

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Customs Valuation

Original: English

**INFORMATION ON IMPLEMENTATION AND
ADMINISTRATION OF THE AGREEMENT**

Addendum

Legislation of Turkey

The following communication dated 24 October 1994 has been received from the Permanent Mission of Turkey.

Pursuant to Article 25 of the Customs Valuation Agreement, I enclose¹ two copies, in English, of the Turkish regulations concerning customs valuation.

These provisions form part of a new codification of Turkey's customs regulations involving the establishment of a dual regulatory structure: on the one hand, changes in the Customs Code comprising the essential principles and, on the other, a set of implementing regulations and provisions.

¹English only.

The Official Journal: 21847 - 12.02.1994

THE CODE

The Code Concerning the Amendment of Article 65 of the Turkish
Customs Code

Number: 3968

Date of Ratification: 10 February 1994

Article 1: Article 65 of The Turkish Customs Code dated 19 July 1972 and numbered 1615 has been amended as follows:

Article 65: The Customs value of imported goods shall be determined in accordance with the methods which are set out in the Agreement of Implementation of Article VII of the General Agreement of Tariffs and Trade.

The elements set out in the second paragraph of the Article 8 of the Agreement shall be included in the customs value.

The Customs value must be declared in Turkish currency. The amounts expressed in foreign currencies on invoices and other documents shall be converted to Turkish currency at the current rate of exchange at the time when the obligation for the payment of the import duties and taxes begins.

Article 2: This Code enters into force on the date of its publication.

Article 3: The Council of Ministers executes the provisions set out in this Code.

The Official Journal: 21847 - 12.02.1994

THE REGULATION

Regulation Concerning the Application of the Agreement of Implementation of the Article VII of the General Agreement of Tariffs and Trade

PART 1

General Provisions

Objective

Article 1: This Regulation sets out the rules and procedures for the valuation of the imported goods on the bases of the provisions of the Agreement on the Implementation of the Article VII of the General Agreement on Tariffs and Trade which was ratified by the Code numbered 3447 and dated 12 May 1988, and by the Decree numbered 88/13194 and dated 30 July 1988, and amended by the Decree numbered 93/4690 and dated 27 July 1993.

Scope

Article 2: This Regulation sets out the methods for the determination of the customs value of imported goods which have been entered into the customs territory (Including those of exempt from taxes and subject to specific duties.)

Base

Article 3: This Regulation has been prepared in accordance with the provisions of the Agreement on the Implementation of the Article VII of the General Agreement on Tariffs and Trade which was ratified by the Code numbered 3447 and dated 12 May 1988, and Decrees numbered 88/13194, 93/4690 and dated 30 July 1988, 27 July 1993 respectively.

Definitions

Article 4: In this Regulation:

- (a) "GATT" means the General Agreement on Tariffs and Trade.
- (b) "The Agreement" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade which was ratified by the Code numbered 3447 and dated 12 May 1988, and Decree numbered 93/4690 and dated 27 July 1993.
- (c) "Customs value of imported goods" means the value of goods for the purpose of levying ad valorem duties of customs on imported goods.
- (d) "Produced" means grown, manufactured and mined.

- (e) "Identical goods" means goods which are produced in the same country and are the same in all respects, including physical characteristics, quality and reputation. (Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.)
- (f) "Similar goods" means goods which although not alike in all aspects, 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 trade mark are among the factors to be considered in determining whether goods are similar.)
- (g) "Goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.
- (h) "Relationship between the buyer and the seller" means the relationship described in the Article 17 of this Regulation.
- (i) "Buying commission" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.
- (j) "Entry port of place" means port of unloading in Turkey for goods carried by sea, the first customs office at the border for goods carried by land, airport of unloading for goods carried by air.
- (k) "The members of the same family" means husband and wife, parent and child, brother and sister (whether by whole or half blood), grandparent and grandchild, uncle or aunt, nephew or niece, step-parent, step-child, step-brother or sister.
- (l) "Sale for export to Turkey" means direct sale for the purpose of importation to Turkey.
- (m) "Royalties and licence fees" includes payments, among other things, for patents, designs, know-how, models, trademarks, registered designs, copyrights and manufacturing processes relating to manufacture, sale for export, use or resale of imported goods.
- (n) "At or about the time" means the first determinable date prior or subsequent to the importation which would enable to establish the unit price of the imported goods or identical or similar imported goods.

However,

- (o) The terms "identical goods" and "similar goods" do not include goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 13 (b/4) of this Regulation because such elements were undertaken in Turkey.
- (p) Goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued.
- (r) Goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

PART 2

Rules on Customs Valuation

Section 1

The Principles Regarding the Transaction Value Method

Determination of the customs value

Article 5: The customs value of imported goods shall be determined by proceeding sequentially through the methods which are set out in the Articles 6 to 12 of this Regulation. Where the customs value cannot be determined in accordance with a method, the following method shall be used.

The transaction value method

Article 6: The customs value of imported goods is the transaction value, that is the price actually paid or payable for the goods when sold for export to Turkey, adjusted in accordance with the provisions of Articles 13 and 14 of this Regulation, provided:

- (a) That there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - 1. are imposed or required by Turkish Laws and Regulations or by the public authorities in Turkey;
 - 2. limit the geographical area in which the goods may be resold; or
 - 3. do not substantially affect the value of the goods;
- (b) 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;
- (c) That no part of the proceeds of 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 Article 13 of this Regulation;
- (d) That the buyer and seller are not related, or where the buyer and the seller are related the transaction value is acceptable for the customs purposes under the provisions of paragraphs (e) and (f) of this Article;
- (e) In determining whether the transaction value is acceptable for the purposes of the above provisions, the fact that the buyer and seller are related within the meaning of Article 17 of this Regulation shall not in itself be grounds for regarding the transaction value as unacceptable. In such cases 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 he shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing;

- (f) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the transaction value method whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:
1. the transaction value in sales to unrelated buyers of identical or similar goods for export to Turkey;
 2. the customs value of identical or similar goods as determined under the provisions of Article 10 of this Regulation;
 3. the customs value of identical or similar goods as determined under the provisions of Article 11 of this Regulation;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in the Article 13 of this Regulation and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

- (g) The tests set forth in paragraph (f) are to be used at the initiative of the importer and only for comparison purposes. Values which would substitute the transaction value cannot be established under the provisions of paragraph (f);
- (h) 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 price includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or to a third party to satisfy an obligation of the seller. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of directly or indirectly letters of credit or endorsable negotiable instrument;

Activities undertaken by the buyer on his own account (including marketing), other than those for which an adjustment is provided in Article 13 of this Regulation, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value of imported goods.

The transaction value method of identical goods

Article 7: The transaction value method of identical goods is as follows:

- (a) If the customs value of imported goods cannot be determined under the provisions of Article 6 of this Regulation, the customs value shall be the transaction value of identical goods sold for export to Turkey at or about the same time as the goods being valued;
- (b) In applying this method, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or quantity, shall be used, provided that such adjustments can be made on the basis of

demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

Where the costs and charges referred in paragraph (f) of Article 13 of this Regulation 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 in question arising from differences in distances and modes of transport.

If, in applying this method, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

The transaction value method of similar goods

Article 8: The transaction value method of similar goods is as follows:

- (a) If the customs value of the imported goods cannot be determined under Articles 6 and 7 of this Regulation, the customs value shall be the transaction value of similar goods sold for export to Turkey and exported at or about the same time as the goods being valued.
- (b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

Where the costs and charges referred to in Article 13 (f) of this Regulation 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 similar goods in question arising from differences in distances and modes of transport.

If in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Section 2

Sequential Order of Application of Valuation Methods

Article 9: If the customs value of imported goods cannot be determined under the methods set out in Articles 6, 7 and 8 of this Regulation, the customs value shall be determined under the provisions of Article 10 or, when the customs value cannot be determined under that Article, under the provisions of Article 11 except that, at the request of the importer the order of application of Article 10 and Article 11 of this Regulation shall be reversed, provided that the Customs Authority agrees to that request.

Section 3

The Principles of the Implementation of the Other Methods

The deductive method

Article 10: The deductive method is as follows:

- (a) If the imported goods or identical or similar imported goods are sold in Turkey in the condition as imported, the customs value of imported goods under the provisions of this method 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 unrelated buyers. The following deductions shall be made from this unit price:
 - (1) Either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with the sales in Turkey of imported goods of the same class or kind;
 - (2) the usual costs of transport and insurance and associated costs incurred within Turkey;
 - (3) the customs duties and other national taxes payable in Turkey by reason of the importation or sale of the goods.
- (b) 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 (a) of this Article, be based on the unit price at which the imported goods or identical or similar goods are sold in Turkey in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of ninety days after such importation.
- (c) If neither the imported goods nor identical nor similar imported goods are sold in Turkey 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 Turkey 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 (a) of this Article.

The computed value method

Article 11: The customs value of imported goods under the provisions of this method shall be based on a computed value. For the implementation of this method the importer has to provide all the necessary information and documentation to the customs authority and must be ready to verify accuracy of those information and documentation by sufficient documents issued by the authorities in the country of production.

The 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 Turkey;
- (c) the costs referred in Article 13(f) of this Regulation.

The last method

Article 12: If the customs value of imported goods cannot be determined under the provisions of Articles 6 to 11 of this Regulation, the customs value shall be determined using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of the General Agreement and implementing the methods, mentioned above, with a reasonable flexibility on the basis of data available in Turkey.

Under this article, the following bases shall not be used for determining the customs value:

- (a) the selling price in Turkey of goods produced in Turkey;
- (b) a system which provides for the acceptance for customs purposes of 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 other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 11 of this Regulation;
- (e) the price of the goods for export to a country other than Turkey;
- (f) minimum customs values;
- (g) arbitrary or fictitious values.

If he so requests, the importer shall be informed in writing of the customs value determined under the provisions of this method and the method used to determine such value.

PART 3

Other Provisions Related to the Customs Valuation

Section 1

Inclusions and Exclusions

Additions to be made into the price actually paid or payable

Article 13: In determining the customs value under the provisions of Article 6 of this Regulation, there shall be added to the price actually paid or payable for the imported goods:

- (a) The following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - (1) Commissions and brokerage, except buying commissions;
 - (2) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (3) the cost of packing, (including labour and materials).
- (b) 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:
 - (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 in Turkey and necessary for the production of the imported goods;
- (c) 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;
- (d) 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;
- (e) Payments made by the buyer as interest charges for deferred payments and for default payments; conforming commissions which are paid as a condition of sale; interest charges for financing arrangements which do not fulfil the requirements laid down under Article 14(c) of this Regulation;

- (f) The costs of transport and insurance, and charges for loading, unloading and handling associated with the transport of the imported goods to the entry port or place.

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

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

The costs and charges that shall not be included into the customs value

Article 14: 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 of goods after the entry port or place;
- (c) Charges for interest under a financial arrangement entered into by the buyer and relating to the purchase of imported goods, provided that the financing arrangement was made in writing; where required, the buyer can verify that goods are actually sold at the price declared as the price actually paid or payable, and the claimed rate of interest does not exceed the level for such transaction prevailing in the country where, and at the time when the finance was provided; regardless of whether the finance is provided by the seller or another natural or legal person;
- (d) The charges for the right to reproduce the imported goods in Turkey except for Article 13(c) of this Regulation;
- (e) Payments made by the buyer for the right to distribute or resell the imported goods if such payments are not a condition of the sale for export to Turkey of the imported goods;
- (f) Buying commissions;
- (g) Import duties or other taxes payable in Turkey by reason of the importation or sale of the goods.

Section 2

The Other Principles for Determining the Customs Value

Article 15:

- (a) If a deficiency is established during the course of inspection, due to loss, waste, theft or not dispatched in agreed quantity, the value of deficient goods shall be excluded from the customs value provided that it is documented.

- (b) The customs value of goods to be sold under the provisions of Article 140 of the Customs Code numbered 1615 shall be determined on the basis of appropriate existing information and documents regarding time, place and quantity. Where no information and documents exist or existing information and documents are not relevant to determine current value of goods, the customs value of such goods shall be determined by customs authorities under the provisions of Article 12 of this Regulation. (N.B. Article 140 of the Turkish Customs Code related to liquidation.)
- (c) In determining the customs value of imported carrier media bearing data or instructions (software), only the cost or value of the carrier medium itself shall be taken into account. The expression "carrier medium" includes magnetic tapes, discs including discs for reading by a laser optical reading system, and diskettes. (It does not include integrated circuits, semiconductors and similar devices or articles incorporating such circuits or devices.)

The expression "data or instructions" does not include sound, cinematic or video recordings.

The rate of exchange that shall be used for determining the customs value

Article 16: The customs value shall be declared in Turkish currency. The amounts expressed in foreign currencies on invoices and other documents shall be converted to Turkish currency at the current rate of exchange at the time when the obligation for the payment of the import duties and taxes begins.

The relationship between the buyer and the seller

Article 17: For the purpose of determining customs value, buyer and seller shall be deemed to be related only if:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds five 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 directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person,
- (h) they are members of the same family.

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 if they fall within the criteria of this Article.

Section 3

Provisions on Responsibilities

Request for and confidentiality of information

Article 18: Upon written request, the importer shall have the right to an explanation in writing from the customs administration as to how the customs value of his imported goods was determined.

However, all information which is by nature confidential or which is provided on a confidential basis for the purpose of customs valuation shall be treated as a strictly confidential by the authorities concerned. They shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Responsibility of importer and the rights of customs administration

Article 19: For the purpose of determining the customs value, the importer, by signing the value declaration form annexed to the import declaration, accepts and undertakes:

- to furnish complete and accurate information and supporting documents;
- to provide any other information or documents which might be required by customs administration;

otherwise, the importer shall be subject to be fined and/or prosecuted in accordance with the relevant provisions of the Customs Code and/or other national legislation.

Nothing in the articles of this Regulation and in the Agreement shall be construed as restricting or calling into question the rights of customs administration to satisfy itself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART 4

Final Provisions

Article 20: Any provision contrary to this regulation contained in the Regulation on Application of Turkish Customs Code numbered 1615 are repealed.

Article 21: The provisions of Article 11 of this Regulation shall enter into force on 12 February 1997, the other provisions shall enter into force 12 February 1994.

Article 22: The State Minister who is responsible for the Under-Secretariat for Customs executes the provisions of this Regulation.