

**CUSTOMS REGULATIONS FOR  
DETERMINING THE CUSTOMS VALUE  
ACCORDING TO THE CUSTOMS LAW OF THE REPUBLIC OF  
CROATIA (ARTICLES 29 TO 48)**

***GENERAL PROVISIONS***

These Customs regulations, pursuant to Articles 29 to 48 of the Customs Law, shall prescribe detailed conditions and the manner of determining the customs value.

***Use of Generally Accepted Accounting Principles***

1. "Generally accepted accounting principles" means the recognised consensus or substantial authoritative support within a country at a particular time as to which economic resources or obligations should be deemed as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be the guidelines of general application, as well as detailed practices and procedures.

2. When applying this Law, the Customs Directorate shall consistently utilise data and information prepared according to the generally accepted accounting principles in the country that are appropriate for the Article concerned.

For example, the determination of usual profit and general expenses under the provisions of Article 35 would be carried out utilising information prepared in a manner consistent with the generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 36 would be carried out utilising information prepared in a manner consistent with generally accepted accounting principles of the country of production.

As a further example, we state the determination of an element provided for in Article 38, paragraph 1, item b), indent 2, whereby the country of importation would utilise information of that country prepared according to the generally accepted accounting principles.

## **NOTES TO ARTICLES**

### **Note to Article 30**

#### *Definitions of terms*

Article 30 of The Customs Law explains the meaning of particular terms, related to the determining of the customs value and used in the further text of The Customs Law.

When applying this Article, a term “persons” shall refer to legal persons wherever applicable.

When applying this Law, it shall be considered that one person controls another when he occupies, either legally or operatively, such a position that he may apply restriction or command onto another person.

For the purpose of Article 30, paragraph 4, item h), the persons shall be considered as members of the same family only if they are related as:

- husband and wife
- parent and child
- brother / sister or half-brother / half-sister
- grandfather or grandmother and grandchildren
- uncle ( father's brother ) and his wife, uncle (mother's brother) and his wife, uncle or aunt and nephew or niece
- fathers-in-law and mothers-in-law (of both – husband and wife), son-in-law and daughter-in-law
- brother-in-law and sister-in-law

### **Notes to Articles 30 to 37**

#### *Sequential Application of Valuation Methods*

1. Articles 31 to 37 define how the customs value of imported goods is to be determined according to the provisions of this Law, to Article VII of GATT and to the Agreement on implementation of Article VII of GATT. The valuation methods are set out in a sequential order of application. The primary method for customs valuation is defined in Article 31, where the value of imported goods is to be determined according to the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. If the customs value cannot be determined based on the provisions of Article 31, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 34, only if the customs value cannot be determined under the provisions of a particular Article, the provisions of the next Article in the sequence may be applied.

3. If the importer does not request that the order of Articles 35 and 36 be reversed, the normal order of the sequence is to be followed. If the importer does so request, but it then proves impossible to determine the customs value under the provisions of Article 36, the customs value is to be determined under the provisions of Article 35, if can be so determined.

4. If the customs value cannot be determined under the provisions of Articles 31 to 36, it is to be determined under the provisions of Article 37.

### **Note to Article 31**

#### *Price actually paid or payable*

The price actually paid or payable shall refer to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

#### Paragraph 1, item a), indent 3

Among the restrictions that would not render a price actually paid or payable as unacceptable, are the restrictions that do not substantially affect the value of the goods. An example of such restriction would be the case where a seller requires a buyer of automobiles not to sell or exhibit them before a fixed date that represents the beginning of a model production.

#### Paragraph 1, item b)

1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes.

Some of those examples include:

- a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods
- c) the price is established because of a form of payment extraneous to the imported goods, such as where imported goods are semi-finished goods that have been provided by the seller, but on condition that the seller will receive a specified quantity of the final products.

2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value.

For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 31. Likewise, if the buyer undertakes on the buyer's own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

#### Paragraph 1, item c)

1. If the goods are imported for which the obligation under Article 31, paragraph 1, item c) is being stipulated, the importer has subsequently to present to the Customs Office the sale, the lend or the use of the imported goods, that results in the obligation of the additional payment of certain amount to the seller at the latest within 30 days from the day when this obligation incurred.

2. On the basis of the submitted presentation, the Custom Office must issue the decision for calculating the amount of the import duty and other import contributions that are payable by the customs obligor.

#### Paragraphs 2 and 3

1. Paragraphs 2 and 3 provide different means of establishing the acceptability of a transaction value.

2. Paragraph 2 provides that where the buyer and seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price.

It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price.

Where the Customs Office has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer.

For example, the Customs Office may have previously examined the relationship, or may already have detailed information concerning the buyer and seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. In the case when the Customs Office cannot accept the transaction value without further inquiry, it should give the importer an opportunity to supply further detailed information for enabling the examination of the circumstances surrounding the sale.

In this respect, the Customs Office should be prepared to examine the relevant aspects of the transaction, including the mode of organising commercial relationship between the buyer and the seller and the mode of arriving at the price in question in order to determine whether the relationship influenced the price.

Where it can be shown that the buyer and seller, although related under the provisions of Article 30, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship.

EXAMPLES: If the price has been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, it means that the price has not been influenced by their mutual relationship.

Further example is case, where it is shown that the price is adequate to ensure recovery of all costs plus a profit that is representative of the firm's overall profit realised over a representative period of time (e.g. on annual basis) in sales of

goods of the same class or kind; this would demonstrate that the price had not been influenced by the relationship.

4. Paragraph 3 of this Article provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a “test” value previously accepted by the Customs Office, and is therefore acceptable under the provisions of Article 31. Where a test under paragraph 3 is met, it is not necessary to examine the question of influence under paragraph 2.

If the Customs Office has already sufficient information to be satisfied, without further detailed inquiries and that one of the tests provided in paragraph 3 has been met, there is no reason for it to require the importer to demonstrate that the test can be met.

In paragraph 3 under the term “unrelated buyers” are meant those buyers who are not related to the seller in any particular case.

Furthermore, a number of factors must be taken into consideration in determining whether one value “Closely approximates” to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case.

For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the “test” value set forth in Paragraph 3 of the Article 31.

### **Note to Article 32**

1. In applying Article 32, whenever possible, the Customs Office shall use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- a) a sale at the same commercial level, but in different quantities;
- b) a sale at a different commercial level, but in substantially the same quantities;

- c) a sale at a different commercial level and in different quantities.

For a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- a) quantity factors only;
- b) commercial level factors only;
- c) both commercial level and quantity factors.

3. The expression “and / or” allows the flexibility to use the sales and make the necessary adjustments in any of the three conditions described above.

4. When applying Article 32, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 2, 3 and 4, which has already been accepted under the provisions of Article 31.

5. A condition for adjustment due to different commercial levels or different quantities shall be that such adjustment may, whether it leads to an increase or a decrease in the value, be performed only based on either demonstrated evidence that shall clearly establish the reasonable way and accuracy of the adjustments e.g. of valid list prices containing prices on different commercial levels or different quantities.

EXAMPLE: If the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price list applicable to a sale of 10 units.

This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities.

However, in the absence of such an objective measure, the determination of a customs value under the provisions of Article 32 is not appropriate.

### Notes to Article 33

1. In applying Article 33, whenever possible, the Customs Office shall use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- a) a sale at the same commercial level, but in different quantities;
- b) a sale at a different commercial level, but in substantially the same quantities;
- c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions, adjustments will then be made, as the case may be, for:

- a) quantity factors only;
- b) commercial level factors only;
- c) both commercial level and quantity factors.

3. The expression “and / or” allows the flexibility to use the sales and make the necessary adjustments in any of the three conditions described above.

4. When applying Article 33, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 2, 3 and 4, which has already been accepted under the provisions of Article 31.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of submitted evidence that clearly established the reasonable way and accuracy of the adjustments, e.g. of valid list prices containing prices referring to different levels or different quantities.

EXAMPLE: If the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price list applicable to a sale of 10 units. This



does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities.

However, in the absence of such an objective measure, the determination of a customs value under the provisions of Article 33 is not appropriate.

### Note to Article 35

1. The term “unit price at which ... goods are sold in the greatest aggregate quantity” means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. EXAMPLE: Goods are sold from a price list that grants favourable unit prices for purchases made in larger quantities.

<i>Sale Quantity</i>	<i>Unit Price</i>	<i>Number of sales</i>	<i>Total quantity sold at each price</i>
1 – 10 units	100	10 x 5 units 5 x 3 units	65
11- 25 units	95	5 x 11 units	55
Over 25 units	90	1 x 30 units 1 x 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each.

In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

a) Sales		b) Totals	
Sale quantity	Unit price	<i>Total quantity sold</i>	<i>Unit price</i>
-----		-----	
40 units	100		
30 units	90	65	90
15 units	100	50	95
50 units	95	60	100
25 units	105	25	105
35 units	90		
5 units	100		

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

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in paragraph 1 of item b) of Article 38, should not be taken into account in establishing the unit price for the purposes of Article 35.

6. It should be noted that "profit and general expenses" referred to in paragraph 1 of Article 35 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless the importer's figures are inconsistent with those obtained in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of paragraph 1, item 3) of Article 35 shall be deducted under the provisions of paragraph 1, item 1) of Article 35.

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 1 of Article 35, the question whether certain goods are "of the same

class or kind” as other goods must be determined on a case-by-case basis by references to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. When applying Article 35, “goods of the same class or kind” includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. When applying paragraph 2 of Article 35, the “earliest date” shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. In the case where the method in paragraph 3 of Article 35 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the costs of such work. Accepted industry formulas, recipes, methods of construction and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in paragraph 3 of Article 35 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity.

However, there can be examples which, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty.

On the other hand, there can also be examples where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation, that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

### **Note to Article 36**

1. As a general rule, the customs value is determined on the information readily available in the country of importation. However, in order to determine a computed value, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation.

Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the importing country authorities. The use

of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the importing country authorities the necessary costs and to provide facilities for any subsequent verification which may be necessary.

2. The “cost or value” referred to in paragraph 1, item a) of Article 36 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, providing that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The “cost or value” shall include the cost of elements specified in paragraph 1, item a), indents 2 and 3 of Article 38. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 38, of any element specified in paragraph 1, item b) of Article 38, 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 paragraph 1, item b) indent 4 of Article 38 which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The “amount for profit and general expenses” referred to in paragraph 1, item b) of Article 36 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by the producers in the country of exportation for export to the country of importation.

5. It should be noted in this context that the “amount for profit and general expenses” has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and the producer's general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if products were being launched in the country of importation and the producer accepted a nil or low profit to offset his general expenses associated with the launch. Where the producer can demonstrate a

low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account providing that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects the usual pricing policies in the branch of industry concerned.

Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain the competitiveness.

Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer of the goods is used for the purposes of determining computed value, the Customs Office shall inform the importer, if the latter so requests, of the source of such information, the data used and accounting based upon data, subject to the provisions of Article 45.

7. The "general expenses" referred to in paragraph 1, item b) of Article 36 covers the direct and indirect costs of producing and selling the goods for export which are not included in paragraph 1, item a) of Article 36.

8. Whether certain goods are "of the same class or kind" as other goods, it must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 36, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 36, "goods of the same class or kind" must be from the same country as the goods being valued.

**Note to Article 37**

1. Customs values determined under the provisions of Article 37 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 37 should be those laid down in Articles 31 to 36 but a reasonable flexibility in the application of such methods would be in accordance with the aims and provisions of Article 37.

3. Some examples of reasonable flexibility are as follows:

*a) Identical goods* – the requirement that the identical goods should be exported at or about the same time when the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued, could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Article 35 and 36 could be used.

*b) Similar goods* - the requirement that the similar goods should be exported about or at the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Article 35 and 36 could be used.

*c) Deductive method* – the requirement that the goods shall have been sold in the “condition as imported” in paragraph 1 of Article 35, and the requirement for “90 days” could be administered flexibly.

**Note to Article 38**Paragraph 1, item a), indent 1

1. When determining the transaction value of imported goods it will be necessary to include in that value commissions and brokerage incurred by the buyer, except buying commissions.

2. The term "buying commission" means fees paid by the importer to the importer's agent for the service of representing the importer abroad in the purchase of the goods being valued.

3. The term "selling commission" means fees paid to the seller's agent who acts on behalf of the seller. He searches for buyers, collects orders and in some cases he stores and delivers the goods. The selling commission, paid by the seller, which shall not be covered by the buyer, cannot be added to the price actually paid or payable.

4. The term "broker's commission" (brokerage) refers to the payment of the commission to the person who does not act for his own account. He acts for both the buyer and seller and usually has no other role but to arrange their contact. Such brokers are usually specialists for certain sorts of goods like for the sugar, coffee, oil and similar.

Where the seller of the goods is paying the broker, the total brokerage shall be included in the price actually paid or payable for the goods. However, there are some cases where the buyer is paying the broker, or proportionally both, the buyer and seller. In such cases, the transaction value shall include only a part covered by the buyer, if it has not already been included in the price of goods and if it is not the buying commission.

It should be emphasised that only the fact of the existence of the commission for itself and sorts of services arranged by brokers connected with the sale of goods are often not visible in the commercial documents accompanying the customs declaration.

Referred to this fact, the Customs Office has the right to require submitting of other documents in order to establish the existence and the sort of services performed.

Paragraph 1, item a) indent 4

1. If transport costs in the documents submitted for the clearance of goods are accounted up to the point of delivery in the customs territory of the Republic of Croatia, transport costs incurring from the point of entry into the customs territory of the Republic of Croatia to the delivery point will not be included in the transaction value.

2. If transport costs are calculated on the basis of the special transport tariff up to the delivery point, according to which the costs decrease depending on the route and the weight of the cargo, transport costs from the place of entry into the customs territory of the Republic of Croatia up to the delivery point shall be calculated in accordance with that special tariff.

3. If transport costs are stipulated up to the delivery point, and if it not possible to determine the amount of costs from the documents submitted, in the transaction value shall be included the total amount of transport costs.

4. When the goods are transported by non-public means of conveyance (personal automobiles and similar), transport costs shall be calculated according to transport tariffs used for such sort of goods when transported by the public traffic. The declarant is obliged to submit evidence for the costs incurred that way.

5. While importing the goods sold by the seller on unique prices regardless to the distance of the delivery point, as a transaction value shall be used such unique price without deduction of transport costs from the point of entry into the customs territory of the Republic of Croatia up to the delivery point.

6. If the goods are transported by sea or by air, as the point of entry into the customs territory of the Republic of Croatia shall be deemed the point of unloading of the goods in the port open for the international traffic and in the case of using of the other means of transport, the customs-crossing point open for the international traffic.

Paragraph 1, item b), indent 2

1. Two factors are involved in the apportionment of the elements specified in paragraph 1, item b) indent 2 of Article 38 to the imported goods – the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to the importer at a given cost, the value of element is that cost. If the element was produced by the importer or by a person related to the importer, its value would be the cost of producing it. If the element had been



previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value for the element has been determined, it is necessary to apportion that value to the imported goods. There are various possibilities.

For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value all at once.

As another possibility, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment.

In the third case, the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. **EXAMPLE:** An importer provides the producer with a mould to be used in the production of the imported goods and contracts with the producer to buy 10.000 units. By the time of arrival of the first shipment of 1.000 units the producer has already produced 4.000 units. The importer may request the Customs Office to apportion the value of the mould over 1.000 units, 4.000 units or 10.000 units.

#### Paragraph 1, item b) indent 4

1. Additions for the elements specified in paragraph 1, item b) indent 4 of Article 38 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and the Customs Office in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer that were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the costs of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm that imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 38.

5. In another case, a firm may bear the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 38 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Paragraph 1, item b), indents 1,2,3 and 4

For all assists determined in indents 1, 2, 3 and 4 shall be valid:

1. If the assist was acquired from a seller not related to the importer, the value of the assists will be the cost to acquire it.

2. If the importer or the person connected with the importer produced assists, the value of the assist will be the cost of the production.

3. The value of the assist, regardless of the fact whether they are based on the cost of the acquisition or on the cost of the production, should also include transport costs to the place of manufacture as well as duties and taxes not refunded.

Paragraph 1, item c)

1. Payments for royalties and licence fees may include payments for patents, models, foreign commercial or industrial trade marks, copyrights and royalties and may, in general, be considered as payments for the right to use, produce or sell the certain product or an item containing some form of the intellectual property.

2. In order to include those costs in the transaction value of the imported goods, they have to fulfil the following conditions:

*a) They must be related to the goods being valued*

Royalties and licence fees must bear directly on the goods being imported, i.e. the imported goods must contain some sort of the intellectual property like, for example, trademark, copyright, some patented process or some other protected right.

*b) The buyer must pay for royalties and licence fees either directly or indirectly as the condition for the sale.*

The purchase of the goods must involve the payments for royalties and licence fees as the condition for the purchase of goods. It is irrelevant to whom the royalties and licence fees are to be paid, they may be paid even to a third person, but the essential is that the purchase is realised under the condition of paying for royalties and licence fees.

*c) They must not be included in the price paid or payable.*

If the value of royalties and licence fees is included in the value of the imported goods, clearly they shall not be added twice to the price actually paid or payable.

Paragraph 3

Where objective and quantifiable data do not exist with respect to the additions that require to be made under the provisions of Article 38, the transaction value cannot be determined under the provisions of Article 31. As an example, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into solution after importation.

If the royalty is based partially on the imported goods and partially on other facts which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to add the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

### **Note to Article 39**

#### Article 39, paragraph 1, item d)

The costs paid by the buyer referred to the right to reproduce the imported goods shall not be added to the transaction value.

Neither are to be added to the transaction value the payments made by the buyer for the right to distribute or to resell the imported goods, if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Although such payments are not to be added to the transaction value of the imported goods, they shall not be deducted if they are already included in the value of the goods.

### **Note to Article 40, item 2**

When determining the transaction value, all reductions of prices and cash discounts are to be taken into consideration, if so agreed and realized before the importation.

Cash discounts are discounts granted to the buyer if he pays the goods within a certain period. If such cash discount shall be realized only after the importation, the importer has to provide the evidence that such discount shall be actually realized, either by providing the statement of the importer or indicating in the invoice that the discount shall be realized. The buyer must also be able to prove that he will actually pay this amount. Cash discounts may be approved only if they are in accordance with the terms of payment and accustomed with respect to the sort of the business affair. The discount bigger than usual may be approved only if the evidence is submitted that such discount shall be actually realized.

Quantity discounts are discounts granted to the buyer in goods on the basis of the quantities bought by the buyer. The discounts for previous deliveries cannot be approved because they have nothing to do with the imported goods and the proper definition of the transaction value states that this is the price actually paid or payable for the imported goods.

Discounts and reductions in prices that were agreed before and realized after the importation are added to the transaction value.

### **Note to Article 41**

1. For the purposes of Article 41, paragraph 1 the expression “goods imported without being on sale” means the following:

- gifts, samples and promotional items furnished free of charge,
- goods imported to the consignment,
- goods imported from the branch-offices which are not considered as separate legal entities,
- goods imported for hire, lease or loan.

2. According to the Advisory Opinion No.1.I of the Technical Committee on customs valuation of World Trade Organisation, the transaction of hiring or leasing the goods is not considered as the sale by their very nature, even where such purchase is provided by the contract. The method of the transaction value for such cases is therefore precluded and it will be necessary to determine the customs value by using the other methods of valuation.

In the cases where the goods similar or identical to goods that are imported have already been sold for export to the country of importation, it would be possible to determine the customs value on the basis of Articles 32 and 33 of the Customs Law. If it is not possible to determine the customs value under the provisions of those Articles, the application of Articles 35 and 36 has to be tried. If all the possibilities according to Articles 32 to 36 have been exhausted, Article 37 has to be applied. Where the goods are being valued by applying Article 37, the methods from Articles 31 to 36 should be applied first with reasonable flexibility.

If it is not possible to determine the customs value by applying Articles 31 to 36, it may be determined by using other reasonable means on condition that they are not precluded by Article 37.

In some cases contract on hire includes also a possibility to purchase. Such possibility may be approved at the beginning, during

or at the end of the contractually agreed basic period. In the first case the customs value should be based on the value of the purchase. In the last two cases the basis for determining the customs value could be rental payments in instalments agreed in the rental contract, increased for the remaining amount required.

In the cases where no possibility to purchase is foreseen, the customs value according to Article 37 may also be determined on the basis of rental costs actually paid or payable for the imported goods. In this case care should be taken with respect to the amount of the rental costs that can be quoted higher for securing the amortization of the goods within a period shorter than it is the economic life of the goods.

Determining of the economic life of the goods may cause some problems in industries where, for example, the rate of technology development is very rapid. A distinction between economic life of new and used goods should be taken into consideration as well and thereby, in dealing with new goods their “whole economic life”, while with used goods their “remaining economic life” is meant.

Where the total rental costs have been determined, the need for certain adjustments may occur in order to establish the customs value either in a form of adding or deducting.

### **Note to Article 43**

1. Article 31 prescribes that the customs value of the imported goods is their transaction value, i.e. price actually paid or payable for goods that are imported into the Republic of Croatia. However, when determining the customs value of carrier media bearing data or instructions for data processing equipment (hereinafter “software”) the value of software shall not be included in the customs value, if its value is distinguished from the value of the carrier media.

2. However, some problems encountered in applying this decision relate to the provision to distinguish the cost or value of the carrier media from the cost or value of the data or instructions. If only the value of carrier media is being known, the Customs Offices may accept it as if the value of the software is being shown separately. If only the value of software occurs or together both values of the carrier media and software, the value of carrier media shall be determined by using the rules on the valuation of the value that are prescribed by the Customs Law.

3. When sending software by ground telephone or satellite, the question of the intellectual property occurs. Transfer of the intellectual property across the borders is not subject to the clearance for itself. However, where the intellectual property is being transferred in a material form, i.e. as carrier data, by applying the harmonised tariff classification system it is liable to the payment of import duties.

When importing software placed on carrier media, such as disks, magnet disks or similar, carrier media is the one liable to the clearance obligation. Radio and ground telephone transfers and software received by the ground telephone or satellite, as the WCO recommended, cannot be classified in the harmonised tariff classification system and are not liable to the clearance procedure.

#### **Note to Article 44**

1. Article 44, item 4 ensures to the importer the right of appeal referred to the determined valuation carried out by the Customs Office for the goods being valued. The appeal can be submitted to the Headquarters of the Customs Directorate, but the importer shall have the right in the final instance to appeal to the Administrative Court.

2. In the provision: "Without penalty " means that the importer shall not be subject to a fine or threat of fine merely because he chose to use his right to appeal. Payment of normal court costs and lawyers' fees shall not be considered as a fine.

3. However, nothing provided for in Article 44 shall prevent the customs authorities to require full payment of customs duties valued prior to an appeal.