

## THE PARLIAMENT OF THE REPUBLIC OF MOLDOVA

## LAW ON THE CUSTOMS TARIFF

No. 1380-XII from 20.11.97

## CHAPTER 1

## GENERAL PROVISIONS

## Article 1 The area of the law application

The present law establishes the manner of formation and application of the customs tariff on the goods introduced or drawn out from the territory of the Republic of Moldova, the rules of imposing duties on goods, as well as methods of determination of the value within the custom house and of the origin country of the goods.

(2) The objective of the customs tariff application:

- a) the optimalization of the imports structure,
- b) the equilibration of the imports and exports of goods, the protection of the home producers;
- c) the creation of the favorable conditions for the integration of the economy of the Republic of Moldova into the world economy.

## Article 2 Basic notions

(1) For the purpose sense of the present law the following notions terms are defined:

**Customs tariff** - a label that includes catalogue a comprehensive nomenclature of goods, that includes the customs duties expressed in percentage export and import lists of the goods imported or exported from the customs territory of the Republic of Moldova as well as those that come from the application of preferential tariff measures in accordance with legal regulations, the the quotes of the custom duty applied on this goods;

**Customs border** - is the State border of the Republic of Moldova;

**Customs territory** - the territory whereon the Republic of Moldova exercises its exclusive jurisdiction in the area of customs activities;

**The passing of the goods over the customs border** - the introduction on into or the drawing out of removal from the customs territory of the goods as well as their covering in transit through any method;

**Goods** - any movables including all types of energy. The means of transport used under international freight transportation agreements are not considered as goods;

**Goods Description and Coding System** - Nomenclature of Goods - the list that includes the codes, the names and the description of the goods in correspondence with the classifying systems applied in the international practice;

**Customs Value of ~~the~~ goods** - the value of the goods for the purposes of levying advalorem duties of customs on imported or exported goods introduced or drawn out from the customs territory, established in accordance with the present law;

**Duty** - compulsory fee payment levied by the customs authority at the introduction into or drawing out removal- of the good out of the customs territory;

**Declarant** - is a natural or legal person making a declaration of goods and objects to the customs authority.

**Country of importation** – the country or the customs territory of importation,

**Identical goods** – goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not exclude goods otherwise conforming to the definition from being regarded as identical.

**Similar goods** - goods 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;

**Goods of the same class or kind** - goods which fall within a group or range of goods in conformity with the Nomenclature of Goods of the Republic of Moldova, approved by the Government of the Republic of Moldova produced by a particular industry or industry sector, including identical or similar goods.

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## CHAPTER II

### CUSTOMS DUTY, ITS TYPES, ESTABLISHMENT AND APPLICATION PROCEDURES

#### Article 3.

##### Types of duty rates

1. The following types of duty rates are applied:
  - 1) ad valorem, added as a percentage to the customs value of dutiable goods;
  - 2) specific, added as a fixed sum per unit of good;
  - 3) combined, that combines both types of customs duties specified in subsubparagraphs 1) and 2) ;
  - 4) particular special, which is subdivided into:
    - (a) protective duty, applied in order to protect the goods of domestic origin while introducing into the customs territory goods of foreign origin in such greatly increased quantities and on such terms or conditions as to cause, or threaten to cause serious injury to domestic producers;
    - (b) anti-dumping duty that is levied at the introduction into the customs territory of certain goods at a lower price than their value in the exporting country at the moment of import, in case they cause, or threaten to cause material injury to domestic producers of like or similar goods, or hinder the organization or extension of the production of like or similar goods in the country.
    - (c) countervailing duty that is applied in cases when into the customs territory are introduced

goods that have been produced or exported with direct or indirect use of subsidies, if they cause or threaten to cause material injury to domestic producers of like or similar goods, or hinder the organization or extension of the production of identical or similar goods in the country.

#### **Article 4. Establishment and Application of the Customs Duty**

- (1) The rates of customs duties and the list of the taxed goods are established by the Parliament.
- (2) The rates of the customs duties are applied in conformity with legislation and international agreements where in the Republic of Moldova participates.
- (3) The rates of the customs duties are unique and can not be modified, except cases foreseen by legislation and international agreements wherein the Republic of Moldova Participates.

**CUSTOMS VALUE OF GOODS**



**Article 10****Methods of calculation of customs value**

(1) The customs valuation of goods introduced on the customs territory are determined by the following methods:

- (a) on the basis of the value of transaction with the respective goods or price actually paid or payable;
- (b) on the basis of the value of transaction with of identical goods;
- (c) on a basis of the value of transaction with of similar goods;
- (d) on the basis of the unitary cost of the goods;
- (e) on the basis of the calculated value of the goods;
- (f) through the reserve method.

(2) The principal method among the above mentioned is the method of customs valuation on the basis of the value of transaction with the respective goods. In case when the principal method can not be applied, other methods are used. Each of the successive methods is applied only in case when the customs value can not be determined through the previous method. Methods d) and e) can be applied in any succession, at the person making the declaration's wish.

**Article 11****Method of customs valuation on the basis of the transaction value  
with respective goods, or price actually paid or payable**

(1) The customs valuation of goods on the basis of the value of transaction with the respective goods, or price actually paid or payable when sold for export to the Republic of Moldova. -In the transaction value are included the following components in case if they have not been previously included in the goods' value of the imported goods:

- (a) expenses for conveyance of goods to an airport, or any other place of entrance of goods on the customs territory:
  - einsurance expensees,
  - cost of transportation;
  - expenses for loading, unloading and trans-shipment of goods;

(b) expenses incurred by the buyer:

- commission and brokerage remuneration, excluding commission for the goods' purchasing
- cost of containers and/or other such multi-usable elements if under the Goods Description and Coding Systems they are considered as part of the goods to value;
- cost of packaging, including the cost of packaging materials and packaging works;

(c) "the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

- (i) materials, components, parts and similar items incorporated in the imported goods;
- (ii) tools, dies, moulds and similar items used in the production of the imported goods;
- (iii) materials consumed in the production of the imported goods;
- (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;"

~~an adequate portion of the following goods and services that have been provided free by the buyer directly or indirectly to be used in the production or sale for export of the goods under valuation;~~

~~— raw materials, materials, parts, half finished products and other components comprising an integral part of the goods under valuation;~~

~~— instruments, dies, moulds and other similar items used in the production of the goods under valuation;~~

~~— materials used to produce the goods under valuation (lubricants, fuel, etc.);~~

~~— engineering developments, experimental construction works, technical design, aesthetic development, drawings and sketches performed outside the territory of the Republic of Moldova and directly needed to produce the goods under valuation;~~

(d) “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;”

~~licence fees and other payments for the use of intellectual property that the buyer should make directly or indirectly as a condition of sale of the goods under valuation;~~

(e) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller~~amount of direct or indirect income the buyer would obtain from any further re-sales, transfers or use of the goods under valuation on the territory of the Republic of Moldova.~~

Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.”

g) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article

2 Every adjustment to the price actually paid or payable has to be done in conformity with the provisions of the present article on the base of objective and measurable data.

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3 In the determining customs value no adjustment to the price actually paid or payable shall be made except those provided by the present article.

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24 2. ~~—~~The above mentioned method cannot be used for the customs valuation of goods if:

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(a) there are restrictions of the buyer's rights to the goods under valuation, except for:

- those established by legislation;
- those related to a geographical region where the goods can be resold;
- those that do not seriously affect the price of the goods;

(b) the sale and price of the transaction depend on observance of conditions that cannot be taken into account;

(c) data used by the declarant when stating the customs value are not proved by documents or do not contain quantitative data and are not trustworthy;

(d) ~~(d)~~ participants in the transaction are mutually dependent persons, with the exception of cases where the transaction value has to be acceptable for customs purposes under the provisions of paragraph 35.~~their mutual dependence did not affect the price of the transaction, which should be confirmed by the person making the declaration.~~ In these cases the mutual dependence of persons is understood as follows:

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- one of the participants in the transaction (a natural person) or an official of one of the participants in the transaction is at the same time an official of another participant in the transaction;
- the participants in the transaction are co-owners of the enterprise;
- the participants in the transaction are linked by labour relations;
- one of the participants in the transaction is an owner of a deposit (share) or a possessor of at

- least 5% of shares with a right to vote in the statutory capital of another participant in the transaction;
- both participants in the transaction are under direct or indirect control of a third party;
  - the participants in the transaction control jointly a third party directly or indirectly;
  - one of the participants in the transaction is under direct or indirect control of another participant in the transaction;
  - the participants in the transaction or their officials are relatives.

5. In determining whether the transaction value is acceptable for the purposes of Article 11.4 (a,b,c), the fact that the buyer and the seller are related within the meaning of Article 11.6 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of Article 11.4 (a,b,c) whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

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

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

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

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

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

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



## Article 12

### Method of customs valuation on the basis of value of transaction with identical goods

1. Using this method as a basis is taken the value of a transaction with identical goods. identical goods means goods which are the same in all respects, including
  - a) physical characteristics,
  - b) quality and reputation,
  - c) country of origin,
  - d) producer.
2. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical; if in all other respects these goods correspond to the requirements of paragraph 1.

## Article 13

### Method of customs valuation on the basis of the value of transaction with similar goods

1. Utilising this method, as a basis is taken the value of transaction with similar goods. Similar goods means goods, 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.
2. While determinig if the goods are similar the following characteristics are taken into account :
  - a) quality, availability of trade mark and market reputation;
  - b) country of origin;
  - c) producer.

## Article 14

### Supplementary principles regarding the customs valuation on the basis of value of transaction with identical or similar goods

1. Goods are not considered identical or similar to those under evaluation if:
  - a) they have not been produced in the same country as goods under valuation;
  - b) their design, experimental construction works, aesthetic adjustment, sketches, drawings and other analogous works have been performed in the Republic of Moldova.
2. Goods that have not been produced by the manufacturer of the goods currently under valuation, but by a different entity, should be considered to be identical or similar only in cases where there are neither identical nor similar goods produced by the manufacturer of the goods under valuation.
3. The method of customs valuation on the basis of value of transaction with identical or similar goods is applied in case when the identical or similar goods are:
  - a) are sold to be introduced on the territory of the Republic of Moldova;
  - b) are introduced at the same time or not later than 90 days before the introduction of the goods that should be valued;

are introduced approximately in same quantity and/or same commercial conditions. If the identical or similar goods have been introduced in other quantity and/or other commercial conditions, the declarant should rectify the corresponding customs value started by her, taking into account the differences and to confirm with documents the presented data.

~~4. The customs value of the goods valued on the basis of value of transaction with identical or similar goods, could be rectified in conditions of the article no.11~~

Where the costs and charges referred to in paragraph 1(a) of Article 11 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 or similar goods in question arising from differences in distances and modes of transport.

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~~5.4. In case when at customs valuation of goods, as a basis can be taken the value of one transaction out of few transaction with identical or similar goods, the lowest value of a transaction is applied.~~

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## Article 15

1. If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of 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:”

(a) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;

(b) the usual costs of transport and insurance and associated costs incurred within the country of importation;

(c) where appropriate, the costs and charges referred to in paragraph 1(a) of Article 11; and

(d) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.

2. “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 shall, subject otherwise to the provisions of paragraph 1, be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.”

3. “If neither the imported goods nor identical nor similar imported goods are sold in the country of importation 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 country of importation 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.”

## Method of customs valuation through the method of unitary cost

~~1. Customs valuation of goods by the method of unitary cost is applied in cases where the goods identical or similar to those under valuation will be sold within the territory of the Republic of Moldova without changing their original condition.~~

~~2. The basis for establishing the customs value of goods by applying the unitary cost method as a basis is is taken the price per unit of goods, at the moment of import, at which these goods are sold in big quantities to a person that has no interdependence relations with the seller.~~

3. ~~The following components are subtracted from the price of a unit of goods:~~
- ~~(a) expenses of paying commission, and usual rise in profit and overheads related to the sale of imported goods of the same kind and standard in the Republic of Moldova;~~
  - ~~(b) amounts of customs duties, taxes and other payments at entrance due in the Republic of Moldova because of the import and sale of the goods;~~
  - ~~(c) usual expenditures incurred in the Republic of Moldova for transportation, insurance, loading and unloading.~~
3. ~~In the absence of previous sales of the goods under valuation, or identical or similar goods in the same condition as they were at the moment of importation, the declarant can request the use of the price of a unit of goods that has been processed, making adjustment to the value added and respecting provisions of paragraph 2 and 3 of the present article.~~

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## Article 16

### Method of customs valuation on the basis of calculated value of the goods

~~When using the method of valuation on the basis of the above mentioned method, as a basis is taken the value of a unit of the given good calculated through additions of the following:~~

- ~~(a) cost of materials and expenses the manufacturer has incurred in connection with the production of the goods under valuation;~~
- ~~(b) total costs typical for selling goods of the same kind from the exporting country to the Republic of Moldova, including transportation costs, loading and unloading costs, insurance to the place of crossing the customs border of the Republic of Moldova, and other expenses;~~
- ~~(c) usual profit gained by an exporter from delivering analogous goods to the Republic of Moldova.~~

"1. The customs value of imported goods under the provisions of 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 country of importation"
- (c) The cost or value of all other expenses necessary to reflect the valuation option chosen by the Member under paragraph 1 (a) of Article 11."

2. The customs authorities may not require or compel any person not resident in its own territory 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 the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation".

## Article 17

### The Reserve method

1. In cases when the customs value of goods cannot be established by the declarant applying

sequentially the methods of customs valuation stipulated by Articles 11, 12, 13, 14, 15 and 16 of the present law, or when the customs authority have the grounds to believe that these methods of customs valuation cannot be applied, then the customs value of goods should be established in accordance with reserve method ~~according to the international agreements wherein the Republic of Moldova participates, using reasonable means consistent with the principles and general provisions of this Agreement~~ and of Article VII of GATT 1994 and on the basis of data available in the country of importation.

2. ~~While applying the reserve method the customs authority provide the declarant with price information on the imported goods.~~ If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

3. The reserve method of determining the customs value of goods can not rely upon the following items:

- (a) the sale price of goods on the home market of the Republic of Moldova;
- (b) price of goods on the home market of the exporting country
- (c) an arbitrary price or a fictive price of the goods;
- (d) the system that foresees the application, in customs aims, of the greatest value of the good out of two possible;
- (e) the production cost of the goods, different from the calculated value of the identical or similar goods, determined according to the provisions of article 16 paragraph a);
- (f) the value of the sold goods for export in another country except the importing country;
- (g) the minimal customs value.

## CHAPTER V

## IDENTIFICATION OF THE COUNTRY OF ORIGIN OF GOODS

## Article 18

### Purpose of identification of the country of origin of goods

(1) The country of origin of goods shall be identified with the purpose of applying tariff and non-tariff measures oriented to regulate the introduction of the goods into the customs territory and the exportation of goods from this territory.

(2) The order of determination of the country of origin of goods is established by the Government on the basis of the present law and the international agreements wherein the Republic of Moldova participates.

## Article 19

## Country of origin of goods

(1) The country of origin of goods is the country where the goods have been wholly obtained or, processed to an extent satisfying the criteria established by the present law and the international agreements wherein the Republic of Moldova participates.

(2) Therewith, the term of the country of origin of goods may be used in reference to a group of

## Article 20

The following goods are recognized as wholly obtained in a given country:

- ## Article 21

1. If two or more countries participate in the production of goods, the origin of goods is determined in accordance with the criteria of substantial transformation.
2. The criteria of substantial transformation are established and applied according to the present law and the international agreements wherein the Republic of Moldova participates, in the way established by the Government.
3. The criteria of substantial transformation in a given country are as following:
  - (a) changing of commodity position (classification code), in the Goods Classification List, at the level of any one of the first four digits, resulting from the processing of goods;
  - (b) carrying out production or technological operations sufficient to consider the goods as originating from the country where these operations took place;
  - (c) The change of value when the percentage share of the value of materials consumed for its production constitute not less than 45% (the rule of ad valorem share)
4. The following operations are not considered as meeting the criteria of substantial transformation:
  - a) operations insuring the safety of goods during storage or transportation;

- b) operations to prepare goods for sale and transportation (fractioning of a consignment, formation of shipments, sorting, repacking);
- c) simple assembling operations;
- d) mixing of goods (components) without providing the obtained products with specifications making them substantially different from the initial components.

5.. In cases when the respective documents is not stipulated the information on the concrete good or its country of origin, the criteria of the substantial transformation of goods , specified in paragraph 3) subparagraph), is applied.

## Article 22

### Determination of the country of origin of goods delivered in consignments

1. When goods in a disassembled or incomplete state are delivered in several consignments, when their delivery in a single consignment is impossible for production or transportation reasons, and also in cases where a consignment of goods is split into several shipments because of an error, these should be considered, providing it is the wish of the person making the declaration, as unified goods when identifying the country of origin.
2. This condition of appling the provisos of paragraph 1 are:
  - a) the customs authority has been advised in advance about splitting of disassembled goods into several consignments and have been provided with the reasons for such splitting, detailed specifications of every consignment, showing the codes of goods according to the commodity classification according the Goods Description and Coding System, and the value and country of origin of goods in every consignment;
  - b) documentary confirmation of erroneous splitting of goods into several shipments;
  - c) shipment of all consignments from the same country by the same supplier;
  - d) importation of all consignments through the same customs station;
  - e) shipment of all consignments of goods within 6 months from the date of acceptance of the customs declaration or from the date of expiration of the time period for submitting the declaration for the first consignment.

## Article 23

### Confirmation of the origin of goods

1. To obtain the confirmation of the origin of goods from a given country, the customs authority is entitled to require presentation of a certificate of origin of goods.
2. Introducing goods into the customs territory of the Republic of Moldova, the presentation of a certificate of origin of goods is compulsory for:
  - a) goods originated from countries that are provided by the Republic of Moldova with preferential conditions regarding the customs tariff;
  - b) goods whose importation from a given country is regulated by means of quantitative restrictions (quotas) or by other means of regulation of foreign trade;
  - c) if stipulated by international agreements of the Republic of Moldova, and by legislation of the Republic of Moldova in the areas of environmental protection, public health, protection of consumers'

rights in Moldova, public order, national security and other vital interests of the Republic of Moldova;

- d) in cases where there is no information about the origin of goods in the documents submitted for customs clearance, or if the customs of the Republic of Moldova have grounds to believe that the declared information about the origin of goods is not trustworthy.

4. When goods are exported from the customs territory of the Republic of Moldova, the certificate of origin of goods, when required by respective agreements, national regulations of an importing country or international commitments of the Republic of Moldova, is issued by an authorized local public administrative body or organization.

## Article 24

### Certificate of origin of goods

1. Certificate of origin of goods should confirm clearly the fact that the goods indicated therein originate from the respective country, and it should contain the following:

(a) a written declaration by the consignor stating that the goods meet the regin;

(b) a written statement by a competent body of the exporting country that has issued the certificate that the data of the certificate are trustworthy.

2. The certificate of origin of goods should be attached to the customs declaration and other documents produced for customs clearance. If the certificate is lost, then its officially certified duplicate should be produced.

3. If any doubts arise regarding the authenticity of the certificate or data contained therein, including the data about country of origin of goods, the customs of the Republic of Moldova may request the authorities that have issued the certificate or from competent organizations of the country shown as the country of origin of goods to provide additional or more specific information.

4. In cases stipulated by the present law, the goods are not considered as originated from a given country until a certificate of origin issued in the proper way or the data requested are provided.

## Article 25

### Additional provisions regarding identification of country of origin of goods

1. For goods coming from countries with which the Republic of Moldova is part at agreements regarding the "Most favoured nation" status can be applied (re-established) the preferential treatment for the customs tariff if the proper certification of their origin is produced within one year from the date the customs procedures are completed.

2. While identifying a country of origin of goods the origin of energy resources, machines, equipment and tools used for their production is not taken into account.

3. Particular procedures to identify a country of origin of goods imported into the customs territory from third countries, as well as from free customs zones and free customs warehouses located on the territory of the Republic of Moldova, are established by the Government.

4. Upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin and preferential origin of a good will be issued as soon as possible but no later than 150 days after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin and preferential

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rules of origin, under which they have been made, remain comparable.”

## Article 26

### Reasons to refuse the passage of goods

1. The customs authority can refuse the passage of goods through the customs border of the Republic of Moldova only if there are sufficient grounds to believe that they originate from a country whose goods are not allowed to pass through, according to international agreements and/or legislation of the Republic of Moldova.
2. Failure to submit a certificate issued in a proper way or information about the origin of goods does not constitute reason to refuse the passage of goods through the customs border.
3. The passage of goods without trustworthy origin determined is permitted under the condition of payment of customs duties at the maximum rates of the customs tariff of the Republic of Moldova.

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## CHAPTER VI

### TARIFF PREFERENCES

## Article 27

### Tariff preferences

1. As Tariff preferences are considered to be facilities provided by a country, in reciprocal or unilateral conditions in respect of goods passed over the customs border of this country under the form of some established customs share for the preferential import or export of goods, reduction of customs tariff, exemption from duties, return of duties paid earlier.
2. The tariff preferences are established by the present law and cannot have an individual nature except for cases stipulated by article 28.
3. Tariff preferences are applied in the manner established by the legislation and international agreements of the Republic of Moldova.

## Article 28

### Exemption from duties

The following is exempt from duties:

- a) means of transportation in international traffic of cargoes, baggage and passengers, and other items of materials and technical supplies and equipment, fuel, foodstuffs and other property needed for normal use during the journey, at intermediate stop points or acquired abroad to guard against accident (breakdown) of the above means of transportation;
- b) goods of official usage introduced or drawn out from the customs territory by foreign citizens, according to the legislation and international agreements wherein the Republic of Moldova participates;
- c) national currency of the Republic of Moldova, foreign currency (except that used for numismatic purposes), as well as securities, in conformity with the legislation;



- d) goods introduced and drawn out from the customs territory as humanitarian aid, their destination considered special by the State;
- e) goods introduced and drawn out from the customs territory gratis basis and/or for charitable purposes on behalf of the State, their destination being confirmed by the authorized body;
- f) goods introduced or drawn out from the customs territory under the customs supervision within the respective customs regimes;
- g) goods transported under customs supervision as transit through the customs territory of the Republic of Moldova and intended for third countries;
- h) goods transported through the customs border by physical persons and not intended for production or other commercial activity in accordance with the Customs Code of the Republic of Moldova;
- i) goods preliminary imported in zones of free initiative in order to be processed and further exported;
- j) printed periodicals and books in the areas of education, science and culture, books for kindergartens, education institutions and medical.

## CHAPTER VII

### THE MODALITY OF REIMBURSEMENT OF CUSTOMS DUTIES

#### Art.29

The amount of customs duties paid in excess to the Budget as result of calculation errors, realization of advance payments in amounts that exceed the real necessity or as a result of cancellation of some payments after the introduction of modifications in customs declarations, the amounts of exceeded payments are transferred to the account of payer or are utilized to meet other customs duties.

#### Art.30

To obtain the reimbursement or the transferred for the payment of other duties, the payer present a request to the customs body in which is registered the exceeded respective payment. To the solisitation or request is annexed the territorial statement (certificate) recording the under or ver payment of taxes to the Budget or Social Secirity Fund.

#### Art.31

After the examination of solicitation the customs body take a decision on the reimbursement, the transfer to meet other payments or the refuse of reimbursment of customs duties collected, and will inform in writting the payer about the taken decision. A copy of this decision as well as of the verrification act of the transfers situation made at the date of realization of banking operations will be annexed to the documents that confirm the reimbursement or the utilization of it to meet other payments.

#### Art.32

The transfer to the account of payer or are utilized to meet ohter customs duties and fees will done by the customs bodies on the base of banking and cash documents by means of transfer from the tresorerial accounts for revenues.

#### Art.33

In case of some underpayments to the bugets of all levels, the reimbursement of the account of payer will be not accepted, and the ammount found and confirmed as exceeded payment will be use for the payments.

## CHAPTER VIII

### **LIABILITY FOR VIOLATION OF THE PRESENT LAW**

#### **Article ~~29~~ 34**

##### **Liability for violation of the present law**

Persons charged with a violation of the present law shall incur liability in conformity with current legislation.

## CHAPTER ~~VIII~~ IX INTERNATIONAL AGREEMENTS

### Article ~~30~~ 35

#### International agreements

If an international agreement wherein the Republic of Moldova participates stipulates norms different from those contained in the present law, the international agreement norms shall be applied.

## CHAPTER X

### IMPLEMENTATION OF PROVISIONS OF SOME ARTICLES

#### Art.36

The implementation of provisions of some articles will be done in conformity with the interpretative notes exposed as appendix, a comprehensive part of the present law.

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## CHAPTER ~~IX~~ XI FINAL PROVISIONS

### Article ~~34~~ 37

#### Validation of the present law

The present law comes into force from the day of its publication.

### Article ~~32~~ 38

The Government of the Republic of Moldova should, within a 6-month period:

- bring its normative acts into conformity with the present law;
- submit to the Parliament its proposals regarding:
  - bringing the current legislation into conformity with the present law;
  - development of new normative acts to ensure efficient application and observance of the present law.

Chishinau, November the 20<sup>th</sup> 1997  
No. 1380 — XIII

APPENDIX IINTERPRETATIVE NOTESGeneral Note :Sequential Application of Valuation Methods

1. Articles 11 through 17 define the modality of the determination of customs value of imported goods under the provisions of this Law. The methods of valuation are set out in a sequential order of application. The first method for customs valuation is defined under Article 11 and according to this Article imported goods are to be valued every time when prescribed conditions are fulfilled.

2. Where the customs value cannot be determined under the provisions of Article 11, 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 10.2, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

3. If the importer does not request that the order of Articles 15 and 16 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 16, the customs value is to be determined under the provisions of Article 15, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Articles 11 through 16 it is to be determined under the provisions of Article 17.

Use of Generally Accepted Accounting Principles

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

2. For the purposes of this Law, the customs administration of the Republic Moldova shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 15 would be carried out utilizing information prepared in a manner consistent with 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 16 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in paragraph 1(c) line three of Article 11 undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 7

Paragraph 4

"Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because the importer chose to exercise the right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

Note to Article 11

Paragraph 1(b) line one

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

Paragraph 1(c) line three

1. There are two factors involved in the apportionment of the elements specified in paragraph 1(c) line three of Article 11 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 the 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 has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, 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. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with 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 administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

*Paragraph 1(c) line four*

1. Additions for the elements specified in paragraph 1(c) line four of Article 11 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

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

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

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside 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 11.

5. In another case, a firm may carry 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 11 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

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

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

*Paragraph 1(d)*

1. The royalties and licence fees referred to in paragraph 1(d) of Article 11 may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods 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 country of importation of the imported goods.

### Price Actually Paid or Payable

1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

2. Activities undertaken by the buyer on the buyer's 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. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

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

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) the cost of transport after importation;
- (c) duties and taxes of the country of importation.

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

### Paragraph 2(a) linea three

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

### Paragraph 2(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 examples of this 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 on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that the seller will receive a specified quantity of the finished goods.

2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. 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 2(d)

1. Paragraph 2(d) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

2. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.



*Note to Article 12*

1. In applying Article 12, the customs administration shall, wherever possible, 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; or

(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; or

(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 one of the three conditions described above.

4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

*Note to Article 13*

1. In applying Article 13, the customs administration shall, wherever possible, 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; or

- (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; or
- (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 one of the three conditions described above.
4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 13 is not appropriate.

*Note to Article 15*

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. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

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

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

<u>Sale quantity</u>	<u>Unit price</u>
<u>40 units</u>	<u>100</u>
<u>30 units</u>	<u>90</u>
<u>15 units</u>	<u>100</u>
<u>50 units</u>	<u>95</u>
<u>25 units</u>	<u>105</u>
<u>35 units</u>	<u>90</u>
<u>5 units</u>	<u>100</u>

(b) Totals

<u>Total quantity sold</u>	<u>Unit price</u>
<u>65</u>	<u>90</u>
<u>50</u>	<u>95</u>
<u>60</u>	<u>100</u>
<u>25</u>	<u>105</u>

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(c) of Article 11, should not be taken into account in establishing the unit price for the purposes of Article 15.

6. It should be noted that "profit and general expenses" referred to in paragraph 1 of Article 15 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.

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 4 of Article 15, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in 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. For the purposes of Article 5, "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. Where the method in paragraph 2 of Article 5 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

11. It is recognized that the method of valuation provided for in paragraph 4 of Article 15 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

*Note to Article 16*

1. As a general rule, customs value is determined under this Law the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in paragraph 1(a) of Article 16 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in paragraphs 1(b) linea two and linea three of Article 11. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 11, of any element specified in paragraph 1(c) of Article 11 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(c) linea four of Article 11 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(b) of Article 16 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 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 a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high 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 provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to 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 is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of paragraph 4 of Article 8.

7. The "general expenses" referred to in paragraph (b) of Article 16 covers the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1(a) of Article 6.

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 16, 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 16, "goods of the same class or kind" must be from the same country as the goods being valued.

### Note to Article 17

1. Customs values determined under the provisions of Article 17 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 17 should be those laid down in Articles 11 through 16 but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 17.

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 as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.

(b) Similar goods - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.