

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Customs Valuation

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Legislation of Republic of Korea

* English only. The original text in Korean has been submitted to the secretariat (Non-Tariff Measures Division) where it can be consulted.

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I. KOREAN MEASURES TO IMPLEMENT THE NEW VALUATION CODE

1. The Korean government acceded to the GATT valuation Code on January 4, 1981 under the condition that the 5 year implementation reservation would be applied.

Therefore, the Code will be fully applied in Korea from February 5, 1986.

2. The Korean government already revised its Customs Law in December 1983 in order to implement the Code, and has been implementing the Code since July 1, 1984 with some exceptions.
3. Some exceptions will be invalid from February 5, 1986, according to Article 43-14 of the Law (Prior application of treaties). These exceptions include the method to determine the customs value for passenger's luggage etc. (Article 9-10 of the Customs Law), Change in the order of determination of customs value (Article 9-9 of the Law), and Suspension of Valuation (Article 9-10 of the Law).
4. The Korean government plans to revise the provisions of the Law concerned which provided the

above exceptions in accordance with the Code as soon as possible.

5. In practice, the government directed the Commissioner of Customs Administration Office in December 1985 to take the necessary measures for full application of the code from February 5, 1986. Therefore, the Code will be fully applied in Korea without any exception.

* Article 43-14 of the Law (Prior Application of Treaties)

1. When the provisions of a treaty are different from those of the present Law, the former shall be applied, however, that exceptions shall be made when the tariff rate prescribed by the present Law is lower than that prescribed by the treaty.
2. Matters necessary for the fulfilment of a treaty may be prescribed by a Presidential Decree.

II. The Customs Law

Article 9 (Basis for Assessment)

The basis for assessment of customs duties shall be the price or quantity of imported goods.

Article 9-2 (Declaration of Price)

1. When a liable duty payer files an import declaration, he shall declare the price of goods concerned to the customs collector as prescribed by the Commissioner, (hereinafter referred to as "price declaration"). The price declaration may be made, however, as prescribed by the Commissioner, before the date of import declaration concerned, when deemed necessary to enhance the effectiveness of customs clearance.

Note:

See Commissioner's Decree concerned

2. When the price declaration is filed pursuant to the paragraph 1, the documents connected with the determination of the customs value (hereinafter referred to as "assessment documents"), shall be submitted, as prescribed by the Commissioner.

3. If the Commissioner deems that there is no difficulty in determining the customs value of particular goods, the price declaration on that goods may be omitted.

Article 9-3 (Principles of Determination of
Customs Value)

1. The customs value of imported goods shall be the transaction value.
2. "The transaction value" provided in paragraph 1 shall be the price actually paid or payable for the goods sold for export to Korea by the buyer, provided:
 - (1) That there are no restrictions as to the disposition or use of the goods by the buyer.
Exceptions may be made, however, as prescribed by a Presidential Decree;
 - (2) That the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(3) That no part of the proceeds of any subsequent disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of paragraph 3;

(4) That the buyer and seller are not related, or where the buyer and seller are related, as prescribed by the Presidential Decree, that relationship does not influence the price of goods in question.

3. The amount falling under the following items shall be added to the price actually paid or payable prescribed in paragraph 2, to the extent that they are not included in that price:

(1) Commissions and brokerage paid by the buyer;

Note:

According to Article 43-14, the treaties are to be applied prior to the present Law.

Therefore, the buying commissions will be deducted from customs value starting Feb. 5, 1986.

- (2) The cost of containers which are treated as being one for customs purpose with the goods in question, and the cost of packing necessary for labour and materials paid by the buyer;
- (3) The value or the reduced difference of the goods and services 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;
- (4) The cost of the right of patents, trademarks, copyrights and similar to them related to the imported goods, paid directly or indirectly by the buyer (the cost of the right of reproducing the imported goods in Korea shall be excluded);

Note:

The cost of the right of patents, etc. will be restricted to only the cost of the right of those paid as condition of sale under Article 43-14.

- (5) The value of any part of the proceeds of any subsequent disposal or use of the imported

goods that accrues directly or indirectly to the seller;

- (6) The cost of transport of the imported goods to the port of importation, the cost of insurance and other expenses connected with the transport.

Article 9-4 (Customs Value Based on the Transaction Value of Identical Goods)

1. If the customs value of the imported goods cannot be determined under provisions of Article 9-3, the customs value shall be the transaction value of the identical goods which has been accepted as the customs value, provided:

- (1) That the identical goods concerned are produced in the same country, and are imported within the period prescribed by the Commissioner retrospectively from the date of shipment of the goods being valued;

Note:

See Commissioner's Decree concerned.

(2) That commercial levels, quantity levels, distance of transport, type of transport of the identical goods are the same as those of the goods being valued. If there is any difference between them, the customs value must be adjusted.

2. If, in applying the provisions of paragraph 1, more than one transaction value of identical goods are found, the customs value shall be determined as prescribed by the Commissioner.

Note:

See Commissioner's Decree

Article 9-5 (Customs Value Based on the Transaction Value of Similar Goods)

1. If the customs value cannot be determined under the provisions of Articles 9-3 and 9-4, the customs value shall be determined on the basis of the transaction value of similar goods which has been accepted as customs value, and which also satisfies all the requirements prescribed in each item of paragraph of the Article 9-4.

2. If, in applying the provisions of paragraph 1, more than one transaction value of similar goods are found, the customs value shall be determined as prescribed by the Commissioner.

Note:

See Commissioner's Decree

Article 9-6 (The Customs Value Based on the Domestic Sale Price)

1. If the customs value cannot be determined under the provisions of Articles 9-3 through 9-5, the customs value shall be based on the unit price at which the goods being valued, the identical or similar goods are sold in Korea in the same condition as imported, within the period from the date of import declaration which is prescribed by the Commissioner, in the greatest quantity, to persons who are not related to persons from whom they buy such goods, subject to deductions for the items listed below. When the liable duty payers so request, however, the provisions of Article 9-7 shall be applied.

Note:

See Commissioner's Decree

- (1) The commissions usually paid or agreed to be paid, or the additions usually made for profit and general expenses in connection with sales in Korea of the imported goods of the same class or kind, approved by the Commissioner;

Note:

See Commissioner's Decree

- (2) The usual cost of transport, insurance and other associated cost incurred within Korea, after importation of the goods concerned;
 - (3) Taxes and other official charges paid or payable in connection with the importation and domestic sale of the goods concerned.
2. If neither the imported goods nor identical nor similar goods are sold in Korea in the same condition as imported, when the liable duty payer so requests, the customs value shall be based on the unit price at which, after further processing in Korea, the goods thereof are sold in the greatest quantity to the persons who are not related to persons from whom they buy such goods, subject to deductions for the following:

- (1) The amount of money as prescribed in paragraph 1;
- (2) The amount of money, approved by the Commissioner, of value added from such processing in Korea.

Note:

See Commissioner's Decree

Article 9-7 (Customs Value Based on Computed Value)

If the customs value cannot be determined under the provisions of Articles 9-3 through 9-6, the customs value shall be the sum of the following items:

- (1) The cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (2) 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 Korea;
- (3) The cost of transport to the port of importation, the cost of insurance and other expenses connected with the transport.

Article 9-8 (Customs Value Based on Reasonable Means)

If the customs value cannot be determined under the provisions of Articles 9-3 through 9-7, inclusive, the customs value shall be determined under the provisions of the Commissioner's Decree which provide that the reasonable means consistent with the principles prescribed in Articles 9-3 through 9-7.

Note:

See Commissioner's Decree

Article 9-9 (Change in the Order of Determination of the Customs Value)

1. When the customs collector has some difficulties in approving the declared value pursuant to the provisions of Article 9-2 as the customs value pursuant to the provisions of Article 9-3 due to lack of assessment documents, etc., or when the declared value is a remarkably low one, compared with the value pursuant to the provisions of Articles 9-4 through 9-6, the customs value may be determined on the basis of the means designated by the Commissioner among the means pursuant to the provisions of

Articles 9-4 through 9-8, or of the value which a customs officer or the head of the Korean Embassy to foreign countries has investigated.

Note:

This Article will be invalid by the provisions of Article 43-14 from Feb. 5, 1986.

2. The criteria and procedures necessary for the application of paragraph 1 shall be provided by the Commissioner's Decree.

Article 9-10 (Customs Value of Hand Luggage and Other Items)

The customs value of hand luggage, consignment, personal effects sent by separate post, postal matter and other goods designated by the Commissioner, in spite of the provisions of Articles 9-3 through 9-9, shall be determined by the Commissioner's Decree which is based both on the domestic wholesale price of the identical or similar goods less taxes, other official charges, usual expenses and profit, and on the domestic wholesale price in the country of exportation.

Note:

This Article will be invalid by the provisions of Article 43-14 from Feb. 5, 1986.

Article 9-11 (Suspension of Valuation)

1. The Commissioner may suspend the application of the provisions of Articles 9-3 through 9-10, when the declared value impedes or is likely to impede the development of domestic industry, or the declared value is unfair or deemed to be unfair.
2. In case of paragraph 1, the customs value concerned shall be determined as prescribed by the Ministerial Ordinance of Finance.
3. The value determined pursuant to the provisions of paragraph 2 shall be applied, from the date of the suspension of the provisions concerned, pursuant to the provisions of paragraph 1.

Note:

This Article will be invalid by the provisions of Article 43-14 from Feb. 5, 1986.

Article 9-12 (Criteria for the Computation of Freight and Insurance)

1. Freight and insurance pursuant to the provisions of item 6 of paragraph 3 of Article 9-3 and of item 3 of Article 9-7 shall be computed on the basis of freight specifications and insurance specifications or other replaceable documents.

2. If freight and insurance cannot be computed by the means prescribed in paragraph 1, they shall be computed as prescribed by the Commissioner, considering the distance and the means of transport.
3. If those goods designated by the Commissioner are transported by air, freight and insurance shall be computed on the assumption that type are transported by ordinary means of transportation other than air.

Article 9-13 (Foreign Exchange Rate for Customs
Duty)

The foreign exchange rate to be used in converting the foreign currency denoted value into domestic denoted value shall be determined as prescribed by the Commissioner, based on the selling rate of foreign exchange of the preceeding week of the week pursuant to the provisions of Article 5.

Note:

See Commissioner's Decree
Article 5: The date of import declaration.

Article 9-14 (Report on the Investigation of Price)

The Minister of Finance or the Commissioner, when it is deemed necessary for the determination of customs value, may ask a trade association and other persons concerned to submit the necessary materials for that purpose. When requested, they shall comply with the request, unless they have a justifiable cause.

Article 43-14 (Prior Application of Treaties)

1. When the provisions of a treaty are different from those of the present Law, the former shall be applied; provided, however, that exceptions shall be made when the tariff rate prescribed by the present Law is lower than that prescribed by the treaty.
2. Matters necessary for the fulfilment of a treaty may be prescribed by a Presidential Decree.

Article 143 (Removal of Goods Prior to Permission)

1. Any person who intends to withdraw goods declared for import from the storage place prior to permission by the customs collector shall obtain the approval of the customs collector, after furnish-

ing collateral against customs duty payable thereon, provided, however, that the furnishing of collateral may be omitted with respect to goods imported by the government or the autonomous body.

2. The goods withdrawn pursuant to the provisions of paragraph 1 shall be regarded as domestic goods.

III. Presidential Decree for Customs Law

Article 3 (Prices Actually Paid or Payable)

The Price actually paid or payable by the buyer, prescribed in the provisions of paragraph 2 of Article 9-3 of the Customs Law (hereinafter referred to as "the Law"), shall be the total amount of money, paid or payable by the buyer to the seller for the imported goods (The amount of money which the buyer offset for the seller's liabilities, the buyer paid for the seller's liability to a third party and other indirect payment shall be included). However, if the amount of money falling under any of following items can be clearly distinguished from the amount of money paid or payable by the buyer, it shall be subtracted:

- (1) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods;
- (2) Freight, insurance and other costs related to transportation after arrival at the port of importation;
- (3) Customs duties, taxes and other official charges imposed in Korea on the goods imported;

- (4) In the case of importation on deferred payment,
the interest payment on it.

Article 3-2 (Restrictions Having no Substantial
Affection on the Value of Goods)

"Exceptions as prescribed in the Presidential Decree"
in the last clause of item 1 of paragraph 2 of
Article 9-3 of the Law shall be one of any restric-
tion falling under the following items:

- (1) The restrictions, imposed or required by Korean
Law or Regulations or by the disposition thereof;
- (2) Restriction on the area which the imported goods
can be resold;
- (3) Other restrictions which the customs collector
approves as having no substantial affection on the
value of goods.

Article 3-3 (Coverage of Relationship)

"The relationship between the buyer and the seller
prescribed in the Presidential Decree" prescribed
in item 4 of paragraph 2 of Article 9-3 of the Law

shall be one of any case falling under the following items:

- (1) Where the buyer and the seller are officers or directors of one another's businesses;
- (2) Where the buyer and the seller are legally recognized partners in business;
- (3) Where the buyer and the seller are employer and employee;
- (4) Where any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;
- (5) Where either the buyer or the seller, directly or indirectly, controls the other;
- (6) Where the buyer and the seller are controlled directly or indirectly by a third person;
- (7) Where the buyer together with the seller, control a third person, directly or indirectly;
- (8) Where the buyer and seller are members of the same family.

**Article 3-4 (Evidence, etc. of Import Price Not
Affected by Relationship)**

1. In case where the importer, in a transaction by the related persons pursuant to the provisions of item 4 of paragraph 3 of Article 9-3 of the Law, verifies that the declared value closely approximates the value falling under any of following items, accordance with the Commissioner's Decree, the relationship shall be regarded as having no substantial affection on the price of the goods in question.

Note:

See Commissioner's Decree concerned.

- (1) The transaction value of identical or similar goods as determined pursuant to the provisions of Articles 9-3 through 9-5 of the Law;
- (2) The customs value of identical or similar goods as determined pursuant to the provisions of Articles 9-6 and 9-7 of the Law;
- (3) The price in the quotations which shows the sales price to a buyer in Korea without relationship with the exporter of the goods concerned.

Note:

Item 3 will not be valid from Feb. 5
1986.

2. In comparing the declared price with the ones falling under any item of paragraph 1, commercial levels, quantity levels and the elements enumerated in paragraph 3 of Article 9-3 of the Law shall be taken into consideration and adjusted.
3. The person who wants the provisions of paragraph 1 to be applied, shall submit information necessary for the verification at the time of price declaration, in accordance with the Commissioner's Decree.

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Article 3-5 (Goods and Services Supplied by the Buyer)

"Goods and services," prescribed in item 3 of paragraph 3 of Article 9-3 of the Law, shall mean those falling under any of the following items, which the buyer supplies directly or indirectly:

- (1) Materials, components, parts and similar items incorporated in the imported goods;
- (2) Tools, dies, moulds and similar items used in the production of the imported goods;

- (3) Materials consumed in the production of the imported goods;
- (4) Engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Korea, and necessary for the production of the imported goods.

Article 3-6 (Identical Goods and Similar Goods)

1. "Identical goods" prescribed in Article 9-4 of the Law shall mean goods which are the same in all respects, including physical characteristics, quality and reputation (Minor difference in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical).
2. "Similar goods" prescribed in Article 9-5 of the Law shall mean the goods which, although not alike in all aspects, have like characteristics and like component materials which enable them to perform the same function and to be commercially interchangeable.

Article 3-7 (Domestic Sales Price of the Imported Goods)

"The unit price in domestic sales," in the provisions of paragraph 1 of Article 9-6 of the Law, shall be that determined at the first commercial level. The sales price, quoted in cases where there is a relationship between a buyer and a seller pursuant to the provisions of Article 3-3, or a buyer supplies a seller with the goods prescribed in each provisions of Article 3-5 so as to be used in relation with the transaction of imported goods, free of charge or at reduced price, however, shall not be regarded as the above unit price.

Article 3-8 (Valuation of Deteriorated or Damaged Goods)

In cases where imported goods have been deteriorated and damaged before import declaration, the customs value shall be the price, determined pursuant to the provisions of Articles 9-3 through 9-10 of the Law, less the amount equivalent to the value diminished due to deterioration or damage.

**Article 3-9 (Suspension of Valuation and Publication
and Investigation)**

1. The Minister of Finance, when he deems it necessary to investigate whether imported goods have been sold at a illegally lower price or not, shall inform the Commissioner of the fact, and shall have the Commissioner take the measures pursuant to the provisions of paragraph 1 of Article 9-11 of the Law.
2. The Minister of Finance, when he begins the investigation pursuant to the provisions of paragraph 1, shall publish the following items in the Official Gazette:
 - (1) Name, specification and other characteristics of goods concerned;
 - (2) The country of export and the exporter of the goods concerned;
 - (3) The period of investigation;
 - (4) The summary of details to be investigated;
 - (5) Other references.

Note:

This Article will not be valid from Feb. 5 1986.

Article 4 (Freight Computation)

In computing the freight pursuant to the provisions of Article 9-12 of the Law, if the freight of the goods that are carried by the importer's vessel or aircraft or other special means of transportation is conspicuously different from normal freight paid, usually the normal freight shall, except for goods as designated by the Commissioner, be regarded as the freight of the goods in question.

**IV. Commissioner's Decree for the Customs
Law and the Presidential Decree**

FOREIGN EXCHANGE RATE FOR CUSTOMS DUTY

A foreign exchange rate for customs duty prescribed in Article 9-13 of the Law shall be instructed on each Saturday (if the Saturday comes on a holiday, the day preceding thereto) so that an average of the telegraphic transfer (T/T) selling rates to customers announced by the Korea Exchange Bank from Monday to Saturday each week (fractions of Won shall be rounded off to Won; with respect to Japanese currency, fractions of Sen shall be rounded off to Sen) may be applied in the following week.

DETAILS OF PRICE DECLARATION

A liable duty payer (if the actual buyer of imported goods is not a liable duty payer, the actual payer) shall submit to the customs collector a customs value declaration (hereinafter referred to as "the price declaration") on the respective goods, stating the facts about details prescribed in Article 1 through Article 8 and Article 15 of the GATT Valuation Code with respect to transactions in the imported goods and the customs value calculated as a result of inter-

pretation and application of the Valuation Standards thereon.

OMISSION OF PRICE DECLARATION

A liable duty payer on goods falling under one of the following items may omit his value declaration:

- 1) Goods imported directly by the government or by a local autonomous body;
- 2) Goods procured by the government;
- 3) Goods imported by government-run enterprises
- 4) Goods on which customs duty is exempt under the Customs Law, other Law and as well as treaties;
- 5) Goods on which the working tariff rate is duty-free under the Tariff Schedules (however, with the exception of goods which are prescribed by the Commissioner);
- 6) Machinery and parts thereof and goods imported for raw materials used in defence industry (limited to those confirmed or recommended by the competent Minister);
- 7) Raw materials for production of export goods.

DETERMINATION OF CUSTOMS VALUE BASED ON TRANSACTION
VALUE OF IDENTICAL OR SIMILAR GOODS .

Prices for identical or similar goods which provide the basis for valuation shall meet the following requirements:

- (1) The goods shall be those shipped within three months retroactively from the shipping date of the respective goods, and whose prices are known at the time of determining a customs value of the respective goods, however, this shall not apply in cases where the market conditions and commercial practices remain unchanged;
- (2) They shall be identical to the respective goods in terms of commercial level, quantity level, transport distance, and type of transportation, etc., and if there is any difference between the two, the difference in price shall be adjustable on the basis of some objective and quantifiable data;
- (3) They shall not be those produced with use of engineering, development, artwork, design, plans and sketches undertaken in Korea.

- (4) In determining a customs value under Article 9-4 and Article 9-5 of the Law, the liable duty payer may present data on the name, specification, shipping date, date of import declaration, import-declared customs house, and determined customs value.
- (5) If there are two or more transaction values for identical or similar goods, the transaction value of the identical or similar goods which is the closest to the respective goods in terms of manufacturer, time of transaction, commercial level, and transaction quantity, etc., shall be applicable, if there are two or more transaction values under same conditions, the lowest price shall be adopted as the basis of the customs value.

DETERMINATION OF THE CUSTOMS VALUE BASED
ON THE DOMESTIC SALES PRICE

1. Domestic sales prices mentioned in Article 9-6 of the Law shall refer to the prices falling under one of the following items:

- (1) Unit price at which the goods being valued are sold in Korea in the same condition as imported, in the greatest aggregate quantity within days after importation;

(2) Unit price at which the identical or similar goods are sold in Korea in the same condition as imported, in the greatest aggregate quantity within about one month before and after the date of import declaration of the respective goods;

(3) Unit price at which the imported goods, after further processing, are sold in Korea in the greatest aggregate quantity 90 days after importation.

2. In determining a customs value prescribed in Article 9-6 of the Law a balance of the total amount calculated by multiplying a "unit price of the greatest aggregate quantity sold" by the imported quantity, which remains after deducting the amounts under the following items:

(1) Letter of credit (L/C) opening fees, telegraph charges, Korean Traders Association membership dues, and profit (operating profit) and general expenses;

(2) Entrance fees, stevedoring charges, storage fees, ware-house receiving/delivery charges,

customs clearance fees, quarantine fees, inland transportation charges, and inland transportation insurance incurred in Korea following the arrival at the port of import;

- (3) In the case Item 3 of the above paragraph, direct costs such as material cost and labor cost as well as indirect costs such as general administrative expenses required for the respective further processing (for indirect costs such as general administrative expenses, the respective expenses shall be apportioned according to the ratio of the respective businessman's overall general administrative expenses to the products);
- (4) Various taxes and other official charges either paid or payable in connection with the importation of the respective goods;
- (5) In the event of goods for consignment sale, a customs value shall be determined at an amount remaining after the deduction of a consignment sale fee;

- (6) Profit and general expenses shall be taken as a whole and shall be calculated on the basis of the liable duty payer's accounting report prepared according to generally accepted accounting principles.

DETERMINATION OF THE CUSTOMS VALUE BASED ON
REASONABLE MEANS

1. The extensive applying criteria on the transaction value of the identical or similar goods shall be the followings:
 - (1) The definition of the identical or similar goods shall cover all goods which are commercially interchangeable each other under commercial practice, and shall also include those whose countries of production are different from each other;
 - (2) The duration prescribed by the Commissioner under Article 9-4 and Article 9-5 of the Law shall be applied extensively within reasonable scope.

2. The extensive applying criteria on the domestic sale price shall be the following:

The duration prescribed by the Commissioner under Article 9-6 of the Law shall be adjusted to a period deemed by the liable duty payer and the customs house reasonable within the limit of 180 days.