

GENERAL AGREEMENT ON

RESTRICTED

VAL/1/Add.19/Suppl.3*

5 April 1989

TARIFFS AND TRADE

Special Distribution

Committee on Customs Valuation

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Supplement

Legislation of Republic of Korea

Changes in the Customs Law and the Presidential Decree Relevant to the Agreement

Pursuant to paragraph 2 of Article 25 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Customs Valuation Code), the Government of the Republic of Korea is pleased to submit to the Committee information on the changes in Korea's Customs Law and the Presidential Decree relevant to the Code.

The attached texts of the Customs Law and the Presidential Decree were revised at the end of 1988 and entered into force on 1 January 1989.

The Detailed Implementation Regulation (Commissioner's Order) is still being worked on and will be submitted as soon as possible.

The revision is the result of the Republic of Korea's Government's best efforts consistently deployed since its participation in the Customs Valuation Code to make Korea's relevant laws, decrees and orders consistent with the provisions of GATT and of the Code in particular.

Furthermore, the revision of the Law, and the Presidential Decree governing the administration of customs have enhanced the legal status of the regulations on customs valuation.

Lastly, but at least as important, a major objective of the revision was to rationalize the valuation procedures and to make them more efficient for the convenience and benefit of importers and Korea's foreign suppliers.

Overall, therefore, the revised provisions reported on the following pages will serve to facilitate and increase the import flows to the Korean market.

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Revised Customs Law
(Revised by Law No. 4027, 26 December 1988)

Article 9-3 (principles of determination of customs value)

1. The customs value of imported goods shall be the transaction value actually paid or payable by the buyer for the goods sold for export to Korea, adjusted by adding the amounts falling under the following items:

- (1) Commissions and brokerage fees paid by the buyer, except buying commissions.
- (2) The cost of containers which are treated as being one for customs purposes with the goods in question; and the cost of packing paid by the buyer for labour and materials.
- (3) The value or the reduction in value 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 costs of the right of patent, utility model, design, trademark and similar rights, in connection with the goods in question, paid directly or indirectly by the buyer according to the contract. (The cost of the right of reproducing the imported goods in Korea shall be excluded).
- (5) 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.
- (6) The cost of transport of the imported goods to the port of importation, the cost of insurance and other expenses connected with transport. However, exceptions may be made wholly or partially as prescribed by ordinance of the Ministry of Finance.

2. The transaction value provided for in paragraph 1 to be used as customs value shall be the price, provided:

- (1) that there are no restrictions as to the disposition or use of the goods by the buyer. However, exceptions may be made as prescribed by the 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 resale, disposal or use of the goods by the buyer will accrue directly or

indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of paragraph 1;

- (4) that, in the case where the buyer and seller are specially related, as described by the Presidential Decree, the relationship did not influence the price of the goods concerned.

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 the provision of Article 9-3, the customs value shall be the transaction value of identical goods which has been accepted as the customs value provided:

- (1) that the identical goods concerned are produced in the same country as those being valued, and are imported by shipment at or about the same time as the shipment of the goods being valued.

2. If, in applying the provisions of paragraph 1, more than one transaction value of identical goods is found, the customs value shall be determined at the value of the most similar goods taking into account producer, and time, stage and quantity levels, etc. of transaction (hereinafter referred to as "contents of transaction, etc.") and if more than one good equal in contents of transaction, etc., is found at different prices, the customs value shall be determined at the lowest price.

Article 9-5 (customs value based on the transaction value of similar goods)

1. If, in applying the provisions of paragraph 1, more than one transaction value of similar goods is found, the customs value shall be determined on the basis of the price of the most similar good; and if more than one good equal in contents of transaction, etc., is found at different prices, the customs value shall be determined on the basis of the lowest price.

Articles 9-6 (customs value based on the domestic wholesale price)

1. If the customs value cannot be determined under the provisions of Article 9-3 through 9-5, the customs value shall be the price at which the imported good or identical or similar goods are sold domestically to a person without special relationship, in the largest quantity, under the same conditions and at or about the same time of import declaration as the imported good, subject to deductions for the items listed below. However, if the duty payer so requests, the provisions of Article 9-7 shall be applied.

- (1) The commissions usually paid or agreed to be paid in connection with domestic sales, and the additions usually made for profit and general expenses in respect of the same class or kind as the goods being imported for domestic sale.

2. If neither the imported goods nor identical nor similar imported goods are sold domestically in the condition as imported, then, if the duty payer so requests, the customs duty shall be based on the unit price at which the imported goods, after further processing in Korea, are sold in the greatest quantity to the person without special relationship, subject to deductions for the following items:

- (2) The amount of value added by processing in Korea.

Article 9-7 (customs value based on a computed value)

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

- (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.

Article 9-8 (customs value based on reasonable means)

If the customs value cannot be determined under the provisions of Article 9-3 to 9-7, inclusive, the customs value shall be determined using reasonable means consistent with the principles contained in Articles 9-3 through 9-7 and the basic data applicable for valuation.

Article 9-9 (notification of the method of determination of the customs value, etc.)

If the duty payer so requests in writing, the customs collector shall inform him, in writing, of the customs value, the method of determination and the data on which it was based.

Article 9-10 (customs value of personal effects and others)

(Deleted)

Article 9-11 (suspension of valuation)

(Deleted)

Revised Presidential Decree for Customs Law
(Revised by Presidential Decree No. 12572, 31 December 1988)

Article 2 (application of the simplified rate)

3. (Deleted)

Article 3 (price actually paid or payable)

The price actually paid or payable by a buyer, provided for in paragraph 1 of Article 9-3 of the Law, shall be the total amount paid or payable by the buyer to a seller for the imported goods. (The amounts which the buyer offset for the seller's liabilities, the buyer paid for the seller's liability to a third party and of other indirect payments shall be included.)

However, in cases where the amounts relating to any of the following items can be clearly distinguished from the amounts actually paid or payable by the buyer, they shall be subtracted:

- (1) Labour or service costs charged for the construction, installation, assembly, maintenance or technical assistance undertaken on the imported goods after importation.
- (2) Freight, insurance and other costs related to transportation after arrival at the port of importation.
- (3) Customs duty, etc. and other dues imposed in Korea on the goods imported.
- (4) In case of importation against deferred payment, the interest payments incurred.

Article 3-3 (coverage of special relationship)

The special relationship between the buyer and the seller described in the Presidential Decree provided for in item 4 of paragraph 2 of Article 9-3 of the Law shall cover the following cases:

- (1) Where the buyer and the seller are officers or directors of one another's businesses.
- (2) Where the buyer and the seller are partners in business.
- (3) Where the buyer and the seller are in an employer/employee relationship.

- (4) Where a specific person, directly or indirectly, owns or manages 5 per cent or more of the voting stock of the buyer and the seller.
- (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 party.
- (7) Where the buyer and the seller control together a third party, directly or indirectly.
- (8) Where the relation of the buyer and the seller is subject to any item prescribed in item 1 through item 8 of Article 20 of the Presidential Decree for Basic Law for National Tax.

Article 3-4 (evidence, etc. of import price not affected by special relationship)

1. In cases where a special relationship exists between the buyer and the seller as described in Article 3-3, but the declared value is determined in the same way as any other normal transaction or pricing practice of the industry concerned or if the buyer proves that it approaches any of the values as listed hereunder in accordance with the Detailed Implementation Regulations (Commissioner's Order) the special relationship shall be deemed to have no effect on the price of the goods concerned:

- (1) The transaction value of identical or similar goods in the absence of any special relationship.
- (2) The dutiable value of identical or similar goods determined pursuant to the provisions of Article 9-6 and 9-7 of the Law.
- (3) (Deleted)

2. In comparing the declared value with the values falling under any item of paragraph 1, any differences in the stage or quantity of the transaction, and the elements listed in paragraph 1 of Article 9-3 of the Law, shall be taken into account and adjusted for.

Article 3-5 (adjustment of the transaction value)

1. Goods and services described in item 3 of paragraph 1 of Article 9-3 of the Law, shall mean those falling under any of the following items, which the buyer supplies directly or indirectly:

- (3) goods consumed in the production process of the imported goods.

2. "Similar to them" in item 4 of paragraph 1 of Article 9-3 of the Law shall mean those falling under any of the following items:

- (1) Copyright
- (2) Original idea, conception, secret, etc. which are not legal rights but economically useful for production or business.

Article 3-6 (identical goods, etc.)

3. "The same class or kind as the goods being imported" in item 1 of paragraph 1 of the 9-6 of the Law are goods which are produced in the same industry as the goods being imported and which belong to the same category (including identical or similar goods).

Article 3-8 (valuation of deteriorated or damaged goods)

In cases where declared import goods have deteriorated or have been damaged before declaration, the customs value shall be the price less the amount equivalent to the value diminished due to deterioration or damage.

Article 3-9 (application of addition or deduction rates)

1. Where necessary for the efficient administration of customs formalities and to lighten the burden on duty payers, the commissioner may, in the implementation of paragraph 1 of Article 9-3 and paragraph 1 or paragraph 2 of Article 9-6 of the Law, apply the generally recognized addition rate or deduction rate to goods being imported repeatedly over a long period.

2. The addition or deduction rate prescribed in paragraph 1 of Article 3-9 shall be applied only if the duty payer so requests.