COMMISSION REGULATION (EEC) No 1494/80

of 11 June 1980

on interpretative notes and generally accepted accounting principles for the purposes of customs value

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (1), and in particular Article 19 (1) (a) thereof,

Whereas the provisions of this Regulation are such as to ensure that the value for customs purposes will be determined in a uniform manner throughout the Community,

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Customs Valuation Committee,

HAS ADOPTED THIS REGULATION:

Article 1

1. In applying Regulation (EEC) No 1224/80, Member States shall comply with the provisions set out in the Annexes hereto.

2. The provisions of Regulation (EEC) No 1224/80 referred to in the first column of Annex I must be applied in the light of the interpretative note appearing in the second column.

3. If it is necessary to make reference to generally accepted accounting principles in determining the customs value, the provisions of Annex II shall apply.

Article 2

This Regulation shall enter into force on 1 July 1980.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 June 1980.

For the Commission
Étienne DAVIGNON
Member of the Commission

(1) OJ No L 134, 31. 5. 1980, p. 1.

ANNEX I

First column	Second column
Reference to provisions of Title I	Notes
Article 1 (2) (e)	One person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.
Article 2 (3)	1. Customs values determined under the provisions of Article 2 (3) should, to the greatest extent possible, be based on previously determined customs values. 2. The methods of valuation to be employed under Article 2 (3) should be those laid down in Articles 3 to 7 inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 2 (3). 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 6 and 7 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 6 and 7 could be used. (c) *Deductive method* – the requirement that the goods shall have been sold in the 'condition as imported' in Article 6 (1) (a) could be flexibly interpreted; the '90 days' requirement could be administered flexibly.
Article 3 (1)	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.
Article 3 (1) (a) (iii)	An example of such restriction 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.

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Article 3 (1) (b)	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 he will receive a specified quantity of the finished goods. 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 3.
Article 3 (2)	1. Paragraphs 2 (a) and (b) provide different means of establishing the acceptability of a transaction value. 2. Paragraph 2 (a) 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. 3. 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 1, 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 him, 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.

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Article 3 (2) *(cont'd)*	4. Paragraph 2 (b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a 'test' value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 3. Where a test under paragraph 2 (b) is met, it is not necessary to examine the question of influence under paragraph 2 (a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2 (b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met.
Article 3 (2) (b)	A number of factors must be taken into consideration in determining whether one value 'closely approximates' to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the 'test' values set forth in Article 3 (2) (b).
Article 3 (3) (a)	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.
Article 4	1. In applying this Article, the customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantity 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 a different quantity; (b) a sale at a different commercial level but in substantially the same quantity; or (c) a sale at a different commercial level and in a different quantity. 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.

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Article 4 *(cont'd)*	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 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 this Article is not appropriate.
Article 5	1. In applying this Article, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantity 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 a different quantity; (b) a sale at a different commercial level but in substantially the same quantity, or (c) a sale at a different commercial level and in a different quantity. 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 this Article is not appropriate.

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<tr><td>Reference to provisions of Title I</td><td>Notes</td></tr>
<tr><td>Article 6 (1)</td><td>1. The words 'profit and general expenses' 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 his figures are inconsistent with those obtaining 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.

2. In determining either the commissions or the usual profits and general expenses under this provision, 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 this provision, '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.</td></tr>
<tr><td>Article 6 (2)</td><td>1. Where this method of valuation 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.

2. This method of valuation 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.</td></tr>
<tr><td>Article 6 (3)</td><td>1. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

<table>
<tr><th>Sale quantity</th><th>Unit price</th><th>Number of sales</th><th>Total quantity sold at each price</th></tr>
<tr><td>One to 10 units</td><td>100</td><td>10 sales of five units
Five sales of three units</td><td>65</td></tr>
<tr><td>11 to 25 units</td><td>95</td><td>Five sales of 11 units</td><td>55</td></tr>
<tr><td>Over 25 units</td><td>90</td><td>One sale of 30 units
One sale of 50 units</td><td>80</td></tr>
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The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.</td></tr>
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Article 6 (3) *(cont'd)*	2. 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. 3. A third example would be the following situation where various quantities are sold at various prices. (a) **Sales** *Sale quantity* — *Unit price* 40 units — 100 30 units — 90 15 units — 100 50 units — 95 25 units — 105 35 units — 90 5 units — 100 (b) **Total** *Total quantity sold* — *Unit price* 65 — 90 50 — 95 60 — 100 25 — 105 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.
Article 7	1. As a general rule, customs value is determined under this Regulation on the basis of information readily available in the Community. 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 Community. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the Member States. 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 Article 7 (1) (a) 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.

First column	Second column
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Article 7 *(cont'd)*	3. The 'amount for profit and general expenses' referred to in Article 7 (1) (b) is to be determined on the basis of information supplied by or on behalf of the producer unless his 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. 4. No cost or value of the elements referred to in Article 7 (3) shall be counted twice in determining the computed value. 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 his general expenses are high, his 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 Community and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his 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 competitivity. 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. 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 7, 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 7, 'goods of the same class or kind' must be from the same country as the goods being valued.
Article 8 (1) (b) (ii)	1. There are two factors involved in the apportionment of the elements specified in Article 8 (1) (b) (ii) 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 him 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 him, 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 downwards to reflect its use in order to arrive at the value of the element.

First column	Second column
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Article 8 (1) (b) (ii) *(cont'd)*	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, he 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 him 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, 4 000 or 10 000 units.
Article 8 (1) (b) (iv)	1. Additions for the elements specified in Article 8 (1) (b) (iv) 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 8. 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 8 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.

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Article 8 (1) (c)	The royalties and licence fees referred to in Article 8 (1) (c) may include, among other things, payments in respect to patents, trademarks and copyrights.
Article 8 (2)	Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 3. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

ANNEX II

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 the application of this Regulation, the customs administration concerned 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 6 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 7 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 Article 8 (1) (b) (ii) 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.