METHODS OF CUSTOMS VALUATION

a) Method 1: the transaction value method,
b) Method 2: the transaction value of identical goods,
c) Method 3: the transaction value of similar goods,
d) Method 4: the deductive method *(price per unit)*,
e) Method 5: the computed method,
f) Method 6: the fallback method *(available data).*

METHOD 1: THE TRANSACTION VALUE METHOD

The transaction value is the price actually paid or payable for the goods when sold for export to Montenegro, adjusted in accordance with the provisions of Article 38 and 39 of the Customs Law. 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, and includes all payments made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

The customs value of the imported goods is the transaction value of the goods being valued if all the conditions have been fulfilled.

CONDITIONS FOR THE USE OF THE TRANSACTION VALUE METHOD

The transaction value method corresponds to the principle of liberty of freedom of contract in trade. A contract of sale means an exchange of goods, services or property to be exchanged from seller (or vendor) to buyer (or purchaser) for an agreed upon value in money (or money equivalent) paid or the promise to pay same. A contract must not be necessarily in writing, verbal concluded agreements are also possible. For the purposes of customs valuation a contract of sale must pertain to goods, i.e. movable goods and electricity. The contract must already be concluded in the moment of incurrence of a customs debt.

No sales are:

a) Branch or representation office importing from head office.
   In order to use the transaction value method, there must be a sale for export. In circumstances where the ownership of the goods does not change, e.g. the exporter is shipping goods to his/her own employee or a branch or representation office which has no authority to contract on its own behalf, a sale cannot be said to have occurred.
b) Free consignments.
c) Rental or leasing contracts.

The conditions for the use of the transaction value method are in particular as follows:

a) there must be sale for export to Montenegro, proved by commercial invoices, contracts, purchase order, etc.;
b) there must be no restrictions on the disposition or use of the goods by the buyer, other than restrictions which:
   - are imposed or required by law or by the public authorities in Montenegro, e.g. licence, end-use, etc.

- limit the geographical area in which the goods may be resold, or
- do not substantially affect the value of the goods, e.g. selling or exhibiting automobiles prior to a fixed date which represents the beginning of a model year;

c) the sale or price must not be subject to conditions or considerations for which a value cannot be determined with respect to the goods being valued, for example:
   - the seller establishes the price of the imported goods on the condition that the buyer will also buy other goods in specified quantities,
   - the price of the imported goods is dependent upon the price or prices at which the buyer sells other goods to the seller,
   - 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 the condition that he will receive a specified quantity of the finished goods (if a value for can be determined in those cases this amount is to be regarded as a part of the price actually paid or payable);

d) no part of the proceeds of any subsequent resale, disposal or use of goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 38 Customs Law. Sufficient information must be available to permit an accurate adjustment for any such proceeds;

e) the buyer and the seller are not related or if so, the price is not affected by this circumstance. If the buyer and the seller are related, 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.

   In particular, the importer must demonstrate that:
   - the relationship did not influence the price actually paid or payable, or alternatively,
   - the transaction value closely approximates to one of the following so-called test values:
     -- the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to Montenegro,
     -- the customs value of identical goods, as determined under Article 32 of the Customs Law,
     -- the customs value of similar goods, as determined under Article 33 of the Customs Law.

   If the declarant negates in his/her declaration that seller and buyer are related, the customs authorities will generally accept this statement without further examination, unless they have reasonable doubts.

   Doubts may arise, e.g.
   - due to the names of seller and buyer,

- if there are indications in the documents (terms used such as inter-company, transfer or netting prices),
- or the customs authorities have specific information.

METHOD 2: THE TRANSACTION VALUE OF IDENTICAL GOODS

Definition of identical goods:

a) identical goods are defined as goods which are:
    - the same in all respects including:
        -- physical characteristics,
        -- quality, and
        -- reputation,
    - produced in the same country as the goods being valued, and
    - produced by the producer of the goods being valued;

b) the definition of identical goods excludes imported goods for which engineering, artwork, etc. is undertaken in the country of importation and is provided by the buyer to the producer of the goods free of charge or at a reduced cost;

c) where there are no identical goods produced by the same person in the country of production of the goods being valued, identical goods produced by a different person in the same country may be taken into account;

d) minor differences in appearance would not preclude goods which otherwise conform to the definition from being regarded as identical.

The transaction value of identical goods can be adjusted upwards or downwards to account for demonstrated differences between the goods being valued and the identical goods, to take account of:

- trade level differences,
- quantity differences, and
- commercially significant differences for transportation costs due to variances in the mode and/or distance of transport.

When this method is used, the identical goods must have been exported to Montenegro at or about the same time as the goods being valued. Where there is more than one transaction value of identical goods which meets all requirements, the lowest such value is to be used.

METHOD 3: THE TRANSACTION VALUE OF SIMILAR GOODS

Definition of similar goods:

a) similar goods are defined as goods which:
    - closely resemble the goods being valued in terms of component materials and characteristics,
    - are capable of performing the same functions and are commercially interchangeable with the goods being valued,
    - are produced in the same country as the goods being valued,
    - are produced by the producer of the goods being valued;

b) the definition of similar goods excludes imported goods for which engineering, artwork, etc. is undertaken in the country of importation and is provided by the buyer to the producer of the goods free of charge or at a reduced cost;

c) where there are no similar goods produced by the same person in the country of production of the goods being valued, similar goods produced by a different person in the same country may be taken into account.

The same adjustments as in the above article 19 are to be made where appropriate.

The similar goods used must have been exported to Montenegro at or about the same time as the goods being valued. Where this is more than one transaction value of similar goods which meets all the requirements, the lowest such value is to be used.

METHOD 4: THE DEDUCTIVE METHOD (PRICE PER UNIT)

By this method the Customs value is determined on the basis of sales price in Montenegro of the goods being valued or of identical or similar imported goods, less certain specified expenses resulting from the importation and sale of the goods.

The sales in Montenegro must meet the following conditions:
a) the goods have been resold in Montenegro in the same condition as imported;
b) sales of the goods being valued or of identical or similar goods have taken place at the same or substantially the same time as the time of importation of the goods being valued;
c) if no sales took place at or about the time of importation, it is permitted to use sales up to 90 days after importation of the goods being valued;
d) if there are no sales of identical or similar imported goods in the condition as imported that meet all the above requirements, the importer may choose to use sales of the goods being valued after further processing, provided that the value is deducted for the processing added value;
e) the purchaser must not be related to the importer from whom he buys goods at the first commercial level after importation.

The unit price at which the greatest number of units is sold must be established. Commercial invoices will serve as the primary basis for establishing the price per unit.

A deductive value is determined by making a deduction from the established price per unit for the aggregate of the following elements:
a) Commissions generally earned on a unit basis in connection with sales in the country of importation form goods of the same class or kind; or
b) Profit and general expenses generally reflected on a unit basis in sales in the country of importation form goods of the same class or kind; i
c) The usual transport, insurance and associated costs incurred within the county of importation;
d) Customs duties and taxes of the importing country;
e) Value added by assembly or further processing, when applicable.

METHOD 5: THE COMPUTED VALUE (CONSTRUCTION VALUE)

Under this Method, the Customs value is determined on a basis of the cost of production of the goods being valued, plus an amount for profit and general expenses usually reflected in sales from the country of exportation to Montenegro of goods of the same class or kind.

The customs value may be calculated as follows:

a) first, determine the aggregate of the relevant costs, charges and expenses or the value of:
   I. materials employed in producing the imported goods, and
   II. production or other processing costs for the imported goods (direct and indirect labour, factory overheads);

b) the following are to be added if not included under I and II above:
   I. packing costs and charges,
   II. assists (apportioned in a reasonable manner in accordance with generally accepted accounting principles),
   III. engineering work, artwork, etc., undertaken in the country of importation and charged to the producer;

c) add amounts for profit and general expenses, usually reflected in export sales to Montenegro, by producers in the country of export of goods of the same class or kind;

d) add the cost of transport, insurance and related charge to the port or place of importation.

Note:
The order between methods 4 and 5 may be switched, but only upon the importer's request, while the customs office may not decide on such switching.

METHOD 6: THE FALLBACK OR FLEXIBLE METHOD

When Customs value can not be determined under any of the previous methods of valuation, it may be determined by applying in a flexible manner which ever of the previous methods most readily enables calculation of the Customs value. In determining Customs value under this method, no arbitrary, fictitious or prohibited methods of valuation are to be used. The Customs value should be fair, reasonable, uniform and neutral, and should reflect commercial reality to the extent possible.

Under this method, the Customs value may not be based on:

a) the selling price of goods produced in Montenegro;
b) the higher of two alternative values;
c) the price of goods on the domestic market of the country of exportation;
d) the cost of production except under the computed value method;
e) the price of goods for export to a third country;
f) minimum Customs values; and
g) arbitrary or fictitious values.

The following cases of various uses of the fallback method may arise:

a) Article 30 of the Customs Law
Buyer and seller are related and the price is reduced due to this circumstance. The amount of reduction can be determined and the transaction value is adjusted accordingly.

b) 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 Article 32of the Customs Law could be used.

c) 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 Article 33 of the Customs Law could be used.

d) Deductive method
The requirement that the goods shall have been sold in the "condition as imported" in article 35 of the Customs Law could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

e) In particular, transaction value may not be used to value merchandise imported pursuant to a lease or rent agreement, with an option to buy. However, where other bases of valuation may also not be used, a value may be based on the transaction value approach using the “option to buy” price in the lease agreement, reasonably adjusted to arrive at a value.

f) Price dependent on resale price
The price has been only provisionally fixed and will be adjusted either up or down, depending on the profit margin realized on the resale of the goods. Basically, in cases, where the price is payable to the seller not prior to reselling of the goods on the domestic market the transaction value method may be applicable if suitable documentation (e.g. price list) is available. If this is not the case and all other successive methods of valuation are also not applicable, the customs value must be determined following the flexible method.

In applying the fallback method, if more than one method can be applied flexibly, the normal sequence for using methods 1 to 5 must be taken into account.

In a case of a customs offence, for example, if the declarant attempts to understate the transaction value, this action may not necessary lead directly to the flexible method as a sole sanction. In these cases the customs authorities shall initiate offence procedure against the suspicious. In the course of those procedures the customs authorities shall also try to investigate the price really paid to the seller (or to reveal data supporting the successive methods) in order to determine the customs value.

(Prescribed in Public notice – Customs Administration of Montenegro – all in accordance with CustomsCode and Decre for the implementation of CC)