paragraphe (3) ou l'ajustement qui en résulte relativement à la valeur transactionnelle des marchandises identiques, la valeur en douane des marchandises à évaluer ne doit pas se fonder sur la valeur transactionnelle par application du présent article.

Effet de l'absence de renseignements suffisants

(5) Lorsqu'il existe, dans l'évaluation des marchandises, plusieurs valeurs transactionnelles afférentes soit à des marchandises identiques qui remplissent les conditions visées aux paragraphes (1) et (3) soit, à défaut, à des marchandises identiques qui remplissent l'une des conditions visées aux alinéas (2)a) à c) en plus des autres exigences prévues par le présent article et applicables en vertu du paragraphe (2), la valeur en douane des marchandises à évaluer se fonde sur la moindre de ces valeurs transactionnelles.

Choix de la moindre valeur transactionnelle de marchandises identiques

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Transaction
value of similar
goods as value
for duty

39. (1) Subject to subsections (2) and 5
38(2) to (5), where the value for duty of
goods is not appraised under section 37 or
38, the value for duty of the goods is, if it
can be determined, the transaction value
of similar goods, in a sale of those goods
for export to Canada, if that transaction
value is the value for duty of the similar
goods and the similar goods were exported
at the same or substantially the same time 10
as the goods being appraised and were sold
under the following conditions:

- (a) to a purchaser at the same or sub-
stantially the same trade level as the
purchaser of the goods being appraised; 15
and
- (b) in the same or substantially the
same quantities as the goods being
appraised.

Application of
section 38

(2) Subsections 38(2) to (5) apply to 20
this section in respect of similar goods and
wherever in those subsections the expres-
sion "identical goods" is referred to, there
shall be substituted therefor the expression
"similar goods". 25

Deductive value
as value for
duty

40. (1) Subject to subsections (5) and
36(3), where the value for duty of goods is
not appraised under sections 37 to 39, the
value for duty of the goods is the deductive
value of the goods if it can be determined. 30

Determination
of deductive
value

(2) The deductive value of goods being
appraised is

- (a) where the goods being appraised,
identical goods or similar goods are sold
in Canada in the condition in which they
were imported at the same or substan-
tially the same time as the time of
importation of the goods being
appraised, the price per unit, determined
in accordance with subsection (3) and 40
adjusted in accordance with subsection
(4), at which the greatest number of
units of the goods being appraised, iden-
tical goods or similar goods are so sold;
- (b) where the goods being appraised, 45
identical goods or similar goods are not

39. (1) Sous réserve des paragraphes
(2) et 38(2) à (5), la valeur en douane des
marchandises importées, dans les cas où
elle n'est pas déterminée par application
de l'article 37 ou 38, est, si elle est déter- 5
minable, la valeur transactionnelle de mar-
chandises semblables vendues pour l'ex-
portation au Canada, et exportées au
même moment ou à peu près au même
moment que les marchandises à évaluer, 10
pourvu que cette valeur transactionnelle
soit la valeur en douane des marchandises
semblables et que la vente de celles-ci et la
vente des marchandises à évaluer, concu-
rremment : 15

- a) soient réalisées au même niveau
commercial ou approximativement au
même niveau commercial;
- b) portent sur une quantité égale ou
sensiblement égale. 20

Valeur en
douane fondée
sur la valeur
transactionnelle
de marchandi-
ses semblablesApplicabilité de
l'article 38

(2) Les paragraphes 38(2) à (5) s'appli-
quent aux situations prévues au présent
article et, en ce qui a trait aux marchandi-
ses semblables, l'expression «marchandises
identiques» figurant à ces paragraphes 25
désigne alors des marchandises sembla-
bles.

Valeur en
douane fondée
sur la valeur de
référence

40. (1) Sous réserve des paragraphes
(5) et 36(3), la valeur en douane des mar-
chandises est, dans les cas où elle n'est pas 30
déterminée par l'application des articles 37
à 39, leur valeur de référence, si elle est
déterminable.

Détermination
de la valeur de
référence

(2) La valeur de référence des marchan-
dises à évaluer est fonction du prix uni- 35
taire, déterminé conformément au para-
graphe (3) et ajusté conformément au
paragraphe (4), de marchandises de réf-
érence choisies selon les modalités suivantes
:

- a) lorsque, à la date de l'importation
des marchandises à évaluer ou approxi-
mativement à cette date, ces marchandi-
ses, des marchandises identiques ou
semblables sont vendues au Canada 45
dans l'état où elles ont été importées, le
prix unitaire de vente de celles-ci au
moment sus-indiqué est retenu;

sold in Canada in the circumstances described in paragraph (a) but are sold in Canada in the condition in which they were imported before the expiration of ninety days after the time of importation of the goods being appraised, the price per unit, determined in accordance with subsection (3) and adjusted in accordance with subsection (4) at which the greatest number of units of the goods being appraised, identical goods or similar goods are so sold at the earliest date after the time of importation of the goods being appraised; or

(c) where the goods being appraised, identical goods or similar goods are not sold in Canada in the circumstances described in paragraph (a) or (b) but the goods being appraised, after being assembled, packaged or further processed in Canada, are sold in Canada before the expiration of one hundred and eighty days after the time of importation thereof and the importer of the goods being appraised requests that this paragraph be applied in the determination of the value for duty of those goods, the price per unit, determined in accordance with subsection (3) and adjusted in accordance with subsection (4), at which the greatest number of units of the goods being appraised are so sold.

Price per unit

(3) For the purposes of subsection (2), the price per unit, in respect of goods being appraised, identical goods or similar goods, shall be determined by ascertaining the unit price, in respect of sales of the goods at the first trade level after importation thereof to persons who

(a) are not related to the persons from whom they buy the goods at the time the goods are sold to them, and

(b) have not supplied, directly or indirectly, free of charge or at a reduced cost for use in connection with the production and sale for export of the goods any of the goods or services referred to in subparagraph 37(5)(a)(iii).

at which the greatest number of units of the goods is sold where, in the opinion of

b) lorsque ces marchandises, des marchandises identiques ou semblables ne sont pas vendues au Canada dans les situations visées à l'alinéa a) mais sont vendues au Canada dans l'état où elles ont été importées dans les quatre-vingt-dix jours de leur importation, le prix unitaire de celles-ci dès leur vente est retenu;

c) lorsque ces marchandises, des marchandises identiques ou semblables ne sont pas vendues au Canada dans les situations visées aux alinéas a) ou b) et que les marchandises à évaluer, après assemblage, emballage ou transformation complémentaire, sont vendues au Canada dans les cent quatre-vingts jours de leur importation, si l'importateur des marchandises à évaluer demande l'application du présent alinéa en vue de déterminer leur valeur en douane, le prix unitaire de vente des marchandises à évaluer est retenu.

Prix unitaire

(3) Pour l'application du paragraphe (2), le prix unitaire des marchandises à évaluer, de marchandises identiques ou de marchandises semblables désigne le prix unitaire auquel ces marchandises sont vendues, au premier niveau commercial après leur importation, à des personnes qui, à trois fois,

a) ne sont pas liées, au moment de la vente, aux vendeurs des marchandises en question,

b) n'ont fourni, directement ou indirectement, sans frais ou à coût réduit, aucun des produits ou services visés au sous-alinéa 37(5)a)(iii) pour être utilisés lors de la production et de la vente à l'exportation des marchandises en question,

the Deputy Minister or any person authorized by him, a sufficient number of such sales have been made to permit a determination of the price per unit of the goods.

lors de ventes qui totalisent le plus grand nombre d'unités de ces marchandises et qui, de l'avis du sous-ministre ou de son délégué, sont suffisamment nombreuses pour permettre la détermination d'un tel 5 prix.

Adjustment of
price per unit

(4) For the purposes of subsection (2), 5 the price per unit, in respect of goods being appraised, identical goods or similar goods, shall be adjusted by deducting therefrom an amount equal to the aggregate of 10

- (a) an amount, determined in the manner prescribed, equal to
- (i) the amount of commission generally earned on a unit basis, or
 - (ii) the amount for profit and general 15 expenses, including all costs of marketing the goods, considered together as a whole, that is generally reflected on a unit basis

in connection with sales in Canada of 20 goods of the same class or kind as those goods;

- (b) the costs, charges and expenses in respect of the transportation and insurance of the goods within Canada and 25 the costs, charges and expenses associated therewith that are generally incurred in connection with sales in Canada of the goods being appraised, identical goods or similar goods, to the extent 30 that an amount for such costs, charges and expenses is not deducted in respect of general expenses under paragraph (a);

- (c) the costs, charges and expenses 35 referred to in subparagraph 37(5)(b)(i), incurred in respect of the goods, to the extent that an amount for such costs, charges and expenses is not deducted in respect of general expenses under para- 40 graph (a);

- (d) any duties and taxes referred to in clause 37(5)(b)(ii)(B) in respect of the goods, to the extent that an amount for such duties and taxes is not deducted in 45 respect of general expenses under paragraph (a); and

Ajustement du
prix unitaire

(4) Pour l'application du paragraphe (2), le prix unitaire qui y est visé est ajusté en en retranchant :

- a) la somme, déterminée de la manière 10 prescrite, représentant :

- (i) soit le montant de la commission normale payée sur une base unitaire,
- (ii) soit le montant pour les bénéfices et frais généraux, considérés comme 15 un tout et comprenant tous les frais de commercialisation, normalement inclus dans le prix unitaire,

afférent à la vente au Canada de marchandises de même nature ou de même 20 espèce que les marchandises en question;

- b) les coûts et frais de transport et d'assurance des marchandises à l'intérieur du Canada, y compris les coûts et frais connexes, généralement supportés lors 25 de la vente au Canada des marchandises à évaluer, des marchandises identiques ou des marchandises semblables, dans la mesure où ils ne sont pas déduits avec les frais généraux visés à l'alinéa a); 30

- c) les coûts et frais supportés afférents aux marchandises en question et visés au sous-alinéa 37(5)b)(i), dans la mesure où ils ne sont pas déduits avec les frais généraux visés à l'alinéa a); 35

- d) les droits et taxes visés à la disposition 37(5)b)(ii)(B), dans la mesure où ils ne sont pas déduits avec les frais généraux visés à l'alinéa a);

- e) dans le cas visé à l'alinéa (2)c), la 40 valeur ajoutée aux marchandises en question par suite de leur assemblage, emballage ou transformation complémentaire au Canada.

(e) where paragraph (2)(c) applies, the amount of the value added to the goods that is attributable to the assembly, packaging or further processing in Canada of the goods. 5

Rejection of deductive value

(5) Where there is not sufficient information to determine an amount referred to in paragraph (4)(e) in respect of any goods being appraised, the value for duty of the goods shall not be appraised under paragraph (2)(c). 10

(5) Si, en l'absence de renseignements suffisants, la valeur visée à l'alinéa (4)e n'est pas déterminable, la valeur en douane des marchandises à évaluer ne doit pas se fonder sur l'alinéa (2)c). 5

Rejet de la valeur de référence

Definition of "time of importation"

(6) In this section, "time of importation" means, in respect of goods, the date on which the collector or other proper officer authorizes, pursuant to this Act, the release of the goods for use in Canada. 15

(6) Dans le présent article, la date de l'importation des marchandises est la date à laquelle le receveur ou un autre fonctionnaire compétent autorise, en application de la présente loi, le dédouanement des marchandises pour utilisation au Canada. 10

Date de l'importation

Computed value as value for duty

41. (1) Subject to subsection 36(3), where the value for duty of goods is not appraised under sections 37 to 40, the value for duty of the goods is the computed value of the goods if it can be determined. 20

41. (1) Sous réserve du paragraphe 36(3), la valeur en douane des marchandises, dans le cas où elle n'est pas déterminée par application des articles 37 à 40, est leur la valeur reconstituée, si elle peut être déterminée. 15

Valeur imposable fondée sur la valeur reconstituée

Determination of computed value

(2) The computed value of goods being appraised is the aggregate of amounts equal to 25

(2) La valeur reconstituée des marchandises à évaluer est la somme des éléments suivants : 20

Détermination de la valeur reconstituée

(a) the costs, charges and expenses incurred in respect of, or the value of,
(i) materials employed in producing the goods being appraised, and
(ii) the production or other processing of the goods being appraised, 30

a) des coûts et frais supportés ou de la valeur :

(i) des matières utilisées dans la production des marchandises à évaluer d'une part, 25
(ii) d'opérations de production, ou autres, des marchandises à évaluer d'autre part,

determined in the manner prescribed, including, without limiting the generality of the foregoing,

déterminés de manière réglementaire et incluant notamment 30

(iii) the costs, charges and expenses referred to in subparagraph 37(5)(a)(ii), 35

(iii) les coûts et frais visés au sous-alinéa 37(5)a(ii),

(iv) the value of any of the goods and services referred to in subparagraph 37(5)(a)(iii), determined and apportioned to the goods being appraised as referred to in that subparagraph, whether or not such goods and services have been supplied free of charge or at a reduced cost, and 45

(iv) la valeur des marchandises et services visés au sous-alinéa 37(5)a(iii) déterminée et imputée aux marchandises à évaluer de la manière visée dans ce sous-alinéa, même lorsqu'ils sont fournis sans frais ou à coût réduit, 35

(v) the costs, charges and expenses incurred by the producer in respect of engineering, development work, art

(v) les coûts et frais, supportés par le producteur, des travaux d'ingénierie, d'étude, d'art, d'esthétique industrielle, de plans ou croquis exécutés 40

| | | | | |
|--|--|----|--|---|
| | work, design work, plans or sketches undertaken in Canada that were supplied, directly or indirectly, by the purchaser of the goods being appraised for use in connection with the production and sale for export of those goods, apportioned to the goods being appraised as referred to in subparagraph 37(5)(a)(iii); and | 5 | au Canada et fournis, directement ou indirectement, par l'acheteur des marchandises en vue de leur production et de leur vente à l'exportation, imputés aux marchandises à évaluer de la manière visée au sous-alinéa 37(5)a)(iii); | 5 |
| | (b) the amount, determined in the manner prescribed, for profit and general expenses considered together as a whole, that is generally reflected in sales for export to Canada of goods of the same class or kind as the goods being appraised made by producers in the country of export. | 10 | b) le montant, déterminé de manière réglementaire, de l'ensemble des bénéfices et frais généraux, généralement portés dans les ventes de marchandises de même nature ou de même espèce que les marchandises à évaluer, effectuées pour l'exportation au Canada par des producteurs qui se trouvent dans le pays d'exportation. | 10 |
| Definition of "general expenses" | (3) For the purposes of this section, "general expenses" means the direct and indirect costs, charges and expenses of producing and selling goods for export, other than the costs, charges and expenses referred to in paragraph (2)(a). | 20 | (3) Pour l'application du présent article, les frais généraux sont les coûts et frais directs et indirects de production et de vente des marchandises pour l'exportation, qui ne sont pas visés à l'alinéa (2)a). | Frais généraux |
| Residual basis of appraisal | 42. Where the value for duty of goods is not appraised under sections 37 to 41, it shall be appraised on the basis of | 25 | 42. Lorsqu'elle n'est pas déterminée conformément aux articles 37 à 41, la valeur en douane des marchandises se fonde sur les deux éléments suivants : | Dernière base de l'évaluation |
| | (a) a value derived from the methods of valuation set out in sections 37 to 41, interpreted in a flexible manner to the extent necessary to arrive at a value of the goods; and | 30 | a) une valeur obtenue en utilisant les méthodes d'évaluation prévues par les articles 37 à 41, appliquées avec suffisamment de souplesse pour permettre de déterminer la valeur en douane; | 25 |
| | (b) information available in Canada. | | b) les données disponibles au Canada. | 30 |
| Goods exported to Canada through another country | 43. (1) For the purposes of sections 35 to 44.1, where goods are exported to Canada from any country but pass in transit through another country, the goods shall, subject to such terms and conditions as may be prescribed, be deemed to be shipped directly to Canada from the first mentioned country. | 40 | 43. (1) Pour l'application des articles 35 à 44.1, lorsque des marchandises provenant d'un pays sont exportées au Canada en passant par un autre pays elles sont considérées, sous réserve de modalités réglementaires, comme ayant été expédiées directement au Canada à partir du premier pays. | 35 Marchandises exportées au Canada en passant par un autre pays |
| Value for duty in Canadian currency | 44. The value for duty of imported goods shall be computed in Canadian currency in accordance with regulations made pursuant to section 13.1 of the <i>Currency and Exchange Act</i> . | 45 | 44. La valeur en douane des marchandises importées est convertie en monnaie canadienne conformément aux règlements pris en application de l'article 13.1 de la <i>Loi sur la monnaie et les changes</i> . | 40 Valeur en douane en monnaie canadienne |
| Regulations | 44.1 The Governor in Council may make regulations prescribing anything | | 44.1 Le gouverneur en conseil peut, par règlement, établir tout ce qui doit l'être pour application des articles 36 à 44. | 45 Règlements |

that is, by sections 36 to 44, to be prescribed.

Informing importer of determination of value

44.2 The importer of any goods, on his written request, shall be informed in writing of the manner in which the value for duty of the goods was determined." 5

44.2 L'importateur de marchandises, s'il en fait la demande par écrit, est renseigné par écrit sur la manière dont la valeur en douane des marchandises a été déterminée.»

Renseignements donnés à l'importateur concernant la détermination de la valeur

5

REGULATIONS RESPECTING THE DETERMINATION OF THE VALUE FOR DUTY OF IMPORTED GOODS

SHORT TITLE

1. These Regulations may be cited as the *Valuation for Duty Regulations*.

Interpretation

2. In these Regulations, "Act" means the *Customs Act*.

Determination of the Value for Duty of Imported Goods

3. For the purposes of subsection 37(3) of the Act, in determining whether the transaction value of goods being appraised closely approximates another value referred to in that subsection, there shall be taken into consideration

(a) the following factors:

- (i) the nature of the goods being appraised,
- (ii) the nature of the industry that produces the goods being appraised, 20
- (iii) the season in which the goods being appraised are imported, and
- (iv) whether a difference in values is commercially significant; and 25

(b) any difference, in respect of the sales being compared, relating to

- (i) the trade levels at which the sales take place,
- (ii) the quantity levels of the sales, 30
- (iii) any of the amounts referred to in subsection 37(5) of the Act, or
- (iv) the costs, charges or expenses incurred by a vendor when he sells to a

RÈGLEMENT SUR LA DETERMINATION DE LA VALEUR EN DOUANE DES MARCHANDISES IMPORTÉES

TITRE ABRÉGÉ

1. *Règlement sur la détermination de la valeur en douane*.

Définition

2. Dans le présent règlement, «Loi» s'entend au sens de la *Loi sur les douanes*.

Détermination de la valeur en douane des marchandises importées

3. Pour l'application du paragraphe 37(3) 10 de la Loi, en vue de déterminer si la valeur transactionnelle des marchandises à évaluer est très proche d'une autre valeur qui y est mentionnée, sont pris en considération, concurrentement : 15

a) les facteurs suivants :

- (i) la nature des marchandises à évaluer,
- (ii) la nature de la branche de production qui produit les marchandises à évaluer, 20
- (iii) la saison pendant laquelle les marchandises à évaluer sont importées,
- (iv) la différence de valeur est ou n'est pas notable au point de vue commercial; 25

b) une différence relevée dans la comparaison des ventes et portant sur un des éléments suivants :

- (i) les niveaux commerciaux auxquels les ventes s'effectuent, 30
- (ii) les quantités vendues,
- (iii) un des montants visés au paragraphe 37(5) de la Loi,

purchaser to whom he is not related that are not incurred when a vendor sells to a purchaser to whom he is related,

if that difference is determined on the basis of sufficient information.

(iv) les coûts et frais supportés par le vendeur dans une vente entre personnes non liées et non supportés par le vendeur dans une vente entre personnes liées,

5 à condition que cette différence soit détermi- 5
minée à partir de renseignements suffi-
sants.

4. For the purposes of subparagraph 37(5)(a)(iii) of the Act, the value of the goods and services referred to in that subparagraph that are supplied directly or indirectly by the purchaser of goods being appraised shall be determined

(a) in the case of materials, components, parts and other goods incorporated in the goods being appraised or any materials consumed in the production of the goods 15
being appraised, by ascertaining

(i) where the goods were acquired by the purchaser from a person who was not related to him at the time the goods were acquired, the cost of acquisition of 20
the goods,

(ii) where the goods were acquired by the purchaser from a person related to him at the time the goods were acquired who did not produce the goods, the cost 25
of acquisition of the goods incurred by the person related to the purchaser, or

(iii) where the goods were produced by the purchaser or a person related to him at the time the goods were produced, the 30
cost of production of the goods,

and by adding thereto

(iv) the cost of transporting the goods to the place of production of the goods being appraised, and 35

(v) the value added to the goods by any repairs or modifications made to the goods after the goods were so acquired or produced;

(b) in the case of tools, dies, moulds and 40
other goods utilized in the production of the goods being appraised, by ascertaining

(i) where the goods were acquired or leased by the purchaser from a person who was not related to him at the time 45
the goods were acquired or leased, the

4. Pour l'application du sous-alinéa 37(5)a(iii) de la Loi, la valeur des marchandises et services qui y sont mentionnés et qui 10
sont fournis directement ou indirectement par l'acheteur de marchandises à évaluer est,

a) dans le cas des matières, composants, pièces et autres marchandises incorporés dans les marchandises à évaluer ou des 15
matières consommées dans la production de ces marchandises, un des éléments suivants :

(i) leur coût d'acquisition, si l'acheteur les a acquis d'une personne avec qui il 20
n'était pas lié à la date de l'acquisition,

(ii) leur coût d'acquisition supporté par la personne liée à l'acheteur, si l'acheteur les a acquis d'une personne avec qui il était lié à la date de l'acquisition et 25
qui ne les a pas produits,

(iii) leur coût de production, s'ils ont été produits par l'acheteur ou par une personne avec qui il était lié au moment de la production. 30

majoré des deux éléments suivants :

(iv) leur coût de transport jusqu'au lieu de production des marchandises à évaluer,

(v) la valeur qui leur a été ajoutée par 35
suite de réparations ou de modifications faites après leur acquisition ou leur production;

b) dans le cas des outils, matrices, moules et autres marchandises utilisés pour la production des marchandises à évaluer, un des éléments suivants :

(i) leur coût d'acquisition ou de location, si l'acheteur les a acquis ou loués d'une personne avec qui il n'était pas lié 45
au moment de l'acquisition ou de la location,

- cost of acquisition or of the lease thereof,
- (ii) where the goods were acquired or leased by the purchaser from a person related to him at the time the goods were acquired or leased who did not produce the goods, the cost of acquisition or of the lease thereof incurred by the person related to the purchaser, or
- (iii) where the goods were produced by the purchaser or a person related to him at the time the goods were produced, the cost of production of the goods,
- and by adding thereto
- (iv) the cost of transporting the goods to the place of production of the goods being appraised, and
- (v) the value added to the goods by any repairs or modifications made to the goods after the goods were so acquired, leased or produced,
- and by deducting therefrom an amount to account for any previous use of the goods made after the goods were so acquired, leased or produced; and
- (c) in the case of engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Canada and necessary for the production of the goods being appraised, by ascertaining
- (i) where the goods or services, other than work, plans and sketches that are available generally to the public, were acquired or leased by the purchaser from a person who was not related to him at the time the goods or services were acquired or leased, the cost of acquisition or of the lease thereof,
- (ii) where the goods or services, other than work, plans and sketches that are available generally to the public, were acquired or leased by the purchaser from a person who was related to him at the time the goods or services were acquired or leased who did not produce the goods or services, the cost of acquisition or of the lease thereof incurred by the person related to the purchaser,
- (ii) leur coût d'acquisition ou de location supporté par la personne liée à l'acheteur, si l'acheteur les a acquis ou loués d'une personne avec qui il était lié au moment de l'acquisition ou de la location et qui ne les a pas produits,
- (iii) leur coût de production, s'ils ont été produits par l'acheteur ou par une personne avec qui il était lié au moment de la production,
- majoré des deux éléments suivants :
- (iv) leur coût de transport jusqu'au lieu de production des marchandises à évaluer,
- (v) la valeur qui leur a été ajoutée par suite de réparations ou de modifications faites après leur acquisition, location ou production,
- et en en déduisant un montant tenant compte de toute utilisation des marchandises postérieure à leur acquisition, location ou production;
- c) dans le cas des travaux d'ingénierie, d'étude, d'art, d'esthétique industrielle, plans et croquis exécutés ailleurs qu'au Canada et nécessaires à la production des marchandises à évaluer, un des éléments suivants :
- (i) leur coût d'acquisition ou de location, s'il s'agit de travaux, plans et croquis autres que ceux qui sont du domaine public, acquis ou loués par l'acheteur d'une personne avec qui il n'était pas lié au moment de l'acquisition ou de la location,
- (ii) leur coût d'acquisition ou de location supporté par la personne liée à l'acheteur, s'il s'agit de travaux, plans et croquis autres que ceux qui sont du domaine public, acquis ou loués par l'acheteur d'une personne avec qui il était lié au moment de l'acquisition ou de la location et qui ne les a pas exécutés,
- (iii) le coût des copies des travaux, plans ou croquis qui sont du domaine public,
- (iv) leur coût de production ou d'exécution, s'il s'agit de marchandises produi-

(iii) where the work, plans or sketches are available generally to the public, the cost to the public of obtaining copies of such work, plans or sketches, or

(iv) where the goods or services were produced by the purchaser or a person related to him at the time the goods or services were produced, the cost of production thereof.

tes ou de services exécutés par l'acheteur ou par une personne avec qui il était lié à la date de la production ou de l'exécution.

5. For the purposes of applying paragraph 40(4)(a) of the Act in respect of the appraisal of imported goods, an amount equal to the amount of commission or the amount for profit and general expenses referred to in that paragraph shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles that is supplied

(a) by or on behalf of the importer of the goods being appraised; or

(b) where information supplied by or on behalf of the importer of the goods being appraised is not sufficient information, from an examination of sales in Canada of the narrowest group or range of goods of the same class or kind as the goods being appraised, including the goods being appraised, from which sufficient information can be obtained.

5. Pour l'application de l'alinéa 40(4)a de la Loi en ce qui concerne l'évaluation des marchandises importées, la somme qui y est mentionnée et qui représente le montant de la commission ou le montant pour les bénéfices et frais généraux est un pourcentage calculé sur la base des renseignements établis d'une manière compatible avec les principes de comptabilité généralement admis

a) soit fournis par l'importateur des marchandises à évaluer ou en son nom;

b) soit tirés de l'examen des ventes au Canada de la plus proche catégorie ou gamme de marchandises de même nature ou de même espèce que les marchandises à évaluer, y compris ces dernières, et sur laquelle des renseignements suffisants peuvent être obtenus, si les renseignements fournis par l'importateur ou pour son compte ne sont pas suffisants.

6. (1) For the purposes of paragraph 41(2)(a) of the Act, the costs, charges and expenses incurred in respect of, or the value of, the materials and processing referred to in that paragraph for goods being appraised shall be determined on the basis of

(a) the commercial accounts of the producer of the goods being appraised, or

(b) other sufficient information relating to the production of the goods being appraised

supplied by or on behalf of the producer of the goods and prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being appraised.

6. (!) Pour l'application de l'alinéa 41(2)a de la Loi, les coûts et frais supportés ou la valeur qui y sont mentionnés et qui représentent les matières et la transformation relativement aux marchandises à évaluer sont déterminés sur la base

a) soit des comptes commerciaux du producteur des marchandises à évaluer,

b) soit d'autres renseignements suffisants sur la production des marchandises à évaluer

fournis par le producteur des marchandises à évaluer ou en son nom et établis d'une manière compatible avec les principes de comptabilité généralement admis dans le pays de production des marchandises à évaluer.

(2) For the purposes of applying paragraph 41(2)(b) of the Act in respect of goods

(2) Pour l'application de l'alinéa 41(2)b de la Loi en ce qui concerne les marchandises

being appraised, the amount for profit and general expenses referred to in that paragraph shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being appraised that is supplied

(a) by or on behalf of the producer of the goods being appraised; or

(b) where information supplied by or on behalf of the producer of the goods being appraised is not sufficient information, from an examination of sales for export to Canada of the narrowest group or range of goods of the same class or kind referred to in paragraph 41(2)(b) of the Act, including the goods being appraised, from which sufficient information can be obtained.

à évaluer, le montant qui y est mentionné et qui est destiné aux bénéfices et frais généraux est un pourcentage calculé sur la base des renseignements établis d'une manière compatible avec les principes de comptabilité généralement admis dans le pays de production des marchandises à évaluer.

a) soit fournis par le producteur des marchandises à évaluer ou en son nom,

b) soit tirés d'un examen des ventes à l'exportation au Canada de la plus proche catégorie ou gamme de marchandises de même nature ou de même espèce visées à l'alinéa 41(2)b) de la Loi, y compris les marchandises à évaluer, sur lesquelles des renseignements suffisants peuvent être obtenus, si les renseignements fournis par le producteur des marchandises à évaluer ou en son nom ne sont pas suffisants.

**Description of the Proposed Customs Valuation System to Become
Effective January 1, 1985**



Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

Value for Duty

VALUATION

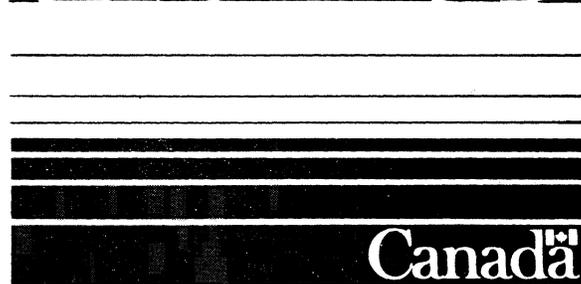
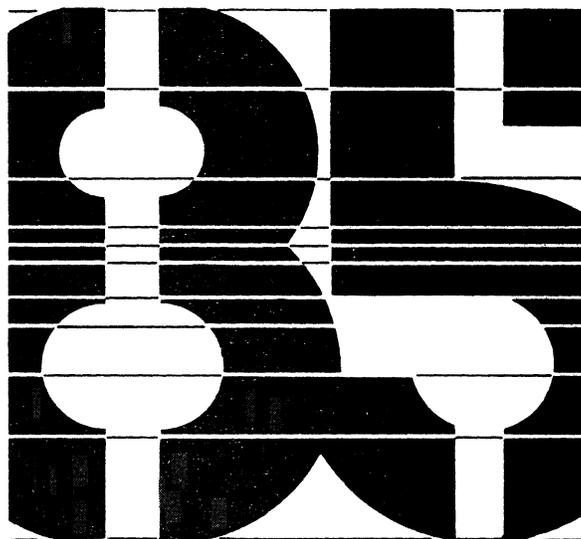


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International Valuation Directorate
Ottawa
November 1983

Foreword

On April 12, 1979, as part of the Tokyo Round of Multilateral Trade Negotiations, Canada indicated its willingness to adopt an international system of Customs valuation concluded under the auspices of the General Agreement on Tariffs and Trade (GATT), by January 1, 1985.

In signing the new International Agreement on Customs Valuation, Canada joined other leading trading nations in applying the provisions of the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade*. This agreement, generally referred to as the Customs Valuation Code, is intended to provide a fair, uniform and neutral system of valuation which conforms to commercial realities and prohibits the use of arbitrary or fictitious Customs values. The system is referred to as the "transaction value system". Under this system, the primary basis for determining the value for duty is the price actually paid or payable for the goods when sold for export to Canada, adjusted as necessary.

NOTE

It is important to note that references to the valuation legislation contained in this Value for Duty booklet pertain to the Revised Draft Amendments to the Customs Act: Value for Duty. (December 1981)

With the approval of Parliament, these proposed amendments will become law. As stated, the anticipated date of implementation for these changes to the valuation system is January 1, 1985.

Introduction

The purpose of this booklet is to provide the Canadian importer and others with an overview of the principles of valuation for duty, as contained in the draft amendments to the Customs Act. As an overview, this narrative is not intended to replace existing legislation or regulations. In cases where more detailed information is required, you are referred to Customs laws, regulations and instructions issued by the Department of National Revenue — Customs and Excise and encouraged to seek departmental assistance.

For further information, please contact any of the Customs offices listed on page 20 of this booklet.

Customs Valuation

Customs valuation is the process of determining the value of importations to which the rates of duty specified in the Customs Tariff are applied.

Key Features in Canada's Proposed Valuation System

Canada's proposed valuation system acknowledges that Customs value should be based on simple and equitable criteria consistent with commercial practices. The system, to be enacted under the authority of Canada's Customs Act, will include several key features.

The Customs Act provides uniform standards for determining the value of imported goods. The proposed legislation sets out, in sequential order, methods to be used for calculating the value for duty of imported goods. The legislation stipulates that the primary basis for Customs value is the "transaction value" which is the price paid or payable, adjusted for certain factors, for goods which are sold for export to Canada. If the transaction value cannot be used as the value for duty, for example where a relationship between the buyer and seller has influenced the price or where the imported goods were not sold, recourse would then be made, in succeeding order, to one of the five alternative valuation methods.

The amendments also provide for adjustments to account for charges payable to third parties as well as certain considerations between buyer and seller that have not been included in the price paid or payable. For example, in determining the "transaction value", the price paid or payable may be adjusted upwards to account for certain charges if paid by the buyer and not already included in the price. Brokerage and commissions, other than buying commissions, the cost of containers (if integral to the product) and packing, royalties and licence fees which must be paid as a condition of sale of the goods, are all considered additions to the price paid or payable for Customs purposes. In other instances, the price paid or payable may be adjusted downwards to deduct other charges, such as

transportation costs from the point of direct shipment, if included in the price paid or payable. These charges would not form part of the value for duty.

Another significant feature relates to the proposed legislative provisions which apply to transactions between related companies. The transaction value in a sale between related companies may be acceptable as the value for duty, provided that the relationship did not influence the price or that the importer is able to demonstrate that the transaction value closely approximates a "test value". For purposes of the legislation, a test value is essentially a value which has been accepted in a previous importation as the value for duty. If, however, the transaction price cannot be used as the value for duty, valuation will be assessed using one of the five alternative methods outlined in the legislation.

Draft Valuation Provisions of the Customs Act

The draft valuation provisions of the Customs Act are contained in Sections 35 through 44.2 of that statute. A very brief synopsis of these sections is included in the appendix of this booklet. For more detailed information, please refer to the draft legislation which is available from your Customs Office.

The Transaction Value Method

The primary method for Customs valuation is the transaction value which bases value for duty on the selling price in the export transaction. The transaction value of imported goods is the price actually paid or payable for the goods, as adjusted, when sold for exportation to Canada.

The price actually paid or payable is the total payment made or to be made by the purchaser to the vendor, even if the payment is made indirectly. An example of an indirect payment would be the settlement by the purchaser, whether in whole or in part, of a debt owed by the vendor.

Limitations on the Use of Transaction Value

The Customs Act provides that the price paid or payable can only be used as the value for duty if the following conditions are met.

- (1) **There are no restrictions on the use or disposition of the goods by the buyer.**

Generally, if a seller imposes any restrictions on a buyer's disposition or use of the imported goods, the transaction value cannot be used. However, the legislation does allow certain exceptions to this rule. Restrictions which may be allowed are:

- (a) those imposed or required by law,
- (b) those limiting the geographical area in which the goods may be resold, and
- (c) those not substantially affecting the value of the goods.

An example of the last restriction would be when a vendor stipulates that a buyer of new-model cars cannot sell or exhibit the cars prior to the start of the new sales year.

- (2) **The sale is not subject to a condition or consideration for which a value cannot be determined.**

This would apply in situations where the sale for export of one article is tied to other sales. As an illustration of how a condition may affect the use of transaction value, an exporter may arrange with an importer to sell certain goods at a specified price on the condition that the importer supply other goods to the exporter at a fixed price.

- (3) **No part of the proceeds of any subsequent resale, use or disposition of the goods accrues to the vendor unless an adjustment can be made to the price paid or payable to account for the value of such proceeds.**

If any part of the proceeds of any subsequent resale, disposal or use of the imported goods accrues directly or indirectly to the vendor, the value of the proceeds must be ascertained and added to the price paid or payable in arriving at the value for duty of the goods.

- (4) **The buyer and seller are not related or, if related, the relationship did not influence the price.**

The transaction value may be acceptable as the value for duty provided that (a) the relationship did not influence the price or (b) the transaction value closely approximates a "test value" as provided for in the proposed amendments to the Customs Act.

In the first instance, if it is decided that a transaction between related parties warrants further investigation, additional information may be requested from the importer to review the circumstances of the sale. If it can be shown that the purchaser and vendor buy and sell from each other as if they were not related, such as by comparison with sales made to unrelated companies, this would demonstrate that the price was not influenced by the relationship.

In the second instance, the transaction value in a sale between related companies may be acceptable as the value for duty provided that the transaction value closely approximates a "test value", which is a value for duty for identical/similar goods that has been determined in a previous importation. The question of whether a "test value" closely approximates the transaction value of the goods being appraised will be determined by Customs on a case-by-case basis, bearing in mind factors relevant to the particular transaction and guidelines which may be issued as required by the Department.

Adjustments to the Selling Price in Determining the Transaction Value

As previously stated, the price paid or payable may be adjusted by adding or deducting from it to account for certain costs and charges which may or may not form part of the value for duty.

(1) The following *additions* are to be made to the price paid or payable if paid by the buyer and not already included in the price.

(a) Commissions and brokerage

Any commission, other than a buying commission, which is paid by the buyer in respect of the imported goods.

(b) Packing costs and charges

Packing costs (incurred by the purchaser) including the cost of cartons, cases and other containers and coverings and, all expenses of packing relevant to placing the goods in the condition in which they were shipped to Canada, such as materials and labour, are treated as part of the value for duty.

(c) Assists

The following goods and services which are provided free or at a reduced charge by a purchaser, for use in connection with the production and sale for export of imported goods (commonly known as "assists") must be added to the price paid or payable. This would apply only to the extent that the value of the assist has not been included in the selling price to the purchaser.

- materials, components, parts and other goods incorporated in the imported goods;
- tools, dies, moulds and other goods used in the production of the imported goods;
- any materials consumed in the production of the imported goods; and
- engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Canada.

In making the adjustment for an assist, the importer is required first to ascertain the value of the assist and second, to apportion the value to the imported goods.

If the importer acquires the assist from an unrelated purchaser at a specified cost, the value of the assist is considered to be that cost. If the assist was produced by the importer or by a person related to him, its value would be the cost of producing it. However, in cases where the assist had been previously used by the importer, regardless of whether it was acquired or produced by the importer, the original cost of acquisition or production would require adjustment downward to reflect its use in order to determine the value of the assist.

Once a value has been determined for the assist, it must be apportioned to the imported goods. The apportionment may be made in various ways. For example, value may be pro-rated over the first shipment if the importer wishes to pay duty on the entire value at one time. As an alternative, the value may be apportioned over the number of units produced up to the time of the first shipment or over the entire anticipated production in cases where contracts or firm commitments exist for that production. The law only stipulates that the apportionment be made for the goods produced for export to Canada but does not specify the manner in which the apportionment should be made. Apportionment of assists must, however, be made in accordance with generally accepted accounting principles. The importer may be required to provide documentation to substantiate the method of apportionment used.

Example

As an example of apportioning the value of assists, an importer provides the producer with a mould to be used in the production of 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 that Customs apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

(d) Royalties and licence fees

Royalties and licence fees, including payments for patents, trademarks and copyrights, that a buyer must pay, directly or indirectly, as a condition of sale of the goods for exportation to Canada must be included in the price paid or payable.

Charges for the right to reproduce the imported goods in Canada are not dutiable.

(e) Proceeds

Proceeds resulting from subsequent sale, disposal or use of the imported goods that are directly or indirectly remitted to the vendor are dutiable payments. Such proceeds form part of the price paid or payable.

(f) Transportation prior to shipment to Canada

Transportation costs, including loading and handling charges and other charges and expenses associated with the transportation and insurance costs, are dutiable when incurred in moving the goods to the place within the country of export from which they are shipped directly to Canada.

2. The *deductions* from the price paid or payable, when the following are included in the price, are:

(a) Transportation after shipment to Canada

Transportation and insurance costs which are incurred from the place in the country of export from which the goods are shipped to Canada, including any of those costs which may occur in Canada, may be excluded from the value for duty, if included in the price.

(b) Expenses after importation

Reasonable costs for construction, erection, assembly, maintenance or technical assistance incurred after importation, or duties or taxes paid or payable on the goods, may be deducted if included in the price paid or payable when determining value for duty.

3. *Discounts* and *rebates* effected after the importation of goods, cannot under most circumstances be deducted from the price paid or

payable. Additional information may be obtained by referring to proposed Memorandum D 13-2-9, concerning "Discounts".

The following example is provided to illustrate adjustments to the price paid or payable.

A Canadian company purchases goods from a vendor in Great Britain. The vendor acquires and ships the goods directly from a French factory. The invoice with the entry summary is itemized as follows:

| | |
|------------------------------|--------|
| goods | \$1000 |
| selling commission | 100 |
| packing | 50 |
| transportation and insurance | 200 |
| | \$1350 |

Q. The vendor's terms of sale are **ex-factory, packed**. What is the transaction value?

A. The transaction value is \$1,150. The transaction price of the goods is adjusted by adding the selling commission and packing costs. The transportation and insurance charges from the point of direct shipment are excluded from the price paid or payable as provided under the proposed amendments to the Customs Act.

Transaction Value of Identical Goods

When the value for duty of goods cannot be appraised under the primary method, transaction value, the value for duty may be based on the transaction value of "identical" goods sold for export at the same or approximately the same time as the goods being appraised. In this respect, "identical goods" are described in the legislation as goods which are the same in all respects, were produced in the same country as those to be valued, and by the same person who produced the goods being appraised. Where there are no goods which meet all the criteria, goods which satisfy the first two criteria (the same in all respects and produced in the same country as those to be valued), but which were produced by a person different from the producer of the goods

being appraised, may be used for valuation purposes.

In applying the transaction value of identical goods, a sale at the same commercial level and in substantially the same quantity as the goods being appraised would be used to determine the value for duty. Where no such sale is found, the transaction value of identical goods, sold at a different commercial level or in different quantities, or both, could be used. In these cases, adjustments would be allowed to account for differences attributable to commercial level, quantity or both. Where there are two or more acceptable transaction values of identical goods, then the lowest of these transaction values would be used as the basis for the value for duty.

Adjustments may also be made to the transaction value of identical goods to account for differences between the transportation and associated costs occurring prior to the place of direct shipment in respect of these goods and the goods being appraised. The adjustments are more fully described in proposed departmental Memorandum D 13-3-1.

Transaction Value of Similar Goods

The third method of valuation legislated by the proposed amendments to the Customs Act is basically identical to the second, except that the goods used as the basis for determining value are "similar to" rather than "identical to" the goods being appraised. This method poses the same basic requirements and allows the same adjustments as the previous method, except that, as noted above, the emphasis has changed from "identical" to "similar".

Under the proposed amendments, similar goods are described as goods which closely resemble the goods being appraised, are capable of performing the same functions, are commercially interchangeable, were produced in the same country as the goods to be valued and by the same person who produced the goods being appraised. Essentially then, similar goods are goods which, although not alike in all characteristics, have like characteristics and like components which enable

them to perform the same functions as the goods being appraised. In addition to the above considerations, Customs may also take into account the quality of the goods, their reputation and the existence of a trademark in determining whether goods are similar.

Deductive Value

If the transaction value of the imported goods cannot be determined using the identical or similar goods method, then the value for duty may be appraised on the basis of the deductive method (section 40) or under the computed value method (section 41). The legislation provides that, at the request of the importer, the order of application of these sections (40 and 41) may be reversed. As a matter of practice, Customs will ensure that importers are made aware of their right to reverse the order of application of the deductive and computed methods prior to applying the sequential order.

Under the deductive method of appraisal, the value for duty is based on the price per unit at which the greatest number of units of the goods being appraised, or identical or similar imported goods, is sold. The goods must be sold in the condition in which they were imported or after further processing at the first trade level after importation. The sale must also be to unrelated persons who have not supplied an assist. The price per unit must be adjusted by deducting all costs, charges and expenses, including any profit realized as the result of the resale, incurred in Canada. There must also be a sufficient number of sales to permit a determination of a unit price for the goods. The determination of what constitutes a number of sales sufficient to establish the price per unit will be made by Customs on a case-by-case basis.

As an example of the determination of the price per unit, assume that two sales of the goods being appraised occur. In the first sale, 500 units are sold at a price of \$100.00 each. In the second sale, 600 units are sold at a unit price of \$85.00. In this example, the greatest number of units sold at a particular price is 600; therefore the price per unit is \$85.00.

As noted above, the deductive method includes provisions which allow for a deduction of amounts for profit and general expenses, including the value of any further processing realized by the Canadian vendor in making the sale. The deduction for profit and general expenses must, of course, be consistent with the amounts generally reflected in connection with sales in Canada of goods of the same class or kind.

The legislation specifies that goods which are to be valued under the deductive method must have been sold in Canada in the condition in which they were imported before the expiration of 90 days, and also provides for a 180-day time frame for the sale in Canada of goods which have been further processed after importation.

Computed Value

If Customs valuation cannot be determined on the basis of the methods previously examined, then the computed method as specified in section 41 of the legislation will be considered.

Under this method, value for duty consists of the sum of the cost of production of the goods being appraised, an amount for profit and general expenses equal to that generally reflected by producers in the country of export on sales to Canada of goods of the same class or kind as those being appraised, and the cost or value of other expenses. These expenses include packing and container costs in addition to dutiable assists for which a value is to be determined and apportioned to the goods being appraised. Design and development costs undertaken in the country of importation by the purchaser and not paid by the producer are to be included in calculating the computed value.

In determining the computed value, the costs, charges and expenses referred to above are to be determined on the basis of information relating to the production of the goods being valued and supplied by or on behalf of the producer. In most cases, the importer would be required to obtain the information needed to apply this method. However, at times it may be necessary for Customs to verify the information on which the value for duty has been based by examining the

costs of producing the goods being valued and other information which may have to be obtained outside Canada. In this regard, it should be emphasized that in order to verify information provided by the producer, Customs would be required to seek approval from the government of the country of production and the producer.

For this reason, the use of the computed value method would generally be limited to cases where the purchaser and vendor are related and the relationship has influenced the price paid or payable. The producer must also be prepared to supply Customs with the necessary cost information and any subsequent verification which may be required.

It is important to note that the amount for profit and general expenses must be taken as a whole. It follows that, in cases where the producer's profit figure is low and his general expenses are high, his profit and general expenses considered as a whole may nevertheless be consistent with those generally reflected in sales by other producers of goods of the same class or kind.

To illustrate the computed value method, the following example is provided.

A Canadian firm purchases and imports photographic equipment from a foreign firm A.

The producer, A, provides the following data on cost of production and packing cost:

| | |
|------------------------|------|
| materials | \$10 |
| direct labour | 8 |
| factory overhead | 5 |
| special export packing | 1 |
| | \$24 |

The total 'cost' of the goods under this method is therefore \$24.00.

Firm A is also able to provide sufficient information relative to profit and general expenses. Expressed as a percentage of "costs", the amount for profit and general expenses equals 20%. This percentage is consistent with the profit and expense amounts of other producers in the country of export who sell goods of the same class or kind to Canada. The computed value of the imported goods is therefore \$28.80 (\$24.00 + 20%).

Residual Basis of Valuation

If the value for duty cannot be determined under any of the preceding methods, it will be based on a value that is derived from one of the previous methods applied in a flexible manner, and on the basis of information available in Canada. In actual practice, each case will have to be considered on its own merits and on a case-to-case basis.

An example of the use of this method would be where the requirement that identical goods be exported at the "same or substantially the same time" as the goods being valued is not met. Although no exports of identical goods have occurred at this time, an importation may have taken place six months earlier. If, in this particular industry, the time differential did not significantly affect the value of the goods, the identical goods method (section 38) could be flexibly applied to allow the transaction value in the previous importation to be used as the value for duty.

What are the Responsibilities of the Importer?

Under Canada's valuation system, importers and/or their authorized agents are responsible for the self-assessment of their duty and tax liabilities with respect to the goods being imported. For valuation purposes, this means that the importer/broker is required to calculate and declare a value for duty on Customs entry documents which meets all the requirements of the valuation provisions specified in the proposed amendments to the Customs Act, related departmental memoranda and instructions.

The importer is then required by law to submit payment incurred for any Customs duties and taxes. Although documentary evidence to support declared values is not required to accompany each entry, the information regarding the entry must be kept available and recorded in such a manner to facilitate inspection by Customs officials after importation, should this be required.

Valuation Rulings

Valuation rulings are administrative guidelines issued to importers and brokers by Customs to provide guidance and direction for determining the value for duty of their imported goods. Importers interested in receiving rulings from the Department should contact Revenue Canada, Customs and Excise in Ottawa. A questionnaire will then be forwarded to the importer for completion, requesting information such as details of business transactions between the importer and exporter of the goods for the goods specified.

After obtaining this information, Customs will be able to confirm many declared values in advance, thereby expediting the valuation process for future importations involving the same goods.

The Appeal Process

Under authority of the Customs Act, importers who believe that their goods have been entered at incorrect values have the right of appeal and, if their appeal is successful, may receive a refund.

The chain of appeal starts with a Dominion Customs Appraiser, then to the Deputy Minister of Customs and Excise, the Tariff Board and, on points of law, to the Federal Court of Canada and finally the Supreme Court of Canada.

Appendix

Valuation Sections of the Draft Customs Act

- Section 35** — contains definitions of terms found throughout the valuation sections of the Customs Act.
- Section 36** — describes the basic principle that value for duty will be appraised on basis of transaction value of goods;
— provides five sequentially ordered alternatives for determining value for duty.
- Section 37** — prescribes transaction value as the primary basis of appraisal;
— adjustments to the price paid or payable also provided in this section.
- Section 38** — valuation alternative to section 37: value for duty determined on basis of transaction value of goods identical to those being appraised.
- Section 39** — provides similar method to previous section except that the goods being used as the basis for determining value are "similar to" as opposed to "identical to" the goods being appraised.
- Section 40** — establishes deductive method which is based on the price at which imported goods, or identical or similar goods, are resold in the country of importation to persons unrelated to the vendor, adjusted to account for the costs and usual profits incurred after importation.
- Section 41** — requires that value for duty be assessed on computed value if sections 37 to 40 are inappropriate;
— value calculated on basis of cost of production plus usual profits and expenses.
- Section 42** — valuation determined using residual method which bases duty on a value derived from one of preceding methods, applied in a flexible manner and on the basis of information available in Canada.
- Section 43** — states that goods exported to Canada in transit through another country will be treated as though they have been shipped directly from the first country.
- Section 44** — provides for the value for duty to be computed in Canadian currency.
- Section 44.1** — gives authority to the Governor in Council to make regulations.
- Section 44.2** — prescribes that, upon demand, the importer will be informed in writing as to how the value for duty was determined.

Excerpt from the Current EC Customs Regulations

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1224/80
of 28 May 1980
on the valuation of goods for customs purposes

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas, on 27 June 1968, the Council adopted Regulation (EEC) No 803/68 on the valuation of goods for customs purposes⁽¹⁾;

Whereas, since then, in its Decision 80/271/EEC of 10 December 1979 concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations, the Council approved in particular, on behalf of the European Economic Community, the 'Agreement on implementation of Article VII of the General Agreement on tariffs and trade'⁽²⁾;

Whereas that Agreement lays down rules for facilitating international trade by removing barriers to such trade arising from the application of different methods of customs valuation; whereas its aim is, in particular, to pursue the objectives of the General Agreement on tariffs and trade (GATT) and to ensure that developing countries enjoy additional advantages in international trade; whereas, where possible, it introduces the transaction value as the basis for the customs valuation of goods;

Whereas that Agreement will enter into force on 1 January 1981; whereas, however, the Community holds the view that it should be implemented from 1 July 1980;

Whereas the Community, in accepting the Agreement, has placed itself under an obligation to ensure,

not later than the date of entry into force of the Agreement for the Community, that its rules concerning customs valuation conform with the provisions of the Agreement;

Whereas, to this end, the customs valuation system introduced by Regulation (EEC) No 803/68 and currently in force should be amended; whereas that Regulation was intended to ensure uniform application of the Common Customs Tariff and equal treatment of Community importers; whereas the objective of this Regulation is to foster world trade by introducing a fair, uniform and neutral system of customs valuation excluding the use of arbitrary or fictitious customs values; whereas, therefore, the customs value must be determined in accordance with criteria which are compatible with trade practice; whereas, in particular, the basis for customs valuation of goods will, as a general rule, be the transaction value defined in Article 3 of this Regulation;

Whereas, however, certain transitional measures must be laid down in the case of goods the customs value of which must be determined prior to the date of entry into force of the abovementioned Agreement;

Whereas it is necessary to guarantee that this Regulation applies uniformly to imports of all goods and, therefore, to lay down a Community procedure which will enable the detailed rules for its implementation to be adopted within an appropriate period;

Whereas it is, therefore, desirable that a committee be set up to organize close and effective collaboration between the Member States and the Commission in this area,

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 6.

⁽²⁾ OJ No L 71, 17. 3. 1980, p. 1.

HAS ADOPTED THIS REGULATION :

TITLE I

Article 1

1. In this Regulation :

- (a) 'customs value' means value for the purpose of applying the Common Customs Tariff ;
- (b) 'produced' includes grown, manufactured and mined ;
- (c) 'identical goods' means goods produced in the same country which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical ;
- (d) 'similar goods' means goods produced in the same country which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable ; the quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar ;
- (e) 'identical goods' and 'similar goods', as the case may be, do not include goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 8 (1) (b) (iv) because such elements were undertaken in the Community ;
- (f) 'goods of the same class or kind' means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods ;
- (g) 'the material time for valuation for customs purposes' means :
 - (i) for goods declared for direct entry into free circulation, the date of acceptance by the customs authorities of the declarant's statement of his intention that the goods should enter into free circulation,
 - (ii) for goods which, after another customs procedure has been applied, enter into free circulation, the time fixed by acts of the Council or the Commission pertaining to that customs procedure or by Member States in accordance with such acts ;
- (h) 'the Agreement' means the Agreement on implementation of Article VII of the General Agree-

ment on tariffs and trade concluded in the framework of the multilateral trade negotiations of 1973 to 1979.

2. For the purposes of this Regulation, 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 % 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.

3. For the purpose of this Regulation, 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 only if they fall within the criteria of paragraph 2.

4. For the purposes of this Regulation, the term 'persons' means natural or legal persons.

Article 2

1. The customs value of imported goods is to be determined under Article 3 whenever the conditions prescribed therein are fulfilled.

2. Where such value cannot be determined under Article 3, it is to be determined by proceeding sequentially through Articles 4, 5, 6 and 7 to the first such Article under which it can be determined, subject to the proviso that the order of application of Articles 6 and 7 shall be reversed if the importer so requests ; it is only when such value cannot be determined under a particular Article that the provisions of the next Article in a sequence established by virtue of this paragraph can be applied.

3. Where the customs value of imported goods cannot be determined under Article 3, 4, 5, 6 or 7, it shall be determined using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of the General Agreement on tariffs and trade and on the basis of data available in the Community.

4. No customs value shall be determined under paragraph 3 on the basis of:

- (a) the selling price in the Community of goods produced in the Community;
- (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 Article 7;
- (e) prices for export to a country not comprised in the customs territory of the Community;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

Article 3

1. The customs value of imported goods determined under this Article shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted in accordance with Article 8, provided:

- (a) that there are no restrictions as to the disposition or use of the goods by the buyer, other than restrictions which:
 - (i) are imposed or required by law or by the public authorities in the Community,
 - (ii) limit the geographical area in which the goods may be resold, or
 - (iii) 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 accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 8; and
- (d) that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes under 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 within the meaning of Article 1 shall not in itself be grounds for regarding the transaction value as unacceptable. Where necessary, 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 he 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 paragraph 1 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, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to the Community;

(ii) the customs value of identical or similar goods, as determined under Article 6;

(iii) the customs value of identical or similar goods, as determined under Article 7;

(iv) the transaction value in sales, between buyers and sellers who are not related in any particular case, for export to the Community of goods which would be identical to the imported goods except for having a different country of production provided that the sellers in any two transactions being compared are not related.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(c) The tests set forth in paragraph 2 (b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the said paragraph 2 (b).

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. 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 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 8, 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.

4. The customs value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods :

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment ;
- (b) customs duties and other taxes payable in the Community by reason of the importation or sale of the goods.

Article 4

1. (a) The customs value of imported goods determined under this Article shall be the transaction value of identical goods sold for export to the Community 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 8 (1) (e) 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.

4. In applying this Article, a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under paragraph 1 for identical goods produced by the same person as the goods being valued.

5. For the purposes of this Article, the transaction value of identical imported goods means a customs value previously determined under Article 3, adjusted as provided for in paragraphs 1 (b) and 2 of this Article.

Article 5

1. (a) The customs value of imported goods determined under this Article shall be the transaction value of similar goods sold for export to the Community 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 8 (1) (e) 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.

4. In applying this Article, a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under paragraph 1 for similar goods produced by the same person as the goods being valued.

5. For the purposes of this Article, the transaction value of similar imported goods means a customs value previously determined under Article 3, adjusted as provided for in paragraphs 1 (b) and 2 of this Article.

Article 6

1. (a) If the imported goods or identical or similar imported goods are sold in the Community in the condition as imported, the customs value of imported goods, determined under 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:

- (i) 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 Community of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within the Community; and
- (iii) the customs duties and other taxes payable in the Community 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 of imported goods determined under this Article 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 Community in the condition as imported at the earliest date after the importation of 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 Community 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 Community 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).

3. In this Article, the unit price at which imported goods are sold in the greatest aggregate quantity is 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.

4. Any sale in the Community 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 Article 8 (1) (b), should not be taken into account in establishing the unit price for the purposes of this Article.

5. For the purposes of paragraph 1 (b), 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.

Article 7

1. The customs value of imported goods determined under 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 Community;
- (c) the cost or value of the items referred to in Article 8 (1) (e).

2. A customs administration may not require or compel any person not resident in the Community 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 a non-Community country by the customs authorities of a Member State with the agreement of the producer and provided that such authorities give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

3. The cost or value of materials and fabrication referred to in paragraph 1 (a) above shall include the cost of elements specified in Article 8 (1) (a) (ii) and (iii). It shall also include the value, duly apportioned, of any element specified in Article 8 (1) (b) 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 Article 8 (1) (b) (iv) which are undertaken in the Community shall be included only to the extent that such elements are charged to the producer.

4. 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 request, of the source of such information, the data, subject to Article 10.

5. The 'general expenses' referred to in paragraph 1 (b) above, cover the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1 (a).

Article 8

1. In determining the customs value under Article 3, 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:
 - (i) commission and brokerage, except buying commissions,
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question,
 - (iii) the cost of packing, whether for labour 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:

- (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 Community and necessary for the production of the imported goods;
- (c) royalties and licence 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) (i) the cost of transport and insurance of the imported goods, and
 - (ii) loading and handling charges associated with the transport of the imported goods
 to the place of introduction of the goods into the customs territory of the Community.

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. In this Article, 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) of this Article:

- (a) charges for the right to reproduce the imported goods in the Community 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 Community of the goods.

Article 9

1. (a) Where factors used to determine the value for customs purposes of goods are expressed in a currency other than that of the Member State where the valuation is made, the rate of exchange to be used shall be that duly published by the competent authorities of the Member State concerned.
- (b) Such rate shall reflect as effectively as possible the current value of such currency in commercial transactions in terms of the currency of such Member State and shall apply during such period as may be specified by the aforementioned competent authorities.
2. (a) Until such time as a rate of exchange is published in accordance with paragraph 1, the rate of exchange to be used shall be the latest selling rate recorded on the most representative exchange market or markets of the Member State concerned at the material time for valuation for customs purposes.
- (b) Where such a rate does not exist, the rate of exchange to be used shall be determined by the procedure laid down in Article 19.

Article 10

1. With a view to determining value for customs purposes and without prejudice to national provisions which confer wider powers on the customs authorities of Member States, any person or undertaking directly or indirectly concerned with the import transactions in question shall supply all necessary information and documents to those authorities within the time limits prescribed by the latter.
2. All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the Commission or to the extent that it may be required to be disclosed in the context of judicial proceedings.
3. Information and documents supplied to the Commission by a Member State pursuant to paragraph 2 may be used by the Commission only for the purpose for which they were supplied. They shall be subject to professional secrecy and in particular may not be communicated to persons other than those who, within the institutions of the Communities or the Member States, are required to have access to them by virtue of the functions they exercise.

Article 11

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 importer shall nevertheless be able to withdraw his goods from customs if, where so required, he provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable.

Article 12

1. Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of his imported goods was determined.
2. Requests for an explanation under paragraph 1 of this Article shall be introduced no later than one month after the date when the customs value is determined in accordance with this Regulation.
3. Where, under national procedures, the importer is provided with the explanation referred to in paragraph 1 without his having made a written request, the requirements of this Article shall be deemed to have been fulfilled.

Article 13

In so far as Community provisions laying down procedures for the settlement of disputes concerning customs matters have not been adopted, the relevant provisions laid down by law, regulation or administrative action of Member States shall remain applicable.

Neither the request nor the explanation referred to in Article 12 shall constitute acts capable as such of activating procedures for the settlement of disputes or judicial or administrative procedures within the meaning of the said national provisions.

Article 14

1. For the purposes of Article 8 (1) (e) and Article 15, the place of introduction into the customs territory of the Community shall be :
 - (a) for goods carried by sea, the port of unloading, or the port of transshipment, subject to transshipment being certified by the customs authorities of that port ;
 - (b) for goods carried by sea and then, without transshipment, by inland waterway, the first port where unloading can take place either at the mouth of the river or canal or further inland, subject to proof being furnished to the customs authorities that the freight to the port of unloading is higher than that to the first port ;

- (c) for goods carried by rail, inland waterway, or road, the place where the first customs office is situated ;
- (d) for goods carried by other means, the place where the land frontier of the customs territory of the Community is crossed.

2. For goods introduced into the customs territory of the Community and then carried to a destination in another part of that territory through the territory of a third country or by sea, after passing through a part of the customs territory of the Community, the place of introduction into the Community to be taken into consideration shall, subject to paragraph 3, be determined in accordance with the procedure laid down in Article 19.

3. For goods introduced into the customs territory of the Community and carried directly from one of the French overseas departments or Greenland to another part of the customs territory of the Community or vice versa, the place of introduction to be taken into consideration shall be the place referred to in paragraphs 1 and 2 situated in that part of the customs territory of the Community from which the goods came, if they were unloaded or transhipped there and this was certified by the customs authorities.

When those conditions are not fulfilled, the place of introduction to be taken into consideration shall be the place specified in paragraphs 1 and 2 situated in that part of the customs territory of the Community to which the goods are consigned.

Article 15

1. The customs value of imported goods shall not include the cost of transport after importation into the customs territory of the Community provided that such cost is distinguished from the price actually paid or payable for the imported goods.

2. (a) Where goods are carried by the same means of transport to a point beyond the place of introduction into the customs territory of the Community, transport costs shall be assessed in proportion to the distance covered outside and inside the customs territory of the Community, unless evidence is produced to the customs authorities to show the costs that would have been incurred under a general compulsory schedule of freight rates for the carriage of the goods to the place of introduction into the customs territory of the Community.

The preceding subparagraph shall not apply to goods sent by post. Special provisions may be adopted for such goods in accordance with the procedure laid down in Article 19, in view of the special nature of charges in international postal services.

- (b) Where goods are invoiced at a uniform free domicile price which corresponds to the price at the place of introduction, transport costs

within the Community shall not be deducted from that price. However, such deduction shall be allowed if evidence is produced to the customs authorities that the free-frontier price would be lower than the uniform free domicile price.

- (c) Where transport is free or provided by the buyer, transport costs to the place of introduction, calculated in accordance with the schedule of freight rates normally applied for the same modes of transport, shall be included in the customs value.

Article 16

The particulars and documents to be furnished to the customs authorities for the purposes of application of this Regulation shall, where necessary, be determined in accordance with the procedure laid down in Article 19.

TITLE II

Article 17

1. A Customs Valuation Committee (hereinafter called 'the Committee') shall be set up and shall consist of representatives of the Member States with a representative of the Commission as chairman.

2. The Committee shall draw up its own rules of procedure.

Article 18

The Committee may examine :

- (a) all questions relating to the application of this Regulation ; and
- (b) all questions relating to the work of the Technical Committee on Customs Valuation established under the auspices of the Customs Cooperation Council under the Agreement

referred to it by its chairman, either on his own initiative or at the request of a representative of a Member State.

Article 19

1. Provisions necessary for :

- (a) the introduction into Community law of those provisions of Part I of and Annex I to the Agreement which are not reflected in this Regulation, in so far as they do not include amendments to Council acts ; and
- (b) the implementation of the provisions of Title I of this Regulation, other than those contained in Articles 12 and 13

shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3.

- (c) for goods carried by rail, inland waterway, or road, the place where the first customs office is situated ;
- (d) for goods carried by other means, the place where the land frontier of the customs territory of the Community is crossed.

2. For goods introduced into the customs territory of the Community and then carried to a destination in another part of that territory through the territory of a third country or by sea, after passing through a part of the customs territory of the Community, the place of introduction into the Community to be taken into consideration shall, subject to paragraph 3, be determined in accordance with the procedure laid down in Article 19.

3. For goods introduced into the customs territory of the Community and carried directly from one of the French overseas departments or Greenland to another part of the customs territory of the Community or vice versa, the place of introduction to be taken into consideration shall be the place referred to in paragraphs 1 and 2 situated in that part of the customs territory of the Community from which the goods came, if they were unloaded or transhipped there and this was certified by the customs authorities.

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The preceding subparagraph shall not apply to goods sent by post. Special provisions may be adopted for such goods in accordance with the procedure laid down in Article 19, in view of the special nature of charges in international postal services.

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within the Community shall not be deducted from that price. However, such deduction shall be allowed if evidence is produced to the customs authorities that the free-frontier price would be lower than the uniform free domicile price.

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 - (a) the introduction into Community law of those provisions of Part I of and Annex I to the Agreement which are not reflected in this Regulation, in so far as they do not include amendments to Council acts ; and
 - (b) the implementation of the provisions of Title I of this Regulation, other than those contained in Articles 12 and 13

shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3.

2. The representative of the Commission shall submit to the Committee a draft of the provisions to be adopted. The Committee shall deliver an opinion on the draft within a time limit set by the chairman having regard to the urgency of the matter. Decisions shall be taken by a majority of 41 votes, the votes of Member States being weighted as provided in Article 148 (2) of the Treaty. The chairman shall not vote.

3. (a) The Commission shall adopt the provisions envisaged if they are in accordance with the opinion of the Committee.
- (b) If the provisions envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal with regard to the provisions to be adopted. The Council shall act by a qualified majority.
- (c) If, within three months of the proposal being submitted to it, the Council has not acted, the proposed provisions shall be adopted by the Commission.

TITLE III

Article 20

The provisions of this Regulation shall not affect the provisions contained in acts of the Council or of the Commission, or laid down by Member States in accordance with such acts, regarding the determination of the value for customs purposes of goods which enter into free circulation after a customs procedure other than that relating to direct entry into free circulation has been applied.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 May 1980.

Article 21

Each Member State shall inform the Commission of the provisions it adopts for the application of this Regulation. The Commission shall communicate this information to the other Member States.

Article 22

1. This Regulation shall come into force on 1 July 1980 except for Title II which shall come into force on the day following publication of the Regulation in the *Official Journal of the European Communities*.
 2. Regulation (EEC) No 803/68 shall be replaced by this Regulation. Any references to it shall be deemed to refer to this Regulation.
 3. Regulation (EEC) No 803/68 shall continue to apply to goods for which the material time for valuation for customs purposes is prior to 1 July 1980.
 4. The validity of regulations adopted pursuant to Regulation (EEC) No 803/68 may be extended as a transitional measure beyond 30 June 1980 under the procedure in Article 19. Such extension shall not, however, exceed six months.
 5. The laws, regulations and administrative provisions of the Member States laying down simplified procedures for determining the customs value of certain perishable goods shall continue to apply until 31 December 1980.
- Acting on a proposal from the Commission, the Council will adopt Community provisions on these procedures before 1 January 1981.

For the Council

The President

G. MARCORA

Excerpt from the Customs Tariff Law of Japan

Customs Tariff Law

(Purpose)

Article 1. This Law shall provide the rates of customs duty, the basis for customs valuation, the reduction of and exemption from customs duty and other matters relating to the customs systems.

(Definition)

Article 2. In this Law or in any Cabinet Order issued thereunder, the term "importation" shall be subject to the definition as provided for in Article 2 (Definition) of the Customs Law (Law No. 61 of 1954) and the term "exportation" shall mean the act as provided for in sub-paragraph (2) of paragraph 1 of the said Article and also shipment of goods from any country (or, with regard to marine products caught or gathered in the open sea, from any vessel of the country which has caught or gathered them) to any other country.

(Basis for Customs Valuation and Rates of Customs Duty)

Article 3. Customs duty shall be imposed on imported goods on the basis of the value or quantity thereof taken as the basis for customs valuation, and the rates of customs duty shall be as prescribed in the Annexed Tariff of this Law.

(Simplified Duty Rates on Personal Effects)

Article 3-2. For the purpose of application of the preceding Article, the rates of customs duty chargeable on personal effects which are brought into Japan by any person at the time of his entry into Japan shall, notwithstanding the provisions of any other laws relating to customs duty, be as prescribed in the list of simplified duty rates, attached to the Annexed Tariff, which have been computed on the basis of the consolidated rates of customs duty and internal excise taxes (i.e., the internal excise taxes as provided for in sub-paragraph (1) of Article 2 (Definition) of the Law Concerning Collection, etc., of Internal Excise Taxes on Imported Goods (Law No. 37 of 1955)), chargeable on imported goods. However, the foregoing provisions shall not apply to the case where the said person notified the customhouse concerned to the effect that he does not desire to have any of the goods, which he has brought into Japan with him at the time of his entry, charged in accordance with the list of the simplified duty rates.

2. The provisions of the preceding paragraph shall not apply to the following goods.

- (1) Goods designated as duty-free and goods exempted from customs duty, in accordance with the provisions of this Law or any other law relating to customs duty.
- (2) Goods involved in any of the offences as specified in Chapter 10 (Penal provisions) of the Customs Law.

- (3) Goods in commercial quantities, goods of high unit value and other goods, as may be prescribed by a Cabinet Order, as being inappropriate to be subject to application of the rates of duty as enumerated in the list of simplified duty rates as provided for in the preceding paragraph, taking into account the effect on domestic industries, etc.

(Principle for Determining the Customs Value)

Article 4. The value for customs purposes of imported goods (hereinafter referred to as "customs value") shall, except where the first sentence of paragraph 2 applies, be the price actually paid or payable by the buyer to or for the benefit of the seller for the imported goods in the import transaction relating to the goods (excluding the amounts of customs duty or any other charges reduced or refunded in the country of exportation at the time of their exportation), plus the cost of transport, etc., as enumerated below, to the extent that they are not included in the price actually paid or payable for the goods (hereinafter referred to as the "transaction value"):

- (1) Cost of transport, cost of insurance and other expenses incurred for transport of the goods to the port of importation (referred to as "cost of transport, etc., to the port of importation" in the next Article and in paragraph 2 of Article 4-3);
- (2) The following commissions or expenses, to the extent that they are incurred by the buyer in the import transaction relating to the goods:
 - (a) Brokerage and commissions, except buying commissions;
 - (b) The cost of containers which are treated as being one for customs purposes with the goods in question, provided that they shall be of the same kind and value as the containers usually used for such imported goods;
 - (c) The cost of packing the imported goods;
- (3) The value of the following goods or services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production of the imported goods and the import transaction:
 - (a) Materials, parts or similar items incorporated in the imported goods;
 - (b) Tools, moulds or similar items used in the production of the imported goods;
 - (c) Materials consumed in the production of the imported goods;
 - (d) Engineering, plans and sketches and other services necessary for the production of the imported goods as may be prescribed by a Cabinet Order;
- (4) The value of the use of patent, design or trademark right and such similar rights as may be prescribed by a Cabinet Order (excluding the right to reproduce the imported goods in Japan), related to the imported goods, that the buyer must pay, directly or indirectly, as a condition of the import transaction relating to the imported goods; and
- (5) The value of any part of the proceeds of any subsequent disposition or use of the

imported goods by the buyer that accrues directly or indirectly to the seller.

2. Where there exists any of the circumstances prescribed in the following sub-paragraphs in connection with the import transaction relating to the imported goods, the customs value of the imported goods shall be determined in accordance with the provisions of Article 4-2 through Article 4-4:

- (1) When there are restrictions as to the disposition or use of the imported goods by the buyer (excluding restrictions as to the geographical area in which the imported goods may be resold by the buyer and such other restrictions as may be prescribed by a Cabinet Order);
- (2) When the import transaction relating to the imported goods is subject to a condition that the transaction value of the imported goods is established on the basis of the quantity or price of goods other than the imported goods, sold in transaction between the seller and buyer of the imported goods or to any other condition which makes it difficult to determine the customs value of the imported goods;
- (3) When the value of any part of the proceeds of any subsequent disposition or use of the imported goods by the buyer that accrues directly or indirectly to the seller is unknown;
- (4) When the buyer and seller are related (i.e. when they are officers or directors of one another's businesses or when there is such relationship between the buyer and seller as may be prescribed by a Cabinet Order; the same to apply hereinafter in this sub-paragraph and in paragraph 1 of Article 4-3) and the relationship is considered to have influenced the transaction value of the imported goods.

Provided, however, that the first sentence of this paragraph shall not apply to cases which come under sub-paragraph (4) above but in which the importer of the imported goods demonstrates, in accordance with the provisions of a Cabinet Order, that the transaction value of the imported goods is the same as, or closely approximates to, the customs value of identical or similar goods (exported to Japan on or about the same date as the imported goods and produced in the country of production of the imported goods; the same to apply hereinafter in this paragraph), calculated in accordance with the provisions of the preceding paragraph or Article 4-3 (with appropriate adjustment made, in accordance with the provisions of a Cabinet Order, to take account of any price difference between the imported goods and the identical or similar goods arising from differences in commercial level, quantity or cost of transport, etc.; as enumerated in any of the sub-paragraphs of the said paragraph, and such other costs and charges as may be prescribed by a Cabinet Order). Where the customs value is calculated under the provisions of the said paragraph, there shall be used the customs value of goods identical or similar to the imported goods in an import transaction between a buyer and seller who are not related in terms of the provision of sub-paragraph (4).

(Determination of Customs Value on the Basis of Transaction Value of Identical or Similar Goods)

Article 4-2. When the customs value of the imported goods cannot be calculated under the provisions of paragraph 1 of the preceding Article or when the first sentence of paragraph 2 of the said Article applies and if there is available the transaction value (i.e. the customs value which has already been accepted under the provisions of paragraph 1 of the preceding Article; the same to apply hereinafter in this Article) of goods identical or similar to the imported goods (exported to Japan on or about the same date as the imported goods and produced in the country of production of the imported goods; hereinafter in this Article referred to as "identical or similar goods"), the customs value of the imported goods shall be the transaction value of these identical or similar goods (if the transaction values of both identical and similar goods are available, the customs value of the imported goods shall be the transaction value of the former). In applying the provisions of this Article, the transaction value of identical or similar goods shall be the transaction value of identical or similar goods in an import transaction at the same commercial level and in substantially the same quantity as in the case of the imported goods (hereinafter in this Article referred to as "identical or similar goods in a sale at the same commercial level and in the same quantity"). Where there is a significant difference in cost of transport, etc., to the port of importation between the imported goods and the identical or similar goods in a sale at the same commercial level and in the same quantity in question arising from differences in distances and modes of transport, the transaction value of the identical or similar goods shall be the transaction value after necessary adjustment is made, as may be prescribed by a Cabinet Order, to take account of any price difference attributable to such significant differences.

2. Where there is available no transaction value of identical or similar goods in a sale at the same commercial level and in the same quantity as provided for in the preceding paragraph, the transaction value of the identical or similar goods as provided for in the said paragraph shall be the transaction value of identical or similar goods after necessary adjustment is made, as may be prescribed by a Cabinet Order, to take account of any price difference attributable to differences in commercial level or quantity and differences in cost of transport, etc., to the port of importation.

(Determination of Customs Value on the Basis of Domestic Selling Price or Cost of Production)

Article 4-3. When the customs value of the imported goods cannot be calculated under the provisions of the preceding two Articles and if there is available a domestic selling price of the imported goods (including the domestic selling price of the imported goods where they have been delivered from the customs with the approval of the Director-General of Customs under the provisions of paragraph 1 of Article 73 (Delivery of goods prior to import permit) of the

Customs Law; the same to apply hereinafter in this paragraph) or a domestic selling price of goods identical or similar to the imported goods (produced in the country of production of the imported goods; the same to apply hereinafter in this paragraph), the customs value of the imported goods shall be the price as prescribed in any of the following sub-paragraphs (Provided, however, that sub-paragraph (2) shall apply only when sub-paragraph (1) cannot be applied and the importer of the imported goods requests application of the provisions of sub-paragraph (2)).

- (1) If there is available the domestic selling price of the imported goods or of identical or similar goods, sold domestically to persons who are not related to the persons from whom they buy such goods, the same in nature and condition as those goods at the time of the import declaration (or at the time as prescribed in any of the sub-paragraphs of Article 4 (Exceptional date of determination of object for duty assessment) of the Customs Law, in the case of the goods as enumerated in any of those sub-paragraphs; hereinafter in this sub-paragraph and in the next sub-paragraph referred to as "the date of determination of object for duty assessment") on or about the date of determination of object for duty assessment with regard to the imported goods, the customs value shall be such domestic selling price, subject to deductions for the following commissions, etc.:
 - (a) The commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses (excluding the expenses as enumerated in (b) below) in connection with the domestic sale of imported goods of the same class or kind (i.e. goods which fall within a group or range of goods produced by the same industry or industry sector and which belong to the same class or kind as the imported goods; the same to apply in the next paragraph);
 - (b) The usual costs of transport and insurance and associated costs incurred for the transport of the imported goods or of the identical or similar goods sold in the domestic market from the time of their arrival at the port of importation to that of the domestic sale;
 - (c) The customs duties and other charges paid in Japan on the imported goods or the identical or similar goods sold in the domestic market.
 - (2) If there is available the domestic selling price of the imported goods, sold domestically to persons who are not related to the persons from whom they buy such goods, after further processing after the date of determination of object for duty assessment, the customs value shall be such domestic selling price, subject to deductions for the value added by such processing and the amounts of commissions, etc. as enumerated in (a), (b) and (c) of the preceding sub-paragraph.
2. When the customs value of the imported goods cannot be calculated under the provisions

of the preceding paragraph and if the cost of production of the imported goods can be confirmed, the customs value of the imported goods shall consist of the cost of production of the imported goods, usual profit and general expenses in connection with sales for export to Japan of imported goods of the same class or kind produced in the country of production of the imported goods, and cost of transport, etc., of the imported goods to the port of importation.

3. When the cost of production of the imported goods can be confirmed and if the importer of the imported goods so requests, the customs value of the imported goods shall be calculated under the provisions of the preceding paragraph, prior to the application of paragraph 1 above.

(Determination of Customs Value of Special Imported Goods)

Article 4-4. When the customs value of the imported goods cannot be calculated under the provisions of the preceding three Articles, the customs value shall be the value calculated under the provisions of a Cabinet Order as corresponding to the customs value calculated under the provisions of these Articles.

(Determination of Customs Value of Imported Goods Deteriorated or Damaged)

Article 4-5. When the customs value is to be calculated under the provisions of Articles 4 to 4-4 and if it is found that the imported goods have deteriorated or are damaged, in the light of the terms and conditions of the import transaction, by the time of import declaration (or by the time as prescribed in sub-paragraphs (2) to (8) of Article 4 (Exceptional date of determination of object for duty assessment) of the Customs Law, in the case of the goods as enumerated in any of those sub-paragraphs; hereinafter in the proviso to paragraph 1 of Article 10 referred to as "the time of import declaration, etc."), the customs value of the imported goods shall be the customs value calculated as if such deterioration or damage had not occurred, subject to deductions for an amount equivalent to the depreciation caused by such deterioration or damage.

(Special Rule for Determination of Customs Value of Aircargo, etc.)

Article 4-6. If, in calculating the customs value under the provisions of any of Articles 4 to 4-4, inclusive, the imported goods are goods transported by air, the cost of transport and cost of insurance incurred for transport to the port of importation of free samples (provided the customs value of the samples does not exceed such an amount as may be prescribed by a Cabinet Order as a small value, if the customs value is calculated on the basis of airfreight and insurance) or of goods the importation of which is deemed to be urgently necessary for disaster relief, the protection of public hygiene or any other similar purposes and of such other similar good as may be prescribed by a Cabinet Order shall be calculated on the basis of cost of trans-

port and cost of insurance for the usual mode of transport other than by air.

2. If, in calculating the customs value under the provisions of any of Articles 4 to 4-4, inclusive, the imported goods are goods brought into Japan as accompanied luggage by a person entering Japan or any other goods the import transaction of which is considered to be at the level of retail transaction, and they are deemed to be for the personal use of the importer of the imported goods, the customs value of the imported goods shall be the value at which they would have been imported at the level of usual wholesale transaction. The first sentence of this paragraph shall apply mutatis mutandis to the case where the imported goods are a gift to a person resident in Japan and are deemed to be for the personal use of the recipient of the gift.

(Foreign Exchange Rate Used for Conversion of Currency)

Article 4-7. When the customs value is to be calculated under the provisions of any of Articles 4 to 4-6, inclusive, the conversion of a value expressed in foreign currency into Japanese currency shall be made on the basis of the foreign exchange rate on the date of import declaration of the imported goods (or on the relevant date as prescribed in sub-paragraph (1) of Article 5 (Exceptions to applicable laws and regulations) of the Customs Law, if the customs value is to be calculated for the goods as enumerated in the said sub-paragraph).

2. The foreign exchange rate as prescribed in paragraph 1 above shall be established by a Ministry of Finance Ordinance.

(Mandate to Cabinet Order)

Article 4-8. Matters other than those prescribed in Articles 4 to 4-7 which are necessary for calculation of the customs value of the imported goods shall be prescribed by a Cabinet Order.

~~(Beneficial Duty)~~

Article 5. With regard to any imported goods, which are the growth, produce or manufacture of any country (including any territory forming part of such country. This shall apply to Articles 5 to 7, inclusive and to paragraph 2 of Article 9-2.) not entitled to the benefit as provided for in special provisions of any treaty relating to customs duty, a benefit relating to customs duty, not exceeding the benefit as provided for in such special provisions, may be extended to such goods, as may be prescribed by a Cabinet Order, specifying the country and goods.

(Dual Tariff)

Article 6. With regard to any imported goods, which are the growth, produce or manufacture

Excerpts from the current Korean Customs Act

THE CUSTOMS ACT

Law No. 1976, Promulgated Nov. 29, 1967
 Amended Law No. 2062, Dec. 31, 1968
 Amended Law No. 2162, Jan. 1, 1970
 Amended Law No. 2423, Dec. 30, 1972
 Amended Law No. 2469, Feb. 5, 1973
 Amended Law No. 2697, Dec. 21, 1974
 Amended Law No. 2793, Dec. 22, 1975
 Amended Law No. 2928, Dec. 22, 1976
 Amended Law No. 3109, Dec. 5, 1978
 Amended Law No. 3441, Apr. 13, 1981
 Amended Law No. 3478, Dec. 31, 1981
 Amended Law No. 3492, Dec. 31, 1981

CHAPTER I. GENERAL PROVISIONS

Article 1 (Purpose) The purpose of this Act is to properly administer matters pertaining to assessment and collection of customs duties and the customs clearances of goods imported and exported, and thereby to contribute to the development of the national economy and to secure revenues from customs duties.

Article 2 (Definitions) (1) The term "import" used in this Act shall denote the act of bringing into Korea goods falling under any of the following items (the act of withdrawing goods from bonded areas when they pass through bonded areas):

1. Goods arrived in Korea from foreign countries (including marine products fished or reaped by foreign vessels on the high seas); and
2. Goods licensed for export.

(2) The term "export" used in this Act shall mean the act of shipping domestic goods to foreign countries.

(3) The term "foreign goods" used in this Act shall refer to such goods as have arrived in Korea from foreign countries (including marine products fished or reaped on the high seas by foreign vessels) for which an import license has not yet been granted, or such goods for which an export license has already been issued.

(4) The term "domestic goods" used in this Act shall mean those goods, other than foreign goods, situated in Korea, and those marine products fished or reaped on the high seas by vessels of Korean nationality.

(5) The term "domestic wholesale price" used in this Act shall refer to the price at which domestic wholesalers, after having purchased imported goods from foreign traders, sell them openly through domestic wholesale markets by means of normal business practices.

(6) The term "foreign trade vessel" used in this Act shall denote any vessel sailing between Korea and foreign countries for the purpose of foreign trade.

(7) The term "foreign trade aircraft" used in this Act shall mean any aircraft flying between Korea and foreign countries for the purpose of foreign trade.

(8) The term "domestic line vessel" used in this Act shall refer to any vessel engaged

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THE CUSTOMS ACT

in sailing exclusively within the territorial and internal waters of Korea.

(9) The term "domestic line aircraft" used in this Act shall mean any aircraft engaged in flight exclusively within Korea.

(10) The term "supplies for vessels" used in this Act shall mean food stuffs, fuel, expendable items, wire ropes spare parts for repair, fixtures, and such other similar goods as are used solely for and in vessels.

(11) The term "supplies for aircraft" used in this Act shall mean those goods comparable to the supplies for vessels as used exclusively for and in the aircraft.

(12) The term "customs clearance business" used in this Act shall mean the business of engaging, upon the commission by and on behalf of the owner of goods, in the process of export, import, return or bringing-in of the goods, and in any other incidental process (hereinafter referred to as "the customs procedures") in relation to the customs office.

Article 2-2 (Criteria for Interpretation of this Act, Prohibition of the Retroactive Taxation) (1) In respect of interpretation and application of this Act, the duty payer's rights to property shall not be unfairly encroached on, in the light of the taxation equity and the reasonableness of the relevant Article.

(2) Once a certain interpretation of this Act or customs practice has been generally accepted by duty payers, the conduct or calculation in accordance therewith shall be considered legitimate and the retroactive taxation by new interpretation or practice shall not be permitted.

(3) The provision of Paragraph 2, shall not exclude or limit the demand for correction by the results of audit and inspection pursuant to the Board of Audit and Inspection Act.

CHAPTER II. ASSESSMENT AND COLLECTION**Section 1. Taxation Requirements**

Article 3 (Dutiable Goods) Imported goods shall be subject to customs duty.

Article 4 (Time at Which Dutiability is Determined on Goods) Customs duty shall be levied on the basis of the quality and quantity of goods at the time of import declaration; provided, however, that goods falling under any of the following categories shall be subject to customs duty on the basis of the quality and quantity thereof at such times as described below:

1. With regard to goods on which customs duty is collected pursuant to the provision of Paragraph 4 of Article 51, at the time the permit for lading is granted;
2. With regard to goods on which customs duty is collected according to the provision of Paragraph 2 of Article 70, at the time goods are either missing, ruined, destroyed or scrapped;
3. With regard to goods on which customs duty is collected pursuant to the provision of Paragraph 5 of Article 100, at the time the permit is granted for operations outside the bonded plant;
- 3-2. With regard to goods on which customs duty is collected pursuant to the provision of Paragraph 2 of Article 116, at the time the permit is granted for operations outside the bonded construction site;
4. With regard to goods on which customs duty is collected pursuant to the provision of Article 13, at the time the license for transportation is granted;
5. With regard to consumable or usable goods other than falling under any of the items

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- of Article 147, at the time such goods are actually consumed or utilized;
6. With regard to goods imported through postal channels, at the time the goods arrive at customs post office;
 7. With regard to goods stolen or lost, at the time they are either stolen or lost;
 8. With regard to goods which are to be sold by this Act, at the time they are sold; and
 9. With regard to goods imported without import license (Excluding goods for which import declaration has been filed and goods which are referred to in Items 1 through 8), at the time they are imported.

Article 5 (Applicable Laws and Ordinances) Customs duty shall be levied pursuant to the provisions of laws and ordinances in force at the time of import declaration; provided, however, that goods falling under any of the following items shall be subject to duty in accordance with the provisions of laws and ordinances in force on the dates as described below:

1. With regard to foreign goods which are moved into the bonded construction site pursuant to the provision of Article 113, on the date import license is granted;
2. Deleted; and
3. With regard to goods falling under any items of Article 4, on the date the respective development has taken place.

Article 6 (Liable Duty Payer) (1) Anyone who comes under any of the following items shall be liable for payment of customs duty:

1. With regard to goods for which import declaration has been filed, the consignee who has imported the said goods; provided that when the residence or the address of the consignee who has imported the said goods is unknown or when the import declarant is unable to identify consignee in case of any deficiency of customs duty which has been either previously paid or payable thereafter on goods as brought into upon import license or withdrawn pursuant to the provision of Paragraph 1 of Article 148, the import declarant thereof shall be liable, jointly and severally with the consignee-importer of the said goods, for the payment of customs duty thereon.
2. With regard to goods falling under Item 1 of Article 4, the person who has been granted a permit for lading;
3. With regard to goods falling under Item 3 of Article 4, the proprietor of the bonded factory;
4. With regard to goods falling under Item 4 of Article 3, the declarant thereof;
5. With regard to goods falling under Item 5 of Article 4, the consumer or the end-user of such goods;
6. With regard to goods imported through postal channel, the recipient thereof;
7. With regard to goods falling under Item 7 of Article 4, in case of goods stored in a licensed bonded area, the proprietor of such bonded area; and in case of goods under bonded transportation, the declarant thereof; and in case of goods of any other categories, the custodian or handler thereof;
8. Any person who are otherwise designated to be liable duty payers pursuant to the provisions of either this Act or other laws; and
9. With regard to goods other than those enumerated under each of Items 1 through 8, the owner or possessor thereof.

(2) In case where a consignee or declarant referred to in the provision of Item 1 of Paragraph 1 and a person referred to in the provisions of Items 2 through 8 become concurrently responsible for payment of customs duty, the latter shall be the liable duty payer.

(3) When, in the case of collection of customs duty pursuant to the provision of Article 23, the person liable to pay the customs duty is a juridical person (excluding such juridical person whose stocks are listed on the Korea Stocks Exchange), and the assets of the said juridical person are insufficient to pay customs duty, delinquency charges or expenses for delinquency disposition, levied upon or payable by the juridical person, the amount of shortage shall be collected from the person falling under any of the following items as of the date when the liability for payment of customs duty has been determined:

1. A member with unlimited liability; and
2. Either a stockholder or a member with limited liability, and relatives or persons in special relationship with him as determined in the Presidential Decree, whose total amount of shares owned or investment exceeds 51% of the total amount of shares issued by, or the total amount of investment of the said juridical person.

Article 7 (The Rate of Duty) (1) The rate of customs duty shall be as shown in the Tariff attached.

(2) Among the rates of customs duty as shown in the Tariff attached, the provisional rate shall be applicable prior to the basic rate, and the rate designated by the Presidential Decree under the provisions of Articles 10 through 16 shall be applicable prior to the basic and provisional rates.

(3) Among the rates of customs duty as shown in the Tariff attached, the provisional rate may be suspended wholly or partly in effect and/or increased or decreased to narrow the gap with the basic rate, as designated by the Presidential Decree.

Article 7-2 (Pre-Reply of Classification of Items) (1) Any person who intends to import foreign goods may inquire the Director-General of the Customs Administration Office about classification of items on the attached customs rate table which shall be applied to the goods concerned (hereinafter referred to as "classification of items").

(2) The Director-General of the Office of Customs Administration shall, when inquired as provided by Paragraph 1, examine this, and issue without delay pre-reply of classification of items (hereinafter referred to as "pre-reply") in case the classification of items to be applied is decided as a result of examination; provided, however, that this shall not apply in case it is difficult to decide on the classification of items because of the imperfection of the materials presented by the inquirer, and the like.

(3) The head of the customs office shall, when the import declarer presents the pre-reply issued to the person liable to taxation in case of declaration of import as provided by Article 137, classify items according to the contents of the pre-reply when he deems that goods declared to be imported are identical with goods on the pre-reply, on condition that there is no special reason provided for by the Presidential Decree.

(4) Any person who intends to inquire as provided by Paragraph 1, shall pay the fee stipulated by the Ordinance of the Ministry of Finance.

Article 8 (Simplified Rate) (1) With regard to goods falling under any of the following items, the simplified rate may be applicable pursuant to the Presidential Decree notwithstanding the provisions of other laws and decrees:

1. On goods imported as personal effects by either a traveller or a crew member of vessel or aircraft in foreign line service;
2. On mail matters except those which have to receive the license as provided by Article 137; and
3. On goods employed to repair or substitute the part of vessels abroad.

(2) The dutiable value of the goods subject to the flat rate as referred to in the provision

of Paragraph 1 shall, notwithstanding the provision of Article 9, be the domestic wholesale price; provided, however, that the dutiable value of the goods falling under Item 3 of Paragraph 1 shall be foreign currency price paid for repair or substitution therefor.

(3) The simplified rate shall be provided for by the Presidential Decree on the basis of the rate of customs duty on goods imported, additional tax on provisional importation, internal tax and defense tax. However, with regard to goods falling under Item 3 of Paragraph 1, the simplified rate may be determined in consideration of the tariff rate, tariff exemption or reduction on goods generally used for repair or substitution.

(4) In case of the goods under Paragraph 1 whose total sum is under the amount provided for by the Presidential Decree, the rate under Paragraph 3 may be a flat rate in consideration of the rate of the customs duty on goods imported, additional tax on provisional importation, internal tax and defense tax.

Article 8-2 (Application of Duty Rate by Agreement) (1) With regard to goods import declaration of which has *en bloc* been filed, when the duty rate are different by items and the dutiable value can not be classified, the highest of the duty rates may be applicable in response to the goods-holder's application.

(2) In the case of application of the provision of Paragraph 1, the provisions of Section IV, Chapter II shall not be applicable.

Article 9 (Taxation Criteria) (1) The taxation criteria for customs duty shall be the price and/or quantity of imported goods.

(2) The dutiable value of imported goods shall be the price fulfilling the requirements falling under each of the following items:

1. The price on the date of import declaration (or on such other date as enumerated in each pertinent item of Article 4 with regard to those goods provided thereunder). Provided, however, that when the time elapsed from the day when the imported goods had been loaded at the exporting port to the date of import declaration is within a certain period of time as determined by the Ordinance of the Ministry of Finance, and when the import price has not considerably fluctuated, the import price on the day of loading may be the dutiable value;
2. The price which is settled at the open market between mutually independent buyers and sellers;
3. The price at which the goods are delivered in the importing port or the importing place (hereinafter referred to as the "importing port"); and
4. The price which shall include freight, insurance fees and other charges normally required for imported goods until arrival at the importing port from the exporting port.

(3) The dutiable value referred to in Paragraph 2 shall include neither duties nor other charges which shall be or have been reduced or exempted by the exporting country at the time of exporting.

Article 9-2 (Declaration of Price) (1) When the liable duty payer files an import declaration, he shall file the price of the goods concerned to the head of the customs office pursuant to the provisions of the Ordinance of the Ministry of Finance, with such documents as the invoice or other data relating to the determination of the dutiable value (hereinafter referred to as "invoice, etc.") attached thereto. Provided, however, that in cases where the head of the customs office deems there has been an unavoidable reason, the invoice may not be presented.

(2) With regard to goods, in the case of application of Paragraph 1, as deemed not difficult to determine the dutiable value thereof and so designated by the Director General

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of the Office of Customs Administration, a price declaration may be omitted.

Article 9-3 (Determination of the Dutiable Value) (1) The price declared pursuant to the provision of Article 9-2, except in cases falling under any of the following items, shall be the dutiable value:

1. In the case of transactions by such special contracts as consignment sales, instalment sales, etc.;
2. In the case of such transactions between special parties as those between the head office and branches or agencies, etc.; and
3. In the case of prices which shall not be regarded as meeting the requirements provided for in each item under Paragraph 2 of Article 9.

(2) In case of each item under Paragraph 1, the dutiable value shall be determined on the basis of each of the following items:

1. The price, authorized as the dutiable value, at which goods of identical category and quality or of analogous nature have, of late, arrived at the importing port;
2. The price quotation surveyed either by an overseas customs official or by the chief of Korean mission overseas;
3. The price as derived from taking into consideration the difference in value, due to difference in quality, capacity, time of importation and, any other factors between the imported goods and goods of identical category and quality or of analogous nature, on the basis of data concerning the price thereof; and
4. The price as adjusted to meet the requirements under the provisions of each item of Paragraph 2, Article 9, in cases where the declared price lacks for the said requirements.

(3) The scope of transactions referred to in Item 1 and Item 2 of Paragraph 1, shall be prescribed by the Ordinance of the Ministry of Finance.

(4) Matters concerning the customs officials referred to in Item 2 of Paragraph 2, shall be prescribed by the Presidential Decree.

Article 9-4 (Dutiable Value Computed from Market Price) (1) With regard to goods dutiable value of which cannot be determined pursuant to the provisions of Article 9-3, or which are designated by the Minister of Finance, the dutiable value shall be the domestic wholesale price of goods of identical category and quality or of analogous nature on the day as provided for under Article 4, minus taxes, other charges, normal costs and/or normal profits.

(2) The ratio of normal costs and/or normal profits referred to in Paragraph 1, shall be prescribed by the Ordinance of the Ministry of Finance.

Article 9-5 (Criteria for Computation of Freight, and Insurance Fees) (1) The freight and insurance fees referred to in Item 4 of Paragraph 2 of Article 9 shall be computed on the basis either of freight specifications and insurance fees specifications issued by the corresponding businessman or of documents in place thereof.

(2) With regard to computations of freight and insurance fees in Paragraph 1, in case of such air-transported goods, as designated by the Director General of the Office of Customs Administration, the freight and insurance fees for those commodities transported in general forwarding means other than aircraft shall be applied.

(3) When it is impossible to calculate the freight and insurance fees in accordance with the provision of Paragraph 1, the freight and insurance fees shall be computed according to the designation by the Director-General of the Office of Customs Administration, in consideration of distance and method of transportation.

Article 9-6 (Foreign Exchange Rate Applicable to Collection) For the conversion of value expressed in foreign currency into Korean currency in order to determine the dutiable value, the Director General of the Office of Customs Administration shall determine the exchange rate on the basis of the bank rate applicable on the day as prescribed by the provision of Article 5, (the day of import declaration, with regard to goods brought into the bonded construction site).

Article 9-7 (Suspension of Evaluation) (1) In cases where the declared price of the imported goods hinders or deemed likely to hinder the development of domestic industry, as well as in cases where the said price is not proper or deemed not to be proper, the Director-General of the Office of Customs Administration may suspend the application of provision of Article 9-3.

(2) In the case of Paragraph 1, the dutiable value concerned shall be determined as prescribed in the Ordinance of the Ministry of Finance.

(3) The value determined by the provision of Paragraph 2, shall apply from the date when the application of the concerned provision has been suspended pursuant to provision of Paragraph 1.

Article 9-8 (Report on Price Research) The Minister of Finance or the Director General of the Office of Customs Administration may, when deemed necessary, demand the presentation of documents as required to determine the dutiable value, from traders, economic associations, and the others concerned. In this case, any person who is so requested, shall meet the demand unless there are justifiable grounds.

Article 10 (Anti-Dumping Customs Duty) (1) In cases where as a result of importation of goods at dumping price, domestic industry is either impaired, or likely to be impaired, or prevented from functioning in a settled manner, if it is deemed necessary to protect the domestic industry concerned, such customs duty as computed by adding the balance between the dutiable value and dumping price on said goods to the customs duty as computed by the dutiable value of said goods may be assessed, subject to designations of the exporters or the exporting country of said goods and the period by the Presidential Decree.

(2) In cases where either a person who has interest in the industry related to dumping price importation requests, or the Government deems in particularly necessary, the Government shall investigate the facts to confirm whether the price is a dumping price or not.

(3) With regard to goods investigated pursuant to the provision of Paragraph 2, when there is a sufficient ground to presume that the said goods have been imported at dumping price and the Government confirms that it is necessary to protect the domestic industries, the Government may collect the amount equivalent to the balance between the dumping price and the dutiable value, or hold the collateral equivalent to the said balance even before completion of the investigation on the basis of designations of the goods, the exporters or the exporting country and the period by the Presidential Decree.

(4) When it is confirmed as a result of investigation pursuant to the provision of Paragraph 2, that the price of concerned goods is a dumping price the head of the customs office shall collect the customs duty under Paragraph 1, from the importers of said goods, by reckoning the day when the goods were imported at dumping price as the basis in accordance with the Presidential Decree.

Article 11 (Retaliatory Duty) On goods imported from countries which adversely discriminate either against export goods of Korean origin or against vessels or aircraft of

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Korean nationality, such customs duty as is based on normal tariffs plus the amount not more than the amount equivalent to the dutiable value may be levied, subject to designations, by the Presidential Decree, of such countries and goods being imported therefrom.

Article 12 (Emergency Duty) (1) In the case falling under any of the following items, customs duty rate may be raised within such limit as equivalent to forty percent of dutiable value (in the case of specific duty, the amount of customs duty equivalent thereto; the same shall apply hereinafter) in addition to the general tariff rate:

1. In the case of an urgent need to protect domestic industry which is important in relation to the national economy;
2. In the case of an urgent need to discourage the importation of particular goods; and
3. In the case of a need to modify tariffs as a result of a change in the industrial structure and the subsequent serious inequity of tariff on different goods.

(2) Goods on which the rate of customs duty shall be raised pursuant to the provision of Paragraph 1, the tariff rate thereon and the applicable period, shall be prescribed by the Presidential Decree.

Article 13 (Countervailing Duty) (1) When domestic industry, as a result of importation of goods directly or indirectly given a subsidy or a bounty (hereinafter referred to as "a subsidy and the like") in a foreign country in relation to manufacturing, production or exportation, is impaired or deemed likely to be impaired or is practically prevented from functioning in settlement (hereinafter referred to as "practical damage and the like"), if it is deemed necessary to protect the domestic industry concerned, the customs duty of the same amount as such subsidy and the like, or less (hereinafter referred to as "countervailing duty") may be levied in addition to customs duty according to the taxed cost of the goods concerned, subject to designation of such countries, goods or importers by the Presidential Decree.

(2) Countervailing duty may be levied based on the date of importation in case the goods to which a measurement requiring to offer a collateral as provided by Paragraph 9 (hereinafter referred to as "the provisionary measures"), among the goods directly or indirectly given a subsidy and the like in a foreign country in relation to manufacturing, production or exportation falls under any of the following items; provided, however, that the countervailing duty which may be levied in this case shall not exceed the amount offered as a collateral under Paragraph 9:

1. Goods, importation of which is deemed to result in practical damage and the like of domestic industry (including goods that is to receive a subsidy and the like, and importation of which is deemed to result in the practical damage and the like of domestic industry if not for provisionary measures), and which is imported during the period of provisionary measures;
2. Goods that is to receive a subsidy and the like, and importation of which, as it happens in large quantity in a short period of time, is deemed to result in irrecovable damage of domestic industry, and which is imported on and after 90 days prior to the date when provisionary measures are taken in case it is necessary for preventing recurrence of damages; and
3. Goods to which provisional measures under Paragraph 6 are taken as the exporter or the government of the exporting country breaks the promise provided for by Paragraph 9, and which is imported on and after 90 days before the date when provisional measures are taken; provided, however, that this shall not apply to goods imported before the date of breaking the promise.

(3) Any person who has interests related to domestic industry which receives practical damage and the like as mentioned in Paragraph 1 may require to levy a countervailing duty on the goods concerned, by presenting to the Minister of Finance sufficient evidence as to importation of goods given a subsidy and the like, and occurrence of practical damage and the like to domestic industry as a result of importation of the goods concerned, as provided by the Presidential Decree.

(4) The Minister of Finance shall, when he deems it necessary in case there is a requirement as provided by Paragraph 3 and there is sufficient evidence as to importation of goods given a subsidy and the like and occurrence of practical damages and the like to domestic industry as a result of importation of the goods concerned, investigate as to whether it is true or not.

(5) The investigation under Paragraph 4 shall be finished within one year after commencement of the investigation; provided, however, that the period of time may be extended under special circumstances.

(6) In case the investigation under Paragraph 4 commences, or the provisional measures under Paragraph 9 are taken, either the government of exporting country or the exporter of the goods concerned may offer a promise pertinent to the following items: provided, however, that an agreement of the government of exporting country shall be necessary in case of Item 2:

1. A promise that the government of exporting country should exterminate or reduce the subsidy and the like to the goods concerned or take proper measures to prevent damage to domestic industries resulted from the subsidy and the like; and
2. A promise that the exporter should change the cost so that the Minister of Finance may acknowledge the damage to domestic industry resulted from the subsidy and the like removed, or suspend the exportation.

(7) The investigation under Paragraph 4 shall be suspended or terminated in case the Minister of Finance accepts the promise provided for in the provision of Paragraph 6; provided, however, that the investigation may be continued in case the Minister of Finance deems it necessary, or the government of exporting country or the exporter or the importer require to continue the investigation as to damage to domestic industry.

(8) The Minister of Finance may, when he accepts the promise mentioned in Paragraph 6, require the government of exporting country or the exporter to present periodically materials related to fulfillment of the promise.

(9) Presentation of a collateral pertinent to the inferred amount of the subsidy and the like may, when there is sufficient evidence (in case of withdrawal or violation of the promise mentioned in Paragraph 6, and nonfulfillment of presentation of materials requested as provided by the provision of Paragraph 8, sufficient evidence as to this effect) to deduce a fact that goods investigated as provided by the provision of Paragraph 4 has been given the subsidy and the like, and, as a result, practical damage and the like have happened to domestic industry, and when it is necessary for protection of domestic industry, be required along with designation of the exporting country, the exporter of the goods concerned and the period of time (not exceeding 4 months) even before termination of the investigation, as provided by the Presidential Decree.

(10) The Minister of Finance shall, when he terminates the investigation mentioned in Paragraph 4, release the collateral presented as provided by Paragraph 9; provided, however, that this shall not apply when countervailing duty is levied as provided by Paragraph 2.

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Article 14 (Beneficial Duty) Tariff benefits may be granted within the limit of the tariff benefits granted under the provisions of existing treaties on customs tariffs concluded with particular countries, to such imported goods as produced in a country which has not enjoyed tariff benefits under a treaty on beneficial duty, subject to designations of such countries and goods by the Presidential Decree.

Article 15 (Prices Parity Duty) (1) In the case of importation of particular goods, due to a serious setback in supply and demand thereof, for which a stable price level should be maintained, such customs duty as being less than the amount of the standard price designated by the Ordinance of the Ministry of Finance minus the dutiable value of the said goods may be assessed.

(2) In cases where a sharp upsurge in the international prices of particular goods is deemed likely to impede the domestic price stability of related goods, such customs duty may be levied on the said goods as calculated either at a rate below the general tariff rate or by the amount less than the customs duty computed at the general tariff rate, according to the differentiation of the dutiable value.

(3) In cases where prices of particular goods show considerable seasonal fluctuations, the general tariff rate may be raised or lowered within such limit as equivalent to (forty) percent of dutiable value, according to the differentiation of seasons.

(4) The particular goods, the rate of duty, the amount to be collected or the applicable period referred to in the provisions of Paragraphs 1 through 3 shall be prescribed by the Presidential Decree.

Article 16 (Tariff Quota System) (1) In case where it is necessary to import particular goods to balance the supply and demand of materials, such customs duty may be levied in regard of a certain proportion of the said goods imported, as computed at the rate within the limit of the general tariff rate minus the rate equivalent to forty percent of the dutiable value.

(2) In case where there is a need to discourage importation of particular goods, such customs duty may be levied on the excessive portion over a certain quantity of the imported goods concerned, as computed at the rate within the limit of the general tariff rate plus the rate equivalent to forty percent of the dutiable value.

(3) Goods, a certain quantity or rate of duty to be governed by the provisions of Paragraphs 1 and 2, and period of application thereof shall be prescribed by the Presidential Decree.

Section 2. Assessment and Collection

Article 17 (Report and Payment) (1) In the case of an import declaration, the liable duty payer shall report the basis of assessment, rate of duty, and liable amount of duty to the head of the customs office pursuant to the provisions of the Presidential Decree.

(2) When the head of the customs office receives the report referred to in Paragraph 1, (hereinafter referred to as the "report on tax payments") he shall examine the matters so reported and deliver notice of tax payment by report to the liable duty payer.

(3) The liable tax payer shall pay the corresponding amount of duty to the head of the customs office within 20 days from the date when notice of tax payment by report referred to in Paragraph 2, is delivered.

(4) When the amount of duty reported is in excess of or less than the amount due or when it is found necessary to modify any other particulars reported, the liable tax payer

may make the revised report pursuant to the Ordinance of the Ministry of Finance before the import license.

(5) When the amount of duty reported for payment is different from the dutiable tax value, the head of the customs office may correct the value pursuant to the Ordinance of the Ministry of Finance.

Article 17-2 (Notice of Levy) (1) With regard to goods as designated by the Ordinance of the Ministry of Finance, the head of the customs office shall levy and collect the customs duty regardless of the provisions of Article 17.

(2) When the head of the customs office intends to collect the customs duty pursuant to the provision of Paragraph 1, notice of payment shall be delivered to the liable duty payer pursuant to the provisions of the Presidential Decree.

(3) A person who has received the notice referred to in Paragraph 2, shall pay the said amount within 20 days from the date of receipt thereof.

(4) When the head of the customs office has learned that the amount collected falls short due to an error made in the application of basis of assessment, rate of duty, and the provisions relating to reduction or exemption of duty, or any other causes, he shall collect the amount of the shortage.

Article 17-3 (Delinquency Charge) (1) When customs duty has not been paid in full within the payment period, a delinquency charge equivalent to ten percent of the delinquent amount shall be collected from the date when the payment period has expired.

(2) When the delinquent customs duty has not been paid within thirty days after the expiration of the payment period, a delinquency charge equal to five percent of the delinquent amount shall be collected, in addition to the delinquency charge stipulated under Paragraph 1, from the date when thirty days have elapsed.

(3) When the customs duty in delinquency has not been paid within sixty days after expiration of the payment period, a delinquency charge equal to five percent of the delinquent amount shall be collected, in addition to the delinquency charges stipulated under Paragraph 2, from the date when sixty days have elapsed.

(4) With regard to goods as designated by the Presidential Decree, the provisions of Paragraphs 1 through 3 shall not be applicable.

Article 18 (Delivery of Notice of Payment) (1) Notice of tax payment by report and notice of payment for customs duty shall be delivered by mail or by courier except in the case of an on-the-spot-delivery to a liable duty payer.

(2) When the residence, address, place of business or office of a liable duty payer are not known, the head of the customs office may announce the particulars on payment of duty by the public notice either on the bulletin board of the customs office concerned or in any other suitable place.

(3) Liable duty payers shall be regarded to have received the notice of tax payment by report and notice of payment for customs duty upon the expiration of ten days from the date of public notice referred to in Paragraph 2.

Article 19 (On-the-Spot-Collection of Customs Duty) (1) The Customs duty on goods falling under any of the following categories may be collected at the place of customs clearance by an official who inspected the goods concerned:

1. Personal effects of passengers; and
2. Goods unloaded from a vessel wrecked or stranded, and stored at a place other than a bonded area.

Excerpts from the Customs Law of Taiwan

CUSTOMS LAW

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10th Floor, 7 Roosevelt Road, Sec. 1
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NOTE

In case of any discrepancy between the English version and the Chinese text of these Rules, the Chinese text shall govern.

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*Promulgated on August 8, 1967
As Amended on July 17, 1968, August 24, 1971,
July 27, 1974, July 16, 1976
December 8, 1978, February 6, 1980,
August 30, 1980, and May 6, 1983.*

CHAPTER I GENERAL RULES**Article 1**

The collection of Customs duty shall be governed by the provisions of this Law.

Article 2

The term "Customs duty" as used in this Law is meant to denote the import duty which is collectable on goods imported from abroad.

Article 3

Customs duty shall be collected by the Customs either on an ad valorem basis or on a specific basis in accordance with the Customs Import Tariff under which different duty rates are specified in two columns applicable respectively to goods imported from nations or areas either having or having no reciprocal arrangement with the Republic of China. Nations and areas subject to application of each different duty rate shall be reported to the Executive Yuan for decision by the Ministry of Finance after consulting with relevant government agencies, the Executive Yuan shall in turn forward the same to the Legislative Yuan for information. The Customs Import Tariff shall be separately promulgated after enactment through legislative process.

A Customs Duty Rate Commission may be organized by the Ministry of Finance to study and review matters related to the amendment of import tariff and imposition of special customs duty. Organization structure and members of the Commission shall be formulated and nominated by the Ministry of Finance and submitted to the Executive Yuan for approval. Staff personnel required therefor shall be made available through reassignment of appropriate personnel within the statutory personnel quota of the Ministry of Finance.

Article 4

The duty-payer of Customs duty shall be the consignee of the imported goods or the holder of the bill of lading or imported goods.

Article 4-1

When a duty-payer who is a juristic person, a partnership or a non-juristic body is to be dissolved or liquidated, the liquidator shall, prior to the distribution of remaining assets, pay Customs duty, delinquent surcharge and fine respectively in due order according to law.

In case a liquidator violates the provisions of the preceding paragraph, he shall be liable for payment of such unpaid sums of money.

Article 4-2

The Customs duty, delinquent surcharge or fine which shall be levied in accordance with the provisions of this law but have not been collected within five years commencing from the date on which the collection of them was finally determined, shall not be collected again provided, however, that this shall not apply where the case has been referred to the court for compulsory execution and the proceedings have not been concluded prior to the expiration of the five-year period.

For calculation purpose, the aforesaid period shall, after the collection has been finally determined and approval for installment or deferred payments has been granted, commence from the following date on which the respective periods expired.

The provisions of the preceding two paragraphs shall apply mutatis mutandis to all charges leviable under this Law.

CHAPTER II PROCEDURE GOVERNING CUSTOMS DUTY COLLECTION

Section 1 Application for Import and Examination

Article 5

Application for goods imported must be made by the duty-payer within fifteen days from the date of arrival of the means of conveyance on which the goods were carried. However the duty-payer also may make it in advance before the importation of goods.

The rules governing the handling of application in advance for goods to be imported as referred to in the preceding paragraph shall be prescribed by the Ministry of Finance.

Article 5-1

For the purpose of accelerating the Customs clearance process for the imported goods,

the Customs may examine and release them in advance, by collecting import duty based on the Tariff Number and the duty-paying value reported by the duty-payer. In case the import duty is found to have been underlevied or over-levied in later reviews, the tax-payer shall be notified within six months after the release of the goods and the amount of import duty originally paid shall be considered to have approved in the absence of notification upon the expiry of such a time limit.

For the imported goods which are not examined and released in advance by collecting Customs duty in accordance with the provisions of the preceding paragraph, and for which, the Customs is unable to decide, in a prompt manner, the amount of payable duty, the Customs may, at the request of the duty-payer, examine and release the goods in advance by allowing the tax-payer to submit documentary information required for examination and to pay a deposit in an appropriate amount and the Customs shall, in a later examination, determine the amount of payable customs duty within six months from the date following the day on which the goods are released. Failure to do so on the party of the Customs upon expiry of the foregoing six-month period, the duty-paying value declared by the duty-payer shall be deemed as the basis in determining the amount of payable Customs duty.

Under any of the following circumstances, the imported goods shall not be taxed and released in advance in accordance with the provisions of the preceding paragraph provided, however, that the Customs may, at the request of the duty-payer, examine and release the goods in advance by allowing him to pay a deposit in an appropriate amount and set up a time limit for the duty-payer to go through with the Customs clearance procedures. The deposit shall be confiscated in case the duty-payer fails to do so upon expiry of such time limit:

1. The duty-payer fails to file relevant certificates for reduction or exemption of Customs duty in time and supplementary submission of them will follow.
2. The duty-payer fails to apply for the issuance of import permit in time but it is necessary for him to make application for import and to take delivery of the goods immediately. However, this shall apply to imported goods of permissible commodities only.
3. Any other imported goods that the Customs considers necessary to examine and release in advance against payment of a deposit.

Article 5-2

An application for import or export Customs clearance for a conveyance carrying passengers or cargos shall be filed with the Customs by the responsible person thereof.

The responsible person as referred to in the preceding paragraph shall be the captain in the case of ship, the commanding pilot in the case of airplane, the train master in the case of train, and the controller in the case of other motor vehicles.

The rules governing the control of import or export clearance Customs for a conveyance shall be prescribed by the Ministry of Finance.

Article 6

The performance of the necessary procedures such as application for import, duty payment on goods imported, etc. may be entrusted to a customs broker.

The rules governing the establishment and control of customs brokers as referred to in the preceding paragraph shall be prescribed by the Ministry of Finance.

Article 7

When applying for import of goods, the applicant is required to fill out and submit an application for import, to be accompanied by the bill of lading, invoice, packing list and other requisite import documents.

Article 8

The invoice submitted in accordance with the preceding Article shall contain such particulars as the description brand, quantity, quality, specifications, type or model, serial number, and unit price of the goods, freight, insurance and other expenses, and any amount of duty reduced or exempted at the port of shipment. If the goods have been sold prior to application for import, the relevant original contract should also be produced for inspection.

Article 9

An application for examination of the imported goods shall be filed within ten (10) days from the date of application for import. Without an application after the expiry of prescribed period for application for examination, the Customs may directly conduct the examination of imported goods along with the administrator of the warehouse.

When imported goods undergo Customs examination, it shall be at the duty-payer's own cost, to bear the expense for moving, unpacking or opening of the crates as well as the restoration of such packages and crates to their original form or condition.

The imported goods may be allowed to pass without examination by the Customs only as circumstances require. The categories and scope of imported goods which may be passed without examination by the Customs shall be determined by the Ministry of Finance.

Article 10

All goods imported shall be discharged and examined at the time and place designated by the Customs.

In case the goods imported are of a perishable or dangerous nature, or for any special reason approved by the Customs, an exception to the above provision may be granted in respect of the time and place for discharge and examination.

Article 11

For the purpose of verifying the quality and grade of the goods imported, and as

reference material in the course of tariff classification and valuation, the Customs is authorized to take samples from the goods concerned, but the quantity of such samples shall be limited to what is technically necessary for the above purposes.

Section 2 Duty-paying Value

Article 12

The duty-paying value of imported goods liable to Customs duty on ad valorem basis shall be determined and calculated on the basis of their true c.i.f. price plus 10 per cent. However, for simplification of customs duty assessment, the Customs may prepare a duty-paying value table of imported goods to serve as a basic reference for duty assessment.

Where the imported goods is not listed in the said duty-paying value table and the price declared to the Customs is considered as obviously too low, the Customs may decide or estimate an appropriate duty-paying value of such goods by referring to the true c.i.f. price of the same goods recently imported. In case the true c.i.f. price of the same goods recently imported is not obtainable, the Customs may decide or estimate an appropriate duty-paying value of such goods on the basis of their wholesale market value at the port of importation. When the wholesale market value is also not obtainable, the Customs may decide or estimate an appropriate duty-paying value of such goods by referring to the prevailing value of the said goods as domestically or abroad reported by creditable commercial information.

The duty-paying value table of imported goods as referred to in the first paragraph above shall be compiled by the Customs by referring to the true c.i.f. price of the identical or similar goods recently imported, the wholesale price at the port of importation and the prevailing value or the said goods as domestically or abroad reported by creditable commercial information and shall be publicly announced after having been approved by the Ministry of Finance. This same provision shall also apply in the case of amendment thereof.

Article 13

The term "wholesale market value at the port of importation" is defined to mean the normal price at which, on the day of application for import and on the open market at the port of importation, the said commodity or a similar commodity is freely and competitively offered for sale, or is capable of being sold in the usual wholesale quantities, in the ordinary course of trade. The duty-paying value of that commodity shall be derived by deducting the following two items of expenses from the normal price:

- (1) The amount of duty payable on the goods,
- (2) The expenses required for transporting the goods from the port of importation to the domestic market, the normal profit amount, etc., all of which combine to make up 20 per cent of the duty-paying value of the goods.

The formula for ascertaining the duty-paying value is as follows:

Wholesale Market Value x 100 ÷ (100 + duty + 20)
= Duty-paying Value.

In the absence of a wholesale market value at the port of importation, the prevailing price at a near-by principal domestic market may be taken as a basis for calculating the duty-paying value.

Article 14

The term "true c.i.f. price" is defined to mean the price at which, on the day of sale in the exporting country, the commodity or a similar commodity is freely and competitively offered for sale in the usual wholesale quantities and in the ordinary course of trade, plus the following three items of expenses:

- (1) The export duty payable on the commodity and the packing and other charges incurred at the port of shipment before loading.
- (2) The freight for transporting the commodity from the port of shipment to the port of importation; and
- (3) The insurance premium.

Article 15 (Deleted)

Article 16

In the event of the reimportation of machinery, apparatus or appliances which have been sent abroad for repair or assembly, or in the event of the reimport of exported goods for processing abroad, the duty-paying value of such machinery, apparatus or appliances, or processed goods shall be determined or estimated in accordance with the following provisions:

- (1) For machinery, apparatus and appliances which have been sent abroad for repair or assembly, the actual cost of repair or assembly shall be adopted as the basis of calculation;
- (2) For goods reimported after processing abroad, the difference between the duty-paying value of the goods at the time of reimport and that of goods similar to such goods at the time of their export and in their original form shall be adopted as the basis of calculation.

Article 17

In the case of imported goods on which only a rental or royalty is incurred, without a transfer of ownership, the duty-paying value shall be determined on the basis of the amount of the rental or royalty.

The above ruling is applicable only to such goods the ownership of which is not transferrable on account of patent rights, trade secrets or for other specific reasons approved by the Ministry of Finance as a special case.

The term of renting or using the imported goods as referred to in paragraph 1 shall be approved by the Ministry of Finance.

Article 18

In case where the true c.i.f. price is used as the basis for duty paying purposes, the original foreign currency price shall be converted at the current rate of exchange as published or approved by the foreign exchange control authorities. The applicability of such exchange rates shall be defined in an order issued by the Ministry of Finance.

Article 19

In case where a complete set of machinery, together with all essential equipment to be used directly with the machinery in the process of production, has to be imported in a knockdown state and packed separately because of over-size or for any other reason, such machinery and equipment shall be liable to duty according to their respective appropriate tariff headings, unless pertinent documents have, prior to importation, been submitted to the Customs for verification and found in order, in which case duty shall be assessed according to the tariff heading applicable to the machinery completed with equipment as one unit.

Article 20

With the exception of the machinery which is to be dealt with in accordance with the provisions of the preceding article, any other commodity, which is made up of several different component parts and is imported in a knockdown state and packed separately shall be liable to duty assessed according to the tariff heading applicable to the commodity as one single unit.

Article 21

For the purpose of ascertaining the correct duty-paying value of imported goods, the Customs, besides calling for reference the documents as mentioned in Articles 7 and 8, may also take the following additional measures:

- (1) To inspect any other document between the seller and buyer appertaining to the selling price of the goods;
- (2) To conduct inquiries into the wholesale market value or the c.i.f. price of the goods or goods of a similar kind, and to examine past records of duty-paying values assessed on previous shipments;
- (3) To investigate the account books of other sellers of the same imported goods;
- (4) To explore any other evidence pertinent to valuation.

Section 3 Time Limit for Duty Payment and Administrative Remedy**Article 22**

Customs duty shall be paid within fourteen days from the day of issue of the relevant duty memo by the Customs.

Article 23

Any duty-payer who is dissatisfied with the decision of the Customs on the tariff classification, the duty-paying value, or the special duty of the goods he imports, may, within fourteen days after receiving the relevant duty memo from the Customs, declare his objection to the decision to the Customs in writing in accordance with the prescribed form and request the Customs to recheck the case. Pending a final decision on the case, the duty-payer may apply to the Customs for release of the imported goods against payment of a deposit which shall be sufficient to cover the full amount of the duty, taxes and dues leviable.

In case of a determination that a supplementary import duty is leviable on goods examined and released through Customs clearance process, the duty-payer shall pay a deposit equivalent to the full amount of the supplementary import duty leviable if he declares his objection in accordance with the preceding paragraph. In case of failure to make the payment within the prescribed time limit, it shall be deemed that no request for re-check of the case has been made.

Article 24

Within twelve days after the receipt of a protest, the Customs shall review its decision. If the protest is sustained, the original tariff clarification or duty-paying value shall be revised; otherwise, the case shall be reported, with appropriate notation, to the Inspectorate General of Customs for consideration and decision. The time for consideration and decision of each case shall not exceed a period of two months.

For the purpose of dealing with such protest cases, the Inspectorate General of Customs shall establish a Tariff Board of Inquiry and Appeal. The rules governing the organization of the Board shall be drawn up by the Ministry of Finance.

Article 25

The duty-payer, if dissatisfied with the decision of the Inspectorate General of Customs as referred to in the preceding Article, may file an administrative appeal to the higher authorities and institute an administrative proceedings in accordance with the law.

Article 25-1

With regard to the Customs duties, delinquent surcharges or fines which are not paid up by the duty-payer or the person subjected to administrative measure, the Customs may notify the relevant authorities to the effect that properties of the duty-payer or the person subjected to administrative measure which shall be sufficient to cover the sums payable may not be transferred to a third party and other rights may not be exercised thereon. In case it is a profit-seeking enterprise, the Customs may further advise the competent authority-in-charge to restrain it from reducing capital or canceling registration.

In case the duty-payer or the person subjected to administrative measure who has

not paid the Customs duties, delinquent surcharges or fines payable according to the provisions of this law shows signs of concealing or transferring his properties in order to evade the execution, the Customs shall request the court for provisional seizure of his properties without requiring the Customs to provide security, provided, however, that this shall not apply where the duty-payer or the person subjected to administrative measure has already provided appropriate security.

In case the duty-payer or the person subjected to administrative measure has not paid the Customs duty leviable or fine up to a certain amount, the judicial agency or the Ministry of Finance may request in writing the Department of Entry of Exit control of the Ministry of the Interior to restrain him from departing from this country. In case it is a juristic person, a partnership or a non-juristic body, its responsible person or representatives may be restrained from departing from this country provided, however, that such restrictions shall be removed where appropriate security has already been provided. Enforcement rules in this connection shall be prescribed by the Executive Yuan.

CHAPTER III PRIVILEGED DUTY TREATMENT

Section 1 Duty Exemption

Article 26

Besides those imports which are duty-free as provided for in the Customs Import Tariff, the following articles are exempt from Customs import duty:

- (1) Articles imported for use by the President and the Vice President of the Republic of China;
- (2) Articles imported for official or personal use by the diplomatic and consular officials of foreign embassies, legations and consulates stationed in the Republic of China, and articles imported by other organizations and personnel which are entitled to diplomatic privileges; provided that the foreign governments concerned are extending reciprocal privileges to the Republic of China;
- (3) Mail pouches imported by diplomatic mission and articles for personal use brought in by officials of Government organizations returning from their overseas posts upon expiry of their terms of office, the scope and categories of which shall be prescribed by the Ministry of Finance;
- (4) Arms and ammunition, military equipment, vehicles, vessels, aircraft and accessories thereof, and supplies imported solely for military use by military authorities and armed forces;
- (5) Relief articles imported by government organizations conducting relief work or by public welfare and charity societies;
- (6) Articles necessary for educational, teaching, research, or experimental purposes imported by public and private schools of all grades or by other educational or research institutions compatible to the respective nature of their establishment;

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TITLE II—CUSTOMS VALUATION

Subtitle A—Valuation Standards Amendments

SEC. 201. VALUATION OF IMPORTED MERCHANDISE.

(a) VALUATION STANDARDS.—Section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) is amended to read as follows:

“SEC. 402. VALUE.

“(a) IN GENERAL.—(1) Except as otherwise specifically provided for in this Act, imported merchandise shall be appraised, for the purposes of this Act, on the basis of the following:

“(A) The transaction value provided for under subsection (b).

“(B) The transaction value of identical merchandise provided for under subsection (c), if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2).

“(C) The transaction value of similar merchandise provided for under subsection (c), if the value referred to in subparagraph (B) cannot be determined.

“(D) The deductive value provided for under subsection (d), if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).

“(E) The computed value provided for under subsection (e), if the value referred to in subparagraph (D) cannot be determined.

“(F) The value provided for under subsection (f), if the value referred to in subparagraph (E) cannot be determined.

“(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary shall prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

“(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

“(b) TRANSACTION VALUE OF IMPORTED MERCHANDISE.—(1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

“(A) the packing costs incurred by the buyer with respect to the imported merchandise;

“(B) any selling commission incurred by the buyer with respect to the imported merchandise;

“(C) the value, apportioned as appropriate, of any assist;

“(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

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“(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

“(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this Act only if—

“(i) there are no restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that—

“(I) are imposed or required by law,

“(II) limit the geographical area in which the merchandise may be resold, or

“(III) do not substantially affect the value of the merchandise;

“(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined with respect to the imported merchandise;

“(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E); and

“(iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).

“(B) The transaction value between a related buyer and seller is acceptable for the purposes of this subsection if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates—

“(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States; or

“(ii) the deductive value or computed value for identical merchandise or similar merchandise;

but only if each value referred to in clause (i) or (ii) that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

“(C) In applying the values used for comparison purposes under subparagraph (B), there shall be taken into account differences with respect to the sales involved (if such differences are based on

Amended by
P.L. 96-490,
effective 1/1/81.

sufficient information whether supplied by the buyer or otherwise available to the customs officer concerned) in—

“(i) commercial levels;

“(ii) quantity levels;

“(iii) the costs, commissions, values, fees, and proceeds described in paragraph (1); and

“(iv) the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

“(3) The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

“(A) Any reasonable cost or charge that is incurred for—

“(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

“(ii) the transportation of the merchandise after such importation.

“(B) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable.

“(4) For purposes of this subsection—

“(A) The term ‘price actually paid or payable’ means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

“(B) Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of the importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1).

“(c) TRANSACTION VALUE OF IDENTICAL MERCHANDISE AND SIMILAR MERCHANDISE.—(1) The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this Act under subsection (b) but adjusted under paragraph (2) of this subsection) of imported merchandise that is—

“(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and

“(B) exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

“(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this paragraph shall be based on sufficient information. If in applying this paragraph with

“Price actually
paid or payable.”

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respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest of such values.

“(d) DEDUCTIVE VALUE.—(1) For purposes of this subsection, the term ‘merchandise concerned’ means the merchandise being appraised, identical merchandise, or similar merchandise.

“Merchandise concerned.”

“(2)(A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

“(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

“(ii) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

“(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.

“(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity is the unit price at which such merchandise is sold to unrelated persons, at the first commercial level after importation (in cases to which subparagraph (A) (i) or (ii) applies) or after further processing (in cases to which subparagraph (A)(iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.

Unit price.

“(3)(A) The price determined under paragraph (2) shall be reduced by an amount equal to—

“(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

“(ii) the actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

“(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

“(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable; and

“(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.

“(B) For purposes of applying paragraph (A)—

“(i) the deduction made for profits and general expenses shall be based upon the importer’s profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and

“(ii) any State or local tax imposed on the importer with respect to the sale of imported merchandise shall be treated as a general expense.

“(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned.

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

“(e) COMPUTED VALUE.—(1) The computed value of imported merchandise is the sum of—

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

“(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

“(C) any assist, if its value is not included under subparagraph (A) or (B); and

“(D) the packing costs.

“(2) For purposes of paragraph (1)—

“(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and

“(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer’s profits and expenses, unless the producer’s profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

“(f) VALUE IF OTHER VALUES CANNOT BE DETERMINED OR USED.—(1) If the value of imported merchandise cannot be determined, or

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otherwise used for the purposes of this Act, under subsections (b) through (e), the merchandise shall be appraised for the purposes of this Act on the basis of a value that is derived from the methods set forth in such subsections, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

“(2) Imported merchandise may not be appraised, for the purposes of this Act, on the basis of—

“(A) the selling price in the United States of merchandise produced in the United States;

“(B) a system that provides for the appraisal of imported merchandise at the higher of two alternative values;

“(C) the price of merchandise in the domestic market of the country of exportation;

“(D) a cost of production, other than a value determined under subsection (e) for merchandise that is identical merchandise or similar merchandise to the merchandise being appraised;

“(E) the price of merchandise for export to a country other than the United States;

“(F) minimum values for appraisal; or

“(G) arbitrary or fictitious values.

This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or United States price under title VII.

“(g) SPECIAL RULES.—(1) For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:

“(A) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

“(B) Any officer or director of an organization and such organization.

“(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

“(D) Partners.

“(E) Employer and employee.

“(F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

“(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

“(2) For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

“(3) For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisal of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term ‘generally accepted accounting principles’ refers to any generally recognized consensus or substantial authoritative support regarding—

“(A) which economic resources and obligations should be recorded as assets and liabilities;

“(B) which changes in assets and liabilities should be recorded;

Imported
merchandise,
appraisal.

Ante, p. 150.

Generally
accepted
accounting
principles.

“(C) how the assets and liabilities and changes in them should be measured;

“(D) what information should be disclosed and how it should be disclosed; and

“(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

“(h) DEFINITIONS.—As used in this section—

“(1)(A) The term ‘assist’ means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

“(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

“(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

“(iii) Merchandise consumed in the production of the imported merchandise.

“(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

“(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work—

“(i) is performed by an individual who is domiciled within the United States;

“(ii) is performed by that individual while he is acting as an employee or agent of the buyer of the imported merchandise; and

“(iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

“(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv):

“(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

“(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

“(2) The term ‘identical merchandise’ means—

“(A) merchandise that is identical in all respects to, and was produced in the same country and by the same person as, the merchandise being appraised; or

“(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B) (i), regardless of whether merchandise meeting such requirements can be found), merchandise that is identical in all respects to, and was produced in the same country as, but not produced by the same person as, the merchandise being appraised.

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

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“(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

“(II) is not an assist because undertaken within the United States.

“(3) The term ‘packing costs’ means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

“(4) The term ‘similar merchandise’ means—

“(A) merchandise that—

“(i) was produced in the same country and by the same person as the merchandise being appraised,

“(ii) is like the merchandise being appraised in characteristics and component material, and

“(iii) is commercially interchangeable with the merchandise being appraised; or

“(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that—

“(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

“(ii) meets the requirement set forth in subparagraph (A) (ii) and (iii).

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

“(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

“(II) is not an assist because undertaken within the United States.

“(5) The term ‘sufficient information’, when required under this section for determining—

“(A) any amount—

“(i) added under subsection (b)(1) to the price actually paid or payable,

“(ii) deducted under subsection (d)(3) as profit or general expense or value from further processing, or

“(iii) added under subsection (e)(2) as profit or general expense;

“(B) any difference taken into account for purposes of subsection (b)(2)(C); or

“(C) any adjustment made under subsection (c)(2);

means information that establishes the accuracy of such amount, difference, or adjustment.”

(b) REPEAL OF EXISTING ALTERNATIVE VALUATION STANDARDS.—Section 402a of the Tariff Act of 1930 (19 U.S.C. 1402) is repealed.

SEC. 202. CONFORMING AMENDMENTS.

(a) TARIFF ACT OF 1930.—The Tariff Act of 1930 (19 U.S.C. 1202 et seq.) is amended as follows:

(1) Paragraph (2) of section 332(e) is amended to read as follows:

19 USC 1332.

- Ante.* p. 194.
- 19 USC 1336.
- 19 USC 1351.
- 19 USC 1500.
- 26 USC 993.
- 19 USC 1401a note.
- Ante.* p. 147.
- 19 USC 1401a note.
- “(2) The term ‘import cost’ means the transaction value of the imported merchandise determined in accordance with section 402(b) plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States.”.
- (2) Section 336 is amended—
- (A) by striking out subsection (b);
- (B) by striking out “and in basis of value” in subsection (c);
- (C) by striking out “or in basis of value” in each of subsections (d), (f), and (k); and
- (D) by striking out subsection (j).
- (3) Paragraph (2)(D)(ii) of section 350(a) is amended by striking out “or 402a”.
- (4) Paragraph (a) of section 500 is amended to read as follows:
- “(a) appraise merchandise by ascertaining or estimating the value thereof, under section 402, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding;”.
- (b) **TARIFF SCHEDULES OF THE UNITED STATES.**—The Tariff Schedules of the United States (19 U.S.C. 1202) are further amended as follows:
- (1) General headnote 6(b)(i) is amended by striking out “or section 402a”.
- (2) Each of the following headnotes is amended by striking out “or 402a” wherever it appears therein:
- (A) Headnote 4 to subpart E of part 3 of schedule 6.
- (B) Headnote 1 to subpart B of part 11 of schedule 7.
- (C) Headnote 2 to part 1 of schedule 8.
- (D) Headnotes 2(a), 2(c), and 3(a) to subpart B of part 1 of schedule 8.
- (c) **OTHER LAWS.**—
- (1) **TRADE ACT OF 1974.**—Section 601(4) of the Trade Act of 1974 (19 U.S.C. 2481(4)) is amended by striking out “(19 U.S.C. sec. 1401a or 1402)” and inserting in lieu thereof “(as in effect before the effective date of the amendments made by title II of the Trade Agreements Act of 1979) or in section 402 of such Act of 1930 (as in effect on the effective date of such title II amendments) whichever is”.
- (2) **INTERNAL REVENUE CODE OF 1954.**—Paragraph (1) of section 993(c) of the Internal Revenue Code of 1954 is amended by striking out “402a of the Tariff Act of 1930 (19 U.S.C. sec. 1401a or 1402)” and inserting in lieu thereof “of the Tariff Act of 1930 (19 U.S.C. 1401a)”.
- SEC. 203. PRESIDENTIAL REPORT ON OPERATION OF THE AGREEMENT.**
- As soon as practicable after the close of the 2-year period beginning on the date on which the amendments made by this title (other than section 223(b), relating to certain rubber footwear) take effect, the President shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade approved under section 2(a) (hereinafter in this subtitle referred to as the “Agreement”), both domestically and internationally, during that period.
- SEC. 204. TRANSITION TO VALUATION STANDARDS UNDER THIS TITLE.**
- (a) **EFFECTIVE DATE OF AMENDMENTS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this title (except the amendments made by section 223(b)) shall take effect on—

(A) January 1, 1981, if the Agreement enters into force with respect to the United States by that date; or

(B) if subparagraph (A) does not apply, that date after January 1, 1981, on which the Agreement enters into such force;

and shall apply with respect to merchandise that is exported to the United States on or after whichever of such dates applies.

(2) **EARLIER EFFECTIVE DATE UNDER CERTAIN CIRCUMSTANCES.**—If the President determines before January 1, 1981, that—

(A) the European Economic Community has accepted the obligations of the Agreement with respect to the United States; and

(B) each of the member states of the European Economic Community has implemented the Agreement under its laws; the President shall by proclamation announce such determination and the amendments made by this title (except the amendments made by section 223(b)) shall take effect on the date specified in the proclamation (but not before July 1, 1980) and shall apply with respect to merchandise that is exported to the United States on or after such date; except that unless the Agreement enters into force with respect to the United States by January 1, 1981, all provisions of law that were amended by such amendments are revived (as in effect on the day before such amendments took effect) on January 1, 1981, and such provisions—

(i) shall remain in effect until the date on which the Agreement enters into force with respect to the United States (and on such date the amendments made by this title (except the amendments made by section 223(b)) are revived and shall apply with respect to merchandise exported to the United States on or after such date); and

(ii) shall apply with respect to merchandise exported to the United States on or after January 1, 1981, and before the date on which the Agreement enters into such force.

(b) **APPLICATION OF OLD LAW VALUATION STANDARDS.**—For purposes of the administration of the customs laws, all merchandise (other than merchandise to which subsections (a) and (c) apply) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

(c) **SPECIAL TREATMENT FOR CERTAIN RUBBER FOOTWEAR.**—The amendments made by section 223(b) shall take effect July 1, 1981, or, if later, the date on which the Agreement enters into force with respect to the United States, and shall apply, together with the other amendments made by this title, to rubber footwear exported to the United States on or after such date. For purposes of the administration of the customs laws, all rubber footwear (other than rubber footwear to which the preceding sentence applies) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

(d) **DEFINITION.**—For purposes of this section, the term “rubber footwear” means articles described in item 700.60 of the Tariff Schedules of the United States (as in effect on the day before the day on which the amendments made by section 223(b) take effect).

19 USC 1202.

Excerpt from the U.S. Department of Commerce's Importing Into the
United States (1984)

request for further review must be filed with the protest. The same Form 19 can be used for this purpose. If filed separately, application for further review must still be filed within 90 days of liquidation. However, if a ruling on the question has previously been issued in response to a request for a decision on a prospective transaction or a request for internal advice, further review will ordinarily be denied. If a protest is denied, an importer has the right to litigate the matter by filing a summons with the U.S. Court of International Trade within 180 days after denial of the protest. The rules of the court and other applicable statutes and precedents determine the course of customs litigation.

While the Customs ascertainment of dutiable status is final for most purposes at the time of liquidation, a liquidation is not final until any protest which has been filed against it has been decided. Similarly, the administrative decision issued on a protest is not final until any litigation filed against it has become final.

Entries must be liquidated within one year of the date of entry unless the liquidation needs to be extended for another one-year period not to exceed a total of 4 years from the date of entry. The Customs Service must notify the importer and certain other interested parties when liquidation of an entry is suspended.

7 conversion of currency

The conversion of foreign currency for customs purposes must be made in accordance with the provisions of section 522, Tariff Act of 1930, as amended. This section states that Customs is to use rates of exchange determined and certified by the Federal Reserve Bank of New York. These certified rates are based on the New York market buying rates for the foreign currencies involved.

In the case of widely used currencies, rates of exchange are certified each day. The rates certified on the first business day of each calendar quarter are used throughout the quarter except on days when fluctuations of 5 percent or greater occur, in which case the actual certified rates for those days are used. For infrequently used currencies, the Federal Reserve Bank of New York certifies rates of exchange upon request by Customs. The rates certified are only for the currencies and dates requested.

For customs purposes, the date of exportation of the goods is the date used to determine the applicable certified rate of exchange. This remains true even though a different rate may have been used in payment of the goods. Information as to the applicable rate of exchange in converting currency for customs purposes in the case of a given shipment may be obtained from a district or port director of Customs.

8 transaction value

U.S. Customs officers are required by law to determine the value for imported merchandise. The valuation provisions of the Tariff Act of 1930 are found in section 402, as amended by the Trade Agreements Act of 1979. Pertinent portions are reproduced in the appendix.

Generally, the customs value of all merchandise, other than certain rubber footwear, exported to the United States on or after July 1, 1980, will be the transaction value for the goods. If the transaction value cannot be used, then certain secondary bases are considered. The secondary bases of value, listed in order of precedence for use, are:

- Transaction value of identical merchandise,
- Transaction value of similar merchandise,
- Deductive value, and
- Computed value.

The order of precedence of the last two values can be reversed if the importer so requests. These secondary bases are discussed in the next two chapters.

Transaction Value

The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts for the following items if not included in the price:

1. The packing costs incurred by the buyer.
2. Any selling commission incurred by the buyer.
3. The value of any assist.
4. Any royalty or license fee that the buyer is required to pay as a condition of the sale.
5. The proceeds, accruing to the seller, of any subsequent resale, disposal, or use of the imported merchandise.

The amounts for the above items are added only to the extent that each is not included in the price actually paid or payable and information is available to establish the accuracy of the amount. If sufficient information is not available, then the transaction value cannot be determined and the next basis of value, in order of precedence, must be considered for appraisal. A discussion of these added items follows:

Packing costs consist of the cost incurred by the buyer for all containers and coverings of whatever nature and for the labor and materials used in packing the imported merchandise, ready for export.

Any selling commission incurred by the buyer with respect to the imported merchandise constitutes part of the transaction value. Buying commissions do not. A selling commission means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

The apportioned value of any assist constitutes part of the transaction value of the imported merchandise. First the value of the assist is determined; then the value is prorated to the imported merchandise.

Assists. An assist is any of the items listed below that the buyer of imported merchandise provides, directly or indirectly, free of charge or at a reduced cost for use in the production of or the sale of merchandise for export to the United States.

Materials, components, parts, and similar items incorporated in the imported merchandise.

Tools, dies, molds, and similar items used in producing the imported merchandise.

Merchandise consumed in producing the imported merchandise.

Engineering, development, artwork, design work, and plans and sketches that are undertaken outside the United States. "Engineering . . ." will not be treated as an assist if the service or work is (1) performed by a person domiciled within the United States, (2) performed while that person is acting as an employee or agent of the buyer of the imported merchandise, and (3) incidental to other engineering, development, artwork, design work, or plans or sketches undertaken within the United States.

Value. In determining the value of an assist, the following general rules apply:

1. The value is either (a) the cost of acquiring the assist, if acquired by the importer from an unrelated seller, or (b) the cost of producing the assist, if produced by the importer or a person related to the importer.
2. The value includes the cost of transporting the assist to the place of production.
3. The value of assists used in producing the imported merchandise is adjusted to reflect use, repairs, modifications, or other factors affecting the value of the assists. Assists of this type include such items as tools, dies, and molds.

For example, if the importer previously used the assist, regardless of whether he acquired or produced it, the original cost of acquisition or of production must be decreased to reflect the use. Alternatively, repairs and modifications may result in the value of the assist having to be adjusted upward.

4. In the case of engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States, the value is (a) the cost of obtaining copies of the assist, if the assist is available in the public domain; (b) the cost of the purchase or of the lease, if the assist was bought or leased by the buyer from an unrelated person; (c) the value added outside the United States, if the assist was produced in the United States and one or more foreign countries.

So far as possible, the buyer's commercial record system will be used to determine the value of an assist, especially such assists as engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States.

Apportionment. Having determined the value of an assist, the next step is to prorate that value to the imported merchandise. The apportionment is done reasonably and according to generally accepted accounting principles. By the latter is meant any generally recognized consensus or substantial authoritative support regarding the recording and measuring of assets and liabilities and changes therein, the disclosing of information, and the preparing of financial statements.

Royalty or license fees that a buyer must pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States should be included in the price paid or payable. Ultimately, whether a royalty or license fee is dutiable will depend on whether the buyer had to pay it as a condition of the sale and to whom and under what circumstances it was paid. The dutiability status will have to be decided on a case-by-case basis.

Charges for the right to reproduce the imported goods in the United States are not dutiable. This right applies only to the following types of merchandise:

- Originals or copies of artistic or scientific works.
- Originals or copies of models and industrial drawings.
- Model machines and prototypes.
- Plant and animal species.

Any proceeds resulting from the subsequent sale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller are dutiable. These proceeds are added to the price actually paid or payable, if not otherwise included.

The price actually paid or payable for the imported merchandise is the total payment excluding international freight, insurance, and other c.i.f. charges, that the buyer makes to the seller. This payment may be direct or indirect. Some examples of an indirect payment are when the buyer settles all or part of a debt owed by the seller, or when the seller reduces the price on a current importation to settle a debt he owes the buyer. Such indirect payments are part of the transaction value.

However, if a buyer performs an activity on his own account, other than those which may be included in the transaction value, then the activity is not considered an indirect payment to the seller and is not part of the transaction value. This applies even though the buyer's activity might be regarded as benefiting the seller; for example, advertising.

Exclusions

The amounts to be disregarded in determining transaction value are as follows:

1. The cost, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the goods from the country of exportation to the place of importation in the United States.
2. Any decrease in the price actually paid or payable that is made or effected between the buyer and seller *after the date of importation* of the goods into the United States.
3. Any reasonable cost or charge incurred for:
 - Constructing, erecting, assembling, maintaining, or providing technical assistance with respect to the goods after importation into the United States, or
 - Transporting the goods after importation.
4. The customs duties and other Federal taxes, including any Federal excise tax for which sellers in the United States are ordinarily liable.

Note: Items 3 and 4 above, must be identified separately.

Limitations

The transaction value of imported merchandise is the appraised value of that merchandise, provided certain limitations do not exist. If any of these limitations are present, then transaction value cannot be used as the appraised value, and the next basis of value will be considered. The limitations can be divided into four groups:

1. Restrictions on the disposition or use of the merchandise.
2. Conditions for which a value cannot be determined.
3. Proceeds accruing to the seller.
4. Related-party transactions where the transaction value is not acceptable.

The term "acceptable" means that the relationship between the buyer and seller did not influence the price actually paid or payable. Examining the circumstances of the sale will help make this determination.

Alternatively, "acceptable" can also mean that the transaction value of the imported merchandise closely approximates one of the following test values, provided these values relate to merchandise exported to the United States at or above the same time as the imported merchandise:

1. The transaction value of identical merchandise or of similar merchandise in sales to unrelated buyers in the United States.
2. The deductive value or computed value for identical merchandise or similar merchandise.

The test values are used for comparison only. They do not form a substitute basis of valuation.

In determining if the transaction value is close to one of the foregoing test values, an adjustment is made if the sales involved differ in:

Commercial levels,

Quantity levels,

The costs, commission, values, fees, and proceeds added to the transaction value (price paid) if not included in the price, and

The costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

As stated, the test values are alternatives to the relationship criterion. If one of the test values is met, it is not necessary to examine the question of whether the relationship influenced the price.

19 transaction value of identical merchandise or similar merchandise

When the transaction value cannot be determined, then the customs value of the imported goods being appraised is the transaction value of identical merchandise. If merchandise identical to the imported goods cannot be found or an acceptable transaction value for such merchandise does not exist, then the customs value is the transaction value of similar merchandise. The above value would be previously accepted customs values.

Besides the data common to all three transaction values, certain factors specifically apply to the transaction value of identical merchandise or similar merchandise. These factors concern (1) the exportation date, (2) the level and quantity of sales, (3) the meaning, and (4) the order of precedence of identical merchandise and of similar merchandise.

Exportation Date. The identical (similar) merchandise for which a value is being determined must have been sold for export to the United States and exported at or about the same time as the merchandise being appraised.

Sales Level/Quantity. The transaction value of identical (similar) merchandise must be based on sales of identical (similar) merchandise at the same commercial level and in substantially the same quantity as the sale of the merchandise being appraised. If no such sale exists, then sales at either a different commercial level or in different quantities, or both, can be used but must be adjusted to take account of any such difference. Any adjustment must be based on sufficient information, that is, information establishing the reasonableness and accuracy of the adjustment.

Meanings. The term "identical merchandise" means merchandise that is—

Identical in all respects to the merchandise being appraised,
Produced in the same country as the merchandise being appraised, and
Produced by the same person as the merchandise being appraised.

If merchandise meeting all three criteria cannot be found, then identical merchandise is merchandise satisfying the first two criteria but produced by a different person than the merchandise being appraised.

Note: Merchandise can be identical to the merchandise being appraised and still show minor differences in appearance.

Exclusion: Identical merchandise does not include merchandise that incorporates or reflects engineering, development, artwork, design work, and plans and sketches provided free or at reduced cost by the buyer and undertaken in the United States.

The term "similar merchandise" means merchandise that is—

Produced in the same country and by the same person as the merchandise being appraised,
Like the merchandise being appraised in characteristics and component materials, and
Commercially interchangeable with the merchandise being appraised.

If merchandise meeting the foregoing criteria cannot be found, then similar merchandise is merchandise having the same country of production, like characteristics and component materials, and commercial interchangeability but produced by a different person.

In determining whether goods are similar, some of the factors to be considered are the quality of the goods, their reputation, and existence of a trademark.

Exclusion: Similar merchandise does not include merchandise that incorporates or reflects engineering, development, artwork, design work, and plans and sketches provided free or at reduced cost by the buyer and undertaken in the United States.

Order of Precedence. Sometimes more than one transaction value will be present. If this occurs, one value must take precedence.

Acceptable sales at the same level and quantity take precedence over sales at different levels and/or quantities. The order of precedence can be summarized as follows:

1. Identical merchandise produced by the same person.
2. Identical merchandise produced by another person.
3. Similar merchandise produced by the same person.
4. Similar merchandise produced by another person.

It is possible that two or more transaction values for identical (similar) merchandise will be determined. In such a case, the lowest value will be used as the appraised value of the imported merchandise.

20 other bases

Deductive Value

If the transaction value of imported merchandise, of identical merchandise, or of similar merchandise cannot be determined, then deductive value is calculated for the merchandise being appraised. Deductive value is the next basis of appraisement to be used, unless the importer designates computed value as the preferred method of appraisement. If computed value was chosen and subsequently determined not to exist for customs valuation purposes, then the basis of appraisement reverts to deductive value.

If an assist is involved in a sale, that sale cannot be used in determining deductive value. So any sale to a person who supplies an assist for use in connection with the production or sale for export of the merchandise concerned is disregarded for deductive value.

Basically, deductive value is the resale price in the United States after importation of the goods, with deductions for certain items. In discussing deductive value, the term "merchandise concerned" is used. The term means the merchandise being appraised, identical merchandise, or similar merchandise. Generally, the deductive value is calculated by starting with a unit price and making certain additions to and deductions from that price.

Unit Price. One of three prices constitutes the unit price in deductive value. The price used depends on when and in what condition the merchandise concerned is sold in the United States.

1. **Time and Condition:** The merchandise is *sold in the condition* as imported *at or about the date of importation* of the merchandise being appraised.

Price: The price used is the unit price at which the greatest aggregate quantity of the merchandise concerned is sold at or about date of importation.

2. **Time and Condition:** The merchandise concerned is *sold in the condition* as imported *but not sold at or about the date of importation* of the merchandise being appraised.

Price: The price used is the unit price at which the greatest aggregate quantity of the merchandise concerned is sold after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of importation.

3. **Time and Condition:** The merchandise concerned is *not sold in the condition* as imported and *not sold before the close of the 90th day* after the date of importation of the merchandise being appraised.

Price: The price used is the unit price at which the greatest aggregate quantity of the merchandise being appraised, after further processing, is sold before the 180th day after the date of importation.

This third price is also known as the "further processing price" or "superdeductive."

Additions. Packing costs for the merchandise concerned are added to the price used for deductive value, provided these costs have not otherwise been included. These costs are added regardless of whether the importer or the buyer incurs the cost. Packing costs means the cost of:

1. All containers and coverings of whatever nature; and
2. Packing, whether for labor or materials, used in placing the merchandise in condition, packed ready for shipment to the United States.

Deductions. Certain items are not a part of deductive value and must be deducted from the unit price. These items are as follows:

1. **Commissions or Profit and General Expenses.** Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, applicable to sales in the United States of imported merchandise that is of the same class or kind as the merchandise concerned, regardless of the country of exportation.

2. **Transportation/Insurance Costs.** The usual and associated costs of transporting and insuring the merchandise concerned from (a) the country of exportation to the place of importation in the United States and (b) the place of importation to the place of delivery in the United States, provided these costs are not included as a general expense under the preceding item 1.
3. **Customs Duties/Federal Taxes.** The customs duties and other Federal taxes payable on the merchandise concerned because of its importation plus any Federal excise tax on, or measured by the value of, such merchandise for which sellers in the United States are ordinarily liable.
4. **Value of Further Processing.** The value added by the processing of the merchandise after importation, provided sufficient information exists concerning the cost of processing. The price determined for deductive value is reduced by the value of further processing, only if the third unit price (the superdeductive) is used as deductive value.

Superdeductive. The importer has the option to ask that deductive value be based on the further-processing price. If the importer makes that choice, certain facts concerning valuing the further-processing method, termed "superdeductive," must be followed.

Under the superdeductive, the merchandise concerned is not sold in the condition as imported and not sold before the close of the 90th day after the date of importation but is sold before the 180th day after the date of importation.

Under this method, an amount equal to the value of the further processing must be deducted from the unit price in determining deductive value. The amount so deducted must be based on objective and quantifiable data concerning the cost of such work as well as any spoilage, waste or scrap derived from that work. Items such as accepted industry formulas, methods of construction, and industry practices could be used as a basis for calculating the amount to be deducted.

Generally, the superdeductive method cannot be used if the further processing destroys the identity of the goods. Such situations will be decided on a case-by-case basis for the following reasons:

1. Sometimes, even though the identity of the goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty for importers or for the Customs Service.
2. In some cases, the imported goods still keep their identity after processing but form only a minor part of the goods sold in the United States. In such cases, using the superdeductive method to value the imported goods will not be justified.

The superdeductive method cannot be used if the merchandise concerned is sold in the condition as imported before the close of the 90th day after the date of importation of the merchandise being appraised.

Computed Value

The last basis of appraisement is computed value. If customs valuation cannot be based on any of the values previously discussed, then computed value is considered. This value is also the one the importer can select to precede deductive value as a basis of appraisement.

Computed value consists of the sum of the following items:

1. Materials, fabrication, and other processing used in producing the imported merchandise.
2. Profit and general expenses.
3. Any assist, if not included in items 1 and 2.
4. Packing costs.

Materials, Fabrication, and Other Processing. The cost or value of the materials, fabrication, and other processing of any kind used in producing the imported merchandise is based on (a) information provided by or on behalf of the producer and (b) the commercial accounts of the producer if the accounts are consistent with generally accepted accounting principles applied in the country of production of the goods.

Note: If the country of exportation imposes an internal tax on the materials or their disposition and refunds the tax when merchandise produced from the materials is exported, then the amount of the internal tax is not included as part of the cost or value of the materials.

Profit and General Expenses. The producer's profit and general expenses are used, provided they are consistent with the usual profit and general expenses reflected by producers in the country of exportation in sales of merchandise of the same class or kind as the imported merchandise. Some facts concerning the amount for profit and general expenses should be mentioned.

1. The amount is determined by information the producer supplies and on his commercial accounts, provided such accounts are consistent with generally accepted accounting principles in the country of production.

Note: As a point of contrast, for deductive value the generally accepted accounting principles used are those in the United States, whereas in computed value the generally accepted accounting principles are those in the country of production.

2. The producer's profit and general expenses must be consistent with those usually reflected in sales of goods of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States. If they are not consistent, then the amount for profit and general expenses is based on the usual profit and general expenses of such producers.

3. The amount for profit and general expenses is taken as a whole. This is the same treatment as occurs in deductive value.

Basically, a producer's profit could be low and his general expenses high, so that the total amount is consistent with that usually reflected in sales of goods of the same class or kind. A producer's actual profit figures, even if low, will be used provided he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the industry concerned.

Assists. If the value of an assist used in producing the merchandise is not included as part of the producer's materials, fabrication, other processing, or general expenses, then the prorated value of the assist will be included in computed value. It is important that the value of the assist is not included elsewhere because no component of computed value should be counted more than once in determining computed value.

Note: The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States is included in computed value only to the extent that such value has been charged to the producer.

Packing Costs. The cost of all containers and coverings of whatever nature and of packing, whether for labor or material, used in placing merchandise in condition, packed ready for shipment to the United States is included in computed value.

Under computed value, "merchandise of the same class or kind" must be imported from the same country as the merchandise being appraised and must be within a group or range of goods produced by a particular industry or industry sector. Whether certain merchandise is of the same class or kind as other merchandise will be determined on a case-by-case basis.

In determining usual profit and general expenses, sales for export to the United States of the narrowest group or range of merchandise that includes the merchandise being appraised will be examined, providing the necessary information can be obtained.

Note: As a point of contrast, under deductive value, "merchandise of the same class or kind" includes merchandise imported from other countries besides the country from which the merchandise being appraised was imported. Under computed value, "merchandise of the same class or kind" is limited to merchandise imported from the same country as the merchandise being appraised.

**Value If Other Values
Cannot Be Determined**

If none of the previous five values can be used to appraise the imported merchandise, then the customs value must be based on a value derived from one of the five previous methods, reasonably adjusted as necessary. The value so determined should be based, to the greatest extent possible, on previously determined values. Only data available in the United States will be used.

Some examples of how the other methods can be reasonably adjusted are:

1. Identical Merchandise (or Similar Merchandise):

- a. The requirement that the identical merchandise (or similar merchandise) should be exported at or about the same time as the merchandise being appraised could be flexibly interpreted.
 - b. Identical imported merchandise (or similar imported merchandise) produced in a country other than the country of exportation of the merchandise being appraised could be the basis for customs valuation.
 - c. Customs values of identical imported merchandise (or similar imported merchandise) already determined on the basis of deductive value and computed value could be used.
2. **Deductive Method:** The 90-day requirement could be administered flexibly.

