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## China, Peoples Republic of

### Exporter Guide

### China's Customs Valuation Operation

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**Report Highlights:**

Proper customs valuation is an important issue to U.S. exporters because of the wide variety of goods coming into China and high cumulative import charges. Ensuring that China Customs is knowledgeable about U.S. products and can properly evaluate an import's declared value is an increasingly important task for companies and industries that rely on the Chinese market.

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## Executive Summary

Proper customs valuation is an important issue for U.S. exporters because of the wide variety of raw, intermediate, and finished goods coming into China and their often significant differences in value. Ensuring that China Customs is knowledgeable about U.S. products and can properly evaluate the declared value is an increasingly important task for companies and industries that rely on the Chinese market. While ensuring the goods are not charged variable rate customs duties that overestimate the value of the imported goods is in the interest of exporters, China Customs is under significant pressure to prevent what was considered wide-spread under-invoicing. This report is designed to provide additional information about how Chinese customs authorities determine appropriate value for imported goods and give advice to industries or companies that feel that currently used calculations over-estimate the value of U.S. goods entering China.

### Customs valuation process

According to the General Administration of Customs of China, China's customs valuation procedures are consistent with the WTO Customs Valuation Agreement. Customs is very aware of WTO compliance issues related to reference pricing and maintains that the relevant laws and practice are WTO compliant.

Duty is collected based on the transaction value. To decrease the risk of fraud, Chinese Customs audits the pricing documents of every shipment. This can be done by automated systems or by customs staff. When customs officials have doubts about the authenticity or accuracy of the declared value, it issues a Customs Notice of the Challenge of Price and notifies the taxpayer of the reasons in written form. The taxpayer shall provide the relevant materials or other evidence in written form to prove that the declared value is true and accurate. If customs still does not accept the declared price after receiving the taxpayer's supporting documents, the duty-paid value will be determined by the following methods after customs consults with taxpayers:

- (1) The appraisal method for the transaction value of identical goods;
- (2) The appraisal method for the transaction value of similar goods;
- (3) The subtractive method;
- (4) The computing method; and
- (5) Other reasonable methods.

Please refer to the Appendix "Measures of Customs of the People's Republic of China for the Assessment and Determination of Duty-paid Value of Import and Export Goods" for additional details of China's customs valuation process.

The key issue for exporters is how Customs makes the judgment that the declared value is doubtful. According to China Customs, the judgment is generally based on three major factors:

- The trader's reputation/record
- China Custom's Commodity Pricing Information Database
- Customs declaration documents

Customs' pricing database collects worldwide pricing information, covering all commodity categories and is updated when new prices are available. Information resources include public reports, product investigations, international data exchanges, and actual declaration data from branch ports. For some large agricultural commodities, such as grain, cotton and soybean, the representative pricing information is easily available from internal and public sources. However, for some small volume imported commodities, such as nuts, the pricing

information is not easy to get and the concern is that customs' database is not be updated timely. Similarly, for commodities with complex grading systems, such as hardwood lumber, there are concerns about the level of information held by Customs. In the case of lumber, price can vary significantly between different grades among the same species or individual grades, customs' database may not cover all of the commodity categories.

Among the three factors, it appears that the pricing database is of the most importance for customs in making the judgment. Chinese customs does not consider the prices in database as "reference prices", but historical data on actual imports that can be used to assess the risk of under-invoicing. If the declared price is much lower than the price in their database, customs will further evaluate the declared price.

### **Suggestions for Customs Valuation Issues**

The following are suggestions for U.S. exporters or for their Chinese importers to minimize the detention of cargoes and clearance delays resulting from the valuation disputes:

1. **Help Chinese Customs Improve Its Pricing Information Database:** To enable customs to fairly value declared prices, Customs needs access to up-to-date U.S. export prices and direct communication with U.S. industry and exporters. Post encourages industry associations to foster close communication with China Customs on pricing information sharing. The Department of Customs Collection of General Administration of Customs of China is in charge of the collection of pricing information.
2. **Maintain A Clean Record On Customs' List of Importers:** Chinese customs indicate that when they make the judgment, importer's record is very important. If the importer has a good record in their database, in many cases, customs will accept the declared price even if it is lower than customs' internal price. Post encourages U.S. exporters to choose customers with good reputation/record to reduce trade disruptions.
3. **Provide Strong and Convincing Documents:** Some importers use customs clearance agencies for declarations and, in many cases, agencies have a poor record of defending clearance declarations by providing inappropriate or too few documents. Therefore, importers should actively work with the agency to provide all supporting documents to enable customs to fairly value the declared price. To convince Customs the declared price is the transaction value when customs doubt, importers or agencies should provide convincing supporting documents: contracts, invoices, Bills of Lading and Letters of Credit to justify the declared prices. In addition, updated industry pricing periodicals are also helpful.

### **Success story**

In April 2008, a Xiamen buyer of U.S. wood products was going to be charged duty at a price of US\$300 per cubic meter while the American exporter confirmed selling prices hovered at US\$250 or less. After close communication, Shenzhen Customs agreed to revalue the shipment. Customs stated that the importer needed to provide strong supporting documents if it wanted the shipment to be valued at a different price. The documents required included: copies of a valid contract, bill of lading, L/C and other shipping documents. After reviewing documents resubmitted by the Xiamen importer, Shenzhen Customs agreed to adjust their valuation and use the transaction prices for this shipment. They also mentioned to ATO Guangzhou that in the future, they might use the information used in this case to evaluate value declaration for similar shipments.

In addition to this individual case, the American Hardwood Export Association (AHEC) also conducts hardwood grading seminars for Chinese industry and Customs. Given the difficult

grading and pricing considerations of hardwood exports from the United States, this outreach has been very effective in clearing up the lack of knowledge about how to properly value U.S. wood products.

## Appendix

### Measures of Customs of the People's Republic of China for the Assessment and Determination of Duty-paid Value of Import and Export Goods

#### Chapter I General Provisions

##### Article 1

For the purpose of correctly measuring and determining the duty-paid value of import and export goods, these Measures are formulated in pursuant to the Customs Law of the People's Republic of China and the Regulation of the People's Republic of China on the Import and Export Duties.

##### Article 2

Customs shall observe the principles of objectiveness, fairness and unification when checking and determining the duty-paid value of import and export goods.

##### Article 3

These Measures shall apply when Customs checks and determines the duty-paid value of import and export goods.

These Measures shall not be applicable to the checking and determination of the duty-paid value of such articles for personal use that are permitted to be imported as the luggage of passengers entering China, personal postal items and etc., or the assessable value of the import and export goods and articles that are suspected of being involved in smuggle.

##### Article 4

Customs shall properly keep the materials involving business secrets provided by taxpayers, and shall not provide them to any other people or entity unless it is otherwise prescribed by the laws or administrative regulations according to the relevant provisions of the State.

A taxpayer may request that Customs keep business secrets in the form of written applications and specifically mention the contents that need to be kept confidential, but shall not refuse to provide relevant materials for Customs on the pretext of business secrets.

#### Chapter II Duty-paid Value of Imported Goods

##### Section 1 Method for Determining the Duty-paid Value of Imported Goods

##### Article 5

The duty-paid value of imported goods shall be checked and determined by Customs on the basis of the transaction value of those goods, which shall include the freight and relevant expenses and the insurance premiums of the goods before they are transported to and unloaded at the entry spot within the territory of the People's Republic of China.

##### Article 6

Where the transaction value of imported goods does not comply with the provisions in Section 2 of this Chapter or cannot be determined, the transaction value of those goods shall

be determined in sequence by the following methods after Customs gains knowledge of the relevant situations and carries out consultation on pricing with the taxpayer:

- (1) The appraisal method for the transaction value of identical goods;
- (2) The appraisal method for the transaction value of similar goods;
- (3) The subtractive method;
- (4) The computing method; and
- (5) Other reasonable methods.

The taxpayer may file an application for reversing the order for Item (3) and Item (4) of the preceding Paragraph after providing relevant materials.

## Section 2 Appraisal Method for the Transaction Value

### Article 7

The transaction value of imported goods shall refer to the total amount of the paid-in or payable value that the buyer shall pay to the seller for the imported goods when the goods are sold within the territory of the People's Republic of China after adjustment according to the provisions in Section 3 of this Chapter, which shall include the price that is directly and indirectly paid.

### Article 8

The transaction value of imported goods shall comply with the following conditions:

- (1) The buyer shall not be restricted with regard to the disposal or use of imported goods, except for the restrictions prescribed and implemented by laws or administrative regulations, the restrictions on areas where the goods are to be sold, and the restrictions that have no substantial impact on the value of the goods;
- (2) The value of imported goods shall not be affected by the conditions or factors that may make the determination of the transaction value of those goods impossible;
- (3) The seller shall not directly or indirectly acquire any proceeds from the buyer's selling, disposal or use of imported goods, unless the adjustment can be made according to Item (4) of Paragraph 1 of Article 11 of these Measures; and
- (4) There shall be no special relation between the buyer and the seller, unless the special relation will not affect the transaction value according to Article 17 of these Measures.

### Article 9

It shall be regarded that the buyer is restricted with regard to the disposal or use of imported goods under any of the following circumstances:

- (1) The imported goods can be used solely for exhibitions or as gifts;
- (2) The imported goods can be sold solely to the designated third party;
- (3) The imported goods can be sold solely to the seller or the designated third party after they are processed into finished products; or
- (4) Any other circumstance under which the buyer is regarded as being restricted with regard to the disposal or use of imported goods upon examination by Customs.

### Article 10

It shall be regarded that the value of imported goods has been affected by the conditions or factors that make the determination of the transaction value of those goods impossible under any of the following circumstances:

- (1) The value of imported goods is determined on condition that the buyer purchases a certain amount of other goods from the seller;
- (2) The value of imported goods is determined on condition that the buyer sells other goods to the seller; or

(3) Any other circumstance under which the value of imported goods is affected by the conditions or factors that makes the determination of the transaction value of those goods impossible upon examination of Customs.

### Section 3 Adjustment Items for the Transaction Value

#### Article 11

When the duty-paid value of imported goods is checked and determined on the basis of transaction price, the following expenses or values that are excluded from the paid-in or payable value of those goods shall be taken into account of the duty-paid value:

(1) The following expenses as borne by the buyer:

- a. Commissions and brokerages other than the commission for buying goods;
- b. Expenses for the containers which are regarded as integral parts of those goods; and
- c. Expenses for the package materials and packing services.

(2) The value of the following goods or services that are relevant to the production of imported goods and the selling thereof within the territory of the People's Republic of China and are provided for free or sold at a price lower than the cost price by the buyer, which may be apportioned in appropriate proportion:

- a. Materials, parts, accessories and similar goods contained in imported goods;
- b. Tools, molds and similar goods used in the production of imported goods;
- c. Materials consumed in the production of imported goods;
- d. Relevant services occurring out of China such as engineering design, technological research and development, techniques and drawings, etc. that are needed for the production of imported goods.

(3) The royalties that the buyer needs to pay to the seller or the relevant party directly or indirectly, unless it is under either of the following circumstances:

- a. The royalties are irrelevant to those goods; or
- b. The payment of royalties does not constitute the conditions for those goods to be sold within the territory of the People's Republic of China.

(4) The proceeds directly or indirectly acquired by the seller from the buyer's selling, disposal or use of those goods after the import thereof.

The taxpayer shall provide objective and quantitative data and materials about the aforesaid expenses or values to Customs. Where the taxpayer fails to provide the aforesaid data and materials, Customs shall check and determine the duty-paid value upon consultation on pricing with the taxpayer according to the methods as mentioned in Article 6 of these Measures.

#### Article 12

When determining the value of goods that shall be taken into account of the duty-paid value of imported goods according to Item (2) of Paragraph 1 of Article 11 of these Measures, the relevant expenses shall be calculated according to the following methods:

(1) The purchase price shall be taken into account of the value in case that the buyer purchases goods from the third party that has no special relation therewith;

(2) The cost of manufacture shall be taken into account of the value in case that the buyer manufactures goods by it or purchases goods from the third party that has any special relation therewith;

(3) The cost of the lease borne by the buyer shall be taken into account of the value in case that the buyer acquires the goods by leasing; and

(4) The value of tools, molds and similar goods used in the production of imported goods shall include the expenses for engineering design, technological research and development, techniques and drawings, etc.

Where the goods have been used by the buyer before they are provided to the seller, the value to be taken into account shall be the value upon depreciation according to the domestically recognized accounting principles.

#### Article 13

The royalties that comply with any of the following conditions shall be regarded as relevant to the imported goods:

(1) The royalties are paid for the patent or the right to use know-how, and the imported goods are under any of the following circumstances:

- a. The imported goods contain patent or know-how;
- b. The imported goods are produced by using any patented method or know-how; or
- c. The imported goods are specially designed or manufactured for implementing the patent or know-how.

(2) The royalties are paid for trademark right, and the imported goods are under any of the following circumstances:

- a. The imported goods are attached with the trademark;
- b. The imported goods are attached with the trademark after importing and may be directly sold; or
- c. The imported goods contain the trademark right when imported and may be sold with the trademark attached after minor processing.

(3) The royalties are paid for copyright, and the imported goods are under either of the following circumstances:

- a. The imported goods contain software, words, music, graphics, images, or other similar contents, including the form of tape, disk, compact disk, or other similar media; or
- b. The imported goods contain other contents with copyright.

(4) The royalties are paid for the right to distribute, or sell or other similar rights, and the imported goods are under either of the following circumstances:

- a. The imported goods may be directly sold after importing; or
- b. The imported goods may be sold after minor processing.

#### Article 14

Where the buyer cannot purchase the imported goods or the deal cannot be made under the conditions stipulated in the contract because the buyer fails to pay the royalties, it shall be regarded that the payment of royalties constitutes the conditions for the imported goods to sell within the territory of the People's Republic of China.

#### Article 15

The following taxes and expenses separately listed in the value of imported goods shall not be taken into account of the duty-paid value of those goods:

(1) The expenses for the construction, installation, assembly, maintenance or technical aid that occur after the import of workshops, machines, equipments or other goods, except for the warranty costs;

(2) The freight and relevant expenses and the insurance premiums of the imported goods that occur after the goods are transported to and unloaded at the entry spot within the territory of the People's Republic of China;

(3) The import duties, the import linkage taxes levied by Customs on behalf of other authorities and other internal taxes;

(4) The expenses paid for the reproduction of imported goods within China; and

(5) The expenses for domestic and overseas technical trainings and overseas inspection.

The expenses for interests that comply with the following conditions simultaneously shall not be taken into account of the duty-paid value:

- (1) The expenses for interests are incurred from the financing for the buyer to purchase imported goods;
- (2) There is a written financing agreement;
- (3) The expenses for interests are separately listed; and
- (4) The taxpayer can prove that the relevant interest rate is not higher than that for local similar transactions at the time and the value of identical or similar imported goods for which there is no financing arrangement is very close to the paid-in or payable value of imported goods.

#### **Section 4 Special Relations**

##### **Article 16**

It shall be regarded that there is a special relation between the buyer and the seller in case of any of the following circumstances:

- (1) Both the seller and the buyer are the members of a same family;
- (2) One of the seller and the buyer is a business senior employee or board director of the other;
- (3) One of the seller and the buyer is directly or indirectly controlled by the other;
- (4) Both the seller and the buyer are directly or indirectly controlled by a third party;
- (5) The seller and the buyer directly or indirectly control a third party together;
- (6) One of the seller and the buyer directly or indirectly possesses, controls or holds 5% or more of the voting stocks or shares publicly issued by the other;
- (7) One of the seller and the buyer is the employee, senior employee or board director of the other; or
- (8) Both the buyer and the seller are members of a partnership.

Where the buyer and the seller have mutual relations in business, and one party is the exclusive agent, distributor or assignee of the other, it shall be deemed that there is a special relation between them providing that the provisions of the preceding Paragraph are met.

##### **Article 17**

Where the taxpayer can prove that the transaction value is close to any of the following values occurring at or about the same time even though there is a special relation between the buyer and the seller, it shall be regarded that such special relation has no impact on the transaction value of imported goods:

- (1) The transaction value of identical or similar goods sold to a buyer with no special relation within China;
- (2) The duty-paid value of identical or similar goods determined according to Article 22 of these Measures; or
- (3) The duty-paid value of identical or similar goods determined according to Article 24 of these Measures.

When comparing the aforesaid values, Customs shall consider the differences in business level and import quantity, and the expense differences resulted from the special relation between the buyer and the seller.

#### **Section 5 Other Checking Methods for the Transaction Value.**

##### **Article 18**

The checking method for the transaction value of identical goods refers to such a checking method with which Customs checks and determines the duty-paid value of imported goods



on the basis of the transaction value of identical goods sold within the territory of the People's Republic of China at or about the same time as the imported goods were imported.

#### Article 19

The checking method for the transaction value of similar goods refers to such a checking method with which Customs checks and determines the duty-paid value of imported goods on the basis of the transaction value of similar goods sold within the territory of the People's Republic of China at or about the same time as the imported goods are imported.

#### Article 20

When checking and determining the duty-paid value of imported goods according to the checking method for the transaction value of identical or similar goods, Customs shall use the transaction value of the identical or similar goods of the same business level and in basically the same quantity as the imported goods. However, the differences between the imported goods and the identical or similar goods in costs and other expenses resulted from the differences of transportation distance and modes shall be adjusted in light of the objective and quantitative data when the aforesaid value is used.

Where there is no transaction value of identical or similar goods mentioned in the preceding Paragraph, the transaction value of identical or similar goods of different business level or in different import quantity may be adopted, however, the differences between the imported goods and the identical or similar goods in value, costs and other expenses resulted from the differences in business level, import quantity, transportation distance and modes shall be adjusted in light of the objective and quantitative data and materials when the aforesaid value is used.

#### Article 21

When checking and determining the duty-paid value of imported goods according to the checking method for the transaction value of identical or similar goods, Customs shall first use the transaction value of the identical or similar goods manufactured by the same manufacturer.

Where there is no transaction value of the identical or similar goods manufactured by the same manufacturer, Customs may use the transaction value of the identical or similar goods manufactured by other manufacturers in the same manufacturing country or region.

Where there are several transaction values of the identical or similar goods, the duty-paid value shall be checked and determined in light of the lowest transaction value.

#### Article 22

The subtractive method refers to such a checking method with which Customs checks and determines the duty-paid value of imported goods in light of the sales price of the imported goods, the identical or similar goods that are sold within China by deducting the relevant expenses incurred within China. And the sales price shall meet the following conditions at the same time:

- (1) It is the price for selling the imported goods, the identical or similar goods at or about the same time of the import of those goods;
  - (2) It is the price for selling the goods in the status as they are imported;
  - (3) It is the price for selling the goods at the first link within China;
  - (4) It is the price for selling the goods to the parties without special relations within China;
- and
- (5) The accumulated sales quantity of the goods is the largest when the goods are sold at the aforesaid price.

#### Article 23

When the duty-paid value of imported goods is checked and determined according to the subtractive method, all the following items shall be subtracted:

- (1) Usual profits and general expenses (including direct and indirect expenses) as well as the generally paid commission of the goods of the same grade or same kind as those goods when they are sold at the first sales link within China;
- (2) Freight and relevant expenses and insurance premiums incurring after the goods are transported to and unloaded at the entry spot within China; and
- (3) Import duties, import linkage taxes levied by Customs on behalf of other authorities and other internal taxes.

Where the imported goods, the identical or similar imported goods are not sold within China in the state as they are imported, the sales price of the further processed goods may be used to check and determine the duty-paid value at the request of the taxpayer providing that other conditions prescribed in Article 22 are met, but the added value from processing shall be deducted at the same time.

The "added value from processing" mentioned in the preceding Paragraph shall be calculated in light of the objective and quantitative data and materials relevant to the costs of processing and according to the standards, calculation methods and other industrial practices generally recognized by the industry.

When determining the items of subtraction according to this Article, Customs shall use the principles and methods in accordance with the accounting principles generally acknowledged within China.

#### Article 24

The computing method refers to such a checking method with which Customs checks and determines the duty-paid value of imported goods in light of the sum of all the following items:

- (1) The costs of materials and parts used for the manufacture of those goods and the expenses of processing;
- (2) The usual profits and general expenses (including direct and indirect expenses) for the sales of the goods of the same grade or same kind within China; and
- (3) The freight and relevant expenses and the insurance premiums incurring before the goods are transported to and unloaded at the entry spot within China.

When checking and determining the duty-paid value of imported goods according to the preceding Paragraph, Customs may verify the relevant materials provided by that enterprise out of China after obtaining the consent of the overseas manufacturer and notifying the government of the relevant country or region in advance.

When determining the relevant value or expenses according to Paragraph 1 of this Article, Customs shall use the principles and methods in accordance with the accounting principles generally acknowledged in the manufacturing country or region.

#### Article 25

The method of rational checking refers to such a checking method with which Customs checks and determines the duty-paid value of imported goods according to the principles prescribed in Article 2 of these Measures and in light of the objective and quantitative data and materials when the checking method for the transaction value, the checking method for the transaction value of identical or similar goods, the subtractive method and the computed method cannot be used to determine the duty-paid value.

#### Article 26

When using the method of rational checking to determine the duty-paid value of imported goods, shall not use the following prices:

- (1) The domestic sales price of the goods manufactured within China;
- (2) The higher prices among the available prices;
- (3) The sales price of the goods on the market of the export place;
- (4) The price of identical or similar goods calculated in light of the values or expenses other than those specified in Article 24 of these Measures;
- (5) The sales price of the goods exported to a third country or region; and
- (6) The lowest fixed price or other arbitrary price.

### **Chapter III Duty-paid Value of Special Imported goods**

#### **Article 27**

Where the duties shall be levied on the imported materials and parts for processing trade or the finished products thereof, Customs shall check and determine the duty-paid value according to the following provisions:

- (1) With regard to the imported materials and parts for the processing with the imported materials for which the duties shall be collected at importation, the transaction value declared for the import of those materials and parts shall be taken as the basis for the checking and determination of duty-paid value;
- (2) With regard to the imported materials and parts for the processing with imported materials or the finished products thereof (including inferior products) that are sold in the domestic market, Customs shall check and determine the duty-paid value in light of the original import transaction value of those materials and parts. If the original import transaction value of those materials and parts cannot be determined, Customs shall check and determine the duty-paid value in light of the import transaction price of the identical or similar goods imported at or about the same time when accepting the declaration for domestic sales;
- (3) With regard to the imported materials and parts for the processing with customers' materials or the finished products thereof (including inferior products) that are sold in the domestic market, Customs shall check and determine the duty-paid value in light of the import transaction price of the identical or similar goods imported at or about the same time when accepting the declaration for domestic sales; and
- (4) With regard to the leftover materials produced by processing enterprises to be sold in the domestic market, the domestic sales price as checked and determined by Customs shall be taken as the duty-paid value.

Where the duty-paid value of the goods of processing trade that will be sold in the domestic market still cannot be determined after referring to the preceding Paragraph, Customs shall check and determine the duty-paid value in light of the method of rational checking.

#### **Article 28**

With regard to the finished products (including inferior products) sold in the domestic market by the processing enterprises within export processing zones, Customs shall check and determine the duty-paid value in light of the import transaction value of the identical or similar goods imported at or about the same time when accepting the declaration for domestic sales.

With regard to the leftover materials or by-products produced in the enterprises within export processing zones, the domestic sales price as checked and determined by Customs shall be taken as the duty-paid value.

If the duty-paid value of the finished products (including inferior products), leftover materials or by-products of the processing enterprises within export processing zones that will be sold in the domestic market still cannot be determined according to the preceding two

paragraphs, Customs shall check and determine the duty-paid value in light of the method of rational checking.

#### Article 29

With regard to the import materials and parts or the finished products thereof (including inferior products) of the processing enterprises within export processing zones that will be sold in the domestic market, Customs shall check and determine the duty-paid value in light of the import transaction value of the identical or similar goods imported at or about the same time when accepting the declaration for domestic sales.

Where there are materials and parts purchased within China in the finished products from the imported materials of the processing enterprises within export processing zones that will be sold in the domestic market, Customs shall check and determine the duty-paid value in light of the original import transaction value of the materials and parts purchased from abroad and contained in the finished products. Where the original import transaction value of the materials and parts cannot be determined, Customs shall check and determine the duty-paid value in light of the import transaction value of the identical or similar goods imported at or about the same time when accepting the declaration for domestic sales.

Where there are materials and parts purchased within China in the finished products from the customers' materials of the processing enterprises within export processing zones that will be sold in the domestic market, Customs shall review the duty-paid value in light of the import transaction value of the identical or similar goods, as the materials and parts purchased abroad and contained in the finished products, imported at or about the same time when accepting the declaration for domestic sales.

With regard to the leftover materials or by-products of the processing enterprises within export processing zones that are produced during the course of the processing for domestic sales, the domestic sales price as checked and determined by Customs shall be taken as the duty-paid value.

Where the duty-paid value of the finished products (including inferior products), leftover materials or by-products of the processing enterprises within export processing zones that will be sold in the domestic market still cannot be determined after referring to the preceding 4 Paragraphs of this Article, Customs shall check and determine the duty-paid value in light of the method of rational checking.

#### Article 30

With regard to the goods (excluding the imported materials for processing trade and the finished products thereof) that are imported from such areas or places as bonded zones, export processing zones, bonded logistics parks, or bonded logistics centers into China and that should be taxed, Customs shall, by referring to the relevant provisions in Chapter II of these Measures, check and determine the duty-paid value in light of the sales price of the goods that are imported from the aforesaid areas or places.

Where the sales price mentioned in the preceding Paragraph does not take into account of the storage fee, freight and other relevant expenses occurring in the aforesaid areas or places, those expenses shall be included in light of the objective and quantitative data and materials.

#### Article 31

With regard to the machines and mechanical appliances, means of transport or other goods transported abroad for repair that have been declared to Customs at exportation and that are re-imported within the time limit specified by Customs, the duty-paid value thereof shall

be checked and determined in light of the overseas repair charges and the expenses of materials and components.

Where the goods transported abroad for repair are not re-imported within the time limit specified by Customs, Customs shall check and determine the duty-paid value in light of the provisions in Chapter II of these Measures.

#### Article 32

With regard to the goods transported abroad for processing that are declared to Customs at exportation and that are transported back to China within the time limit as prescribed by Customs, the duty-paid value shall be checked and determined in light of the overseas processing fees and material fees, the freight for transporting those goods back to China and other relevant expenses and insurance premiums.

Where the goods transported abroad for processing are not re-transported back to China within the time limit as specified by Customs, Customs shall check and determine the duty-paid value in light of the provisions in Chapter II of these Measures.

#### Article 33

With regard to the goods that enter into China temporarily upon the approval of Customs and that shall be taxed, Customs shall check and determine the duty-paid value in light of the provisions in Chapter II of these Measures. With regard to the goods that are temporarily imported into China for retention upon approval of Customs, the retention price as checked and determined by Customs shall be the duty-paid value.

#### Article 34

With regard to the goods imported on lease, the duty-paid value shall be checked and determined according to the following methods:

(1) With regard to the goods of lease in the form of rent paid to foreign countries, the rent checked and determined by Customs during the course of lease shall be taken as the duty-paid value, and the interests shall also be included;

(2) With regard to the goods of lease for retention, the retention price checked and determined by Customs shall be taken as the duty-paid value; and

(3) Where the taxpayer applies for paying the duties once and for all, the duty-paid value shall be determined by choosing the methods mentioned in Article 6 of these Measures upon the strength of application, or shall be the total amount of rents checked and determined by Customs.

#### Article 35

Where it is necessary to make up the reduced or exempted duties of the imported goods, the duty-paid value shall be the original import value of those goods checked and determined by Customs at importation and deducted by the value of the depreciated part, and the calculation formula shall be:

Duty-paid Value = Original Import Value of Those Goods Checked and Determined by Customs at Importation × (1 - Time Period upon Importation When the Duties Are Made up [Month] / Years of Regulation × 12).

The "time period upon importation when the duties are made up" in the above-mentioned calculation formula shall be calculated on a monthly basis. Where there is less than one month but are more than 15 days, it shall be regarded as one month, and if there are less than 15 days, no time period needs to be calculated.

**Article 36**

With regard to the imported goods with no transaction value and imported in the forms of barter, consignment, and donation, etc., the duty-paid value shall be checked and determined according to the methods listed in Article 6 of these Measures upon the price consultation between Customs and the taxpayer.

**Article 37**

With regard to the imported medium that carries special software for data processing equipment, if it is under either of the following circumstances, the duty-paid value shall be checked and determined in light of the value or cost of the medium itself:

- (1) The value or cost of the medium itself is separately listed from the software it carries; or
- (2) Although the value or cost of the medium itself is not separately listed from the carried software, the taxpayer can provide the certification document on the value or cost of the medium itself, or can provide the certification document on the value of the software it carries.

The preceding Paragraph shall not apply to the medium containing fine arts, photographs, audio or video products, movies and television programs, games and electronic journals.

**Chapter IV Calculation of Freight and Relevant Expenses and Insurance Premiums in the Duty-paid Value of Imported goods****Article 38**

The freight of imported goods shall be calculated in light of the expenses actually paid. Where the freight of imported goods cannot be determined, Customs shall calculate the freight in light of the actual transportation costs for those goods or at the freight rate promulgated by the transportation industry at the same time when those goods are imported.

Where the vehicles of transport are the imported goods and are imported by making use of their own drives, Customs shall not additionally calculate the freight when checking and determining the duty-paid value.

**Article 39**

The insurance premiums of imported goods shall be calculated in light of the expenses actually paid. Where the insurance premiums of imported goods cannot be determined or do not actually occur, Customs shall calculate the insurance premiums by 3% of "cost and freight".

$$\text{Insurance Premium} = (\text{Cost} + \text{Freight}) \times 3\%$$

**Article 40**

With regard to the goods imported by mail, the postage shall be taken as the freight and relevant expenses and the insurance premiums.

**Article 41**

With regard to the goods imported by railway or highway that is transacted on the term of FOB (fee on board), Customs shall calculate the freight and relevant expenses and the insurance premiums by 1% of FOB.

**Chapter V Duty-paid Value of Export Goods****Article 42**

The duty-paid value of export goods shall be checked and determined by Customs in light of the transaction value of those goods, and shall take into account of the freight and relevant expenses and the insurance premiums incurred before those goods are loaded at the exit spot within the People's Republic of China.

#### Article 43

The transaction value of export goods refers to the total amount of money that the seller directly and indirectly collects from the buyer for the export of those goods when those goods are sold to the outside of China.

#### Article 44

The following taxes and expenses shall not be taken into account of the duty-paid value of export goods:

- (1) The export tariff;
- (2) The freight and relevant expenses and the insurance premiums separately listed in the price of goods after those goods are loaded at the exit spot within the People's Republic of China; and
- (3) The commission that separately listed in the price of goods that should be borne by the seller.

#### Article 45

When the transaction value of export goods cannot be determined, Customs shall check and determine the duty-paid value of those goods according to the following prices in sequence after knowing the relevant conditions and carrying out the price consultation with the taxpayer:

- (1) The transaction value of the identical goods exported to the same country or region at or about the same time;
- (2) The transaction value of the similar goods exported to the same country or region at or about the same time;
- (3) The value calculated in light of the costs, profits and general expenses (including direct and indirect expenses) for manufacturing the identical or similar goods within China, and the freight and relevant expenses and the insurance premiums incurring within China;
- (4) The value checked according to the method of rational checking.

### **Chapter VI Checking and Determination of Duty-paid Value**

#### Article 46

When a taxpayer makes declaration to Customs, it/he shall, faithfully provide the invoices, contracts, bills of lading, encasement lists and other documents to Customs in light of the relevant provisions in these Measures.

Upon the request of Customs, the taxpayer shall also faithfully provide the relevant payment vouchers related to the purchase of goods as well as other commercial documents, written materials and electric data that can prove the authenticity and accuracy of the declared value.

Where any price item mentioned in Section 3 of Chapter II of these Measures is adjusted in the transaction of goods, the taxpayer shall faithfully make declaration to Customs. Where the apportionment calculation is required for the above-mentioned price adjustment item, the taxpayer shall make apportionment in light of the objective and quantitative standards, and shall provide the basis of apportionment to Customs at the same time.

#### Article 47

For the purpose of examining the authenticity and accuracy of the declared value, Customs may exercise the following functions and powers for carrying out the price checking:

- (1) Consulting and duplicating such commercial documents, written materials and electric data that show the relationship between the buyer and seller and the transaction activities as the contracts, invoices, accounts, certificates of foreign exchange settlement and payment, bills, business letters and audio-video products related to the import and export goods;
- (2) Investigating the taxpayer of import and export goods, and the citizens, legal persons or other organizations that have financial or other business relations with the taxpayer about the issues related to the value of import and export goods;
- (3) Checking the import and export goods or selecting samples for inspection or testing;
- (4) Entering the business operational places and the goods storage places of the taxpayer to inspect the goods and business operations related to the import and export activities;
- (5) Investigating, the fund flows reflected in the accounts opened by the taxpayer in the bank or any other financial institution upon approval of the Director of Customs directly under the General Administration of Customs or the authorized director of its subordinate customs and upon the strength of the Notice of Customs of the People's Republic of China on the Consultation of Accounts (see Annex 1) and the work certificates of the relevant customs functionaries, and informing the banking regulatory institution of the relevant information; and
- (6) Consulting the taxation authority about the payment of internal taxes related to the import and export goods.

When Customs exercises the functions and powers prescribed in the preceding Paragraph, the taxpayer and the relevant citizens, legal persons and other organizations shall faithfully reflect the facts, provide the relevant written materials and electronic data, and shall not refuse, delay or make concealment.

#### Article 48

Where Customs has doubts in the authenticity or accuracy of the declared value or considers that there is special relation between the buyer and the seller that will influence the transaction value, it shall issue a Notice of Customs of the People's Republic of China on the Challenge of Price (hereinafter referred to as the Notice on the Challenge of Price, see Annex 2) and notify the reasons for questioning to the taxpayer or the agent thereof in written form. The taxpayer or the agent thereof shall provide the relevant materials or other evidence in written form to prove that the declared value is true and accurate or there is no special relation between both parties within 5 working days upon receipt of a Notice on the Challenge of Price.

Where the taxpayer or the agent thereof fails to provide the materials mentioned in the preceding Paragraph within the prescribed time limit due to justifiable reasons, he/it can file an application for the postponement with Customs before the expiration of the prescribed time limit.

The time limit shall not be prolonged for more than 10 working days unless it is under special circumstances.

#### Article 49

After customs issues a Notice on the Challenge of Price, the custom house shall check and determine the duty-paid value of import or export goods according to the methods mentioned in Article 6 or 45 of these Measures after carrying out the consultation with the taxpayer on pricing in case of the following circumstances:

- (1) The taxpayer or the agent thereof fails to make further explanations within the time limit prescribed by Customs;
- (2) After the taxpayer or the agent thereof provides the relevant materials and evidence, Customs still has reasons to doubt the authenticity or accuracy of the declared value when examining the materials and evidence provided; or



(3) After the taxpayer or the agent thereof provides the relevant materials and evidence, Customs still has reasons to deem that there is any special relation between the buyer and the seller that will influence the transaction value when examining the materials and evidence provided.

#### Article 50

Customs doesn't have to challenge the price if it finds upon examination that there is no transaction value of imported goods, and it shall check and determine the duty-paid value according to the methods mentioned in Article 6 of these Measures after carrying out the consultation on pricing with the taxpayer.

Customs doesn't have to challenge the price if it finds upon examination that there is no transaction value of export goods, and it shall check and determine the duty-paid value according to the methods mentioned in Article 45 of these Measures after carrying out the consultation on pricing with the taxpayer.

#### Article 51

When Customs notifies the taxpayer of the price consultation in light of these Measures, the taxpayer shall carry out the price consultation with Customs within 5 working days upon receipt of a Notice of Customs of the People's Republic of China on the Price Consultation (see Annex 3). Where the taxpayer fails to carry out the price consultation with Customs within the prescribed time limit, it shall be regarded that it/he has given up the right of price consultation, and Customs may directly check and determine the duty-paid value of import or export goods according to the methods mentioned in Article 6 or 45 of these Measures.

When Customs carries out the price consultation with the taxpayer in light of these Measures, it shall work out a Form of Customs of the People's Republic of China for the Notes on Price Consultation (see Annex 4).

#### Article 52

Where it is under any of the following circumstances, Customs doesn't have to carry out the price challenge or the price consultation upon the strength of the written application of the taxpayer, and shall check and determine the duty-paid value of import or export goods according to the methods mentioned in Article 6 or 45 of these Measures:

- (1) Customs has carried out the checking for any batch of goods imported or exported by batches under a same contract;
- (2) The duty-paid value of import or export goods is less than 100,000 yuan, or the sum of the duties and the import linkage taxes levied by Customs on behalf is less than 20,000 yuan; or
- (3) The imported goods are dangerous, fresh and live, perishable, or easy to lose efficacy, or are the discarded or worn, etc.

#### Article 53

Where the imported goods are under any of the circumstances mentioned in Articles 27 through 29 of these Measures, Customs doesn't have to carry out the price challenge, and it shall check and determine the duty-paid value according to the methods mentioned in Article 6 of these Measures after carrying out the consultation on pricing with the taxpayer.

Where the imported goods are under any of the circumstances mentioned in Articles 27 through 29 of these Measures, Customs doesn't have to carry out the price consultation upon the strength of the application of the taxpayer, and shall check and determine the duty-paid value of imported goods according to the methods mentioned in Article 6 of these Measures.

#### Article 54

When Customs is checking and determining the duty-paid value of import or export goods, the taxpayer may pick up the goods in advance after providing guarantee to Customs according to law.

#### Article 55

After Customs checks and determines the duty-paid value of import or export goods, the taxpayer may file a written application to and require it to make written explanations about how to determine the duty-paid value of import or export goods. Customs shall issue a Letter of Customs of the People's Republic of China on the Checking Notification (see Annex 5) in light of the requirements.

### Chapter VII Supplementary Provisions

#### Article 56

The following terms as mentioned in these Measures shall have their meanings as follows: "Within China" refers to within the customs boundaries of the People's Republic of China.

The "duty-paid value" refers to the assessable value used by Customs at the time of calculating and collecting duties.

The "buyer" refers to a natural person, legal person or any other organization that performs the duty of payment, purchases the goods, and assumes risks therefore and obtains profits there from, of which the buyer of imported goods refers to a buyer that purchases the imported goods within the territory of the People's Republic of China.

The "seller" refers to a natural person, legal person or any other organization that sells the goods; of which the seller of imported goods refers to a seller that sells the imported goods within the territory of the People's Republic of China.

"Selling within the territory of the People's Republic of China" refers to the act with which the imported goods are actually transported into the territory of the People's Republic of China, the ownership and risks of the goods have been transferred to the buyer from the seller, and the buyer has paid the price to the seller for them.

The "paid-in or payable value" refers to the sum directly or indirectly paid by the buyer for the purchase of imported goods, namely, all the money that has been paid or to be paid by the buyer to the seller or to a third party performing the seller's obligations as a condition for which the seller sells the imported goods.

The "indirect payment" refers to such a payment method with which the buyer pays all or part of the money to a third party upon request of the seller, or offsets other capital flows between the buyer and the seller.

The "commission for buying goods" refers to the service charges paid by the buyer to his purchase deputy for the purchase of the imported goods.

The "brokerage" refers to the service charges paid by the buyer to the broker who represents the interests of both the buyer and the seller for the purchase of the imported goods.

The "identical goods" refers to the goods that are manufactured in the same country or region as the imported goods and that are identical with the imported goods in all the aspects of physical nature, quality and prestige, etc, however, minor external differences are acceptable.

The "similar goods" refers to the goods that are manufactured in the same country or region as the imported goods and that, though not identical in all the aspects, have similar characteristics, similar composing materials, the same functions and may be exchanged with the imported goods commercially.

"About the same time" refers to within 45 days before and after the day on which Customs accepts the declaration of the goods. When the subtractive method is used for checking and determining the duty-paid value of imported goods, if the imported goods, the identical or similar goods are not sold within China within 45 days before and after the day on which Customs accepts the declaration of the goods, the time for the selling within China may be prolonged to within 90 days before and after the day on which Customs accepts the declaration of the goods.

The "generally acknowledged accounting principles" refers to the norms in principle and the processing methods for accounting business that are generally observed in the relevant accounting work of the relevant country or region, including the principles of accrual basis, matching, historical cost, distinguishing between revenue expenditure and capital expenditure, etc. related to the determination of the value of the goods.

The "royalties" refers to the charges paid by the buyer of imported goods for obtaining the permission or transfer of the patents, trademarks, know-how, copyright law, distribution right or selling right of the seller of intellectual property or the valid agent thereof.

The "expenses for technical trainings" refers to the expenses paid by the buyer of imported goods for the teaching, boarding, transportation and medical insurance etc. of the training teachers and personnel where the seller or a third party thereof gives the relevant technical directions about the imported goods to the technical personnel dispatched by the buyer.

The "software" refers to the program and document used for data processing equipments as prescribed by the Regulation on the Protection of Computer Software.

The "know-how" refers to the knowledge, experience, methods, and knacks etc. in the form of drawings, models, technical materials, and criteria etc. in the aspects of undisclosed technical processes, formula, product design, quality control, testing, and marketing and management etc.

The "minor processing" refers to the dilution, mixing, classification, simple assembling, repacking and other similar processing.

The "goods of the same grade or same kind" refers to the goods in a batch or series of goods produced by the designated industry or industrial department, including the identical or similar goods.

The "medium" refers to the commodities under the item 85.24 of the customs code in the Rules of the People's Republic of China for the Import and Export Taxes.

The "price checking" refers to the examination of the authenticity and accuracy of the declared transaction price of import and export goods and whether there is any special relation between the buyer and the seller that will affect the transaction price as carried out by Customs upon the strength of the functions prescribed in Article 47 of these Measures by examining documents and certificates, verifying data, checking objects and relevant accounts so as to determine the duty-paid value of import and export goods.

The "consultation on pricing" refers to such an act with which Customs exchanges with the taxpayer their data and materials for determining the duty-paid value on the basis of

keeping confidential the business secrets when using the checking method other than the transaction value.

Article 57

Where the taxpayer holds objection to the checking decision made by Customs, it/he shall pay the taxes according to the relevant administrative decision made by Customs, and may apply for the reconsideration to Customs at the next higher level, or file an administrative lawsuit with the people's court if it/he is still not satisfied with the decision of the reconsideration.

Article 58

Whoever violates these Measures by constituting smuggling or an act of violating the customs surveillance provisions shall be dealt with by Customs in light of the Customs Law of the People's Republic of China and the Detailed Rules of Customs of the People's Republic of China for the Implementation of Administrative Punishments. Where a crime is constituted, the offender shall be subject to criminal liabilities.

Article 59

The power to interpret these Measures shall remain with the General Administration of Customs.

Article 60

These Measures shall come into force on May 1, 2006. The Measures of Customs of the People's Republic of China for the Checking and Determination of Duty-paid Value of Import and Export Goods as promulgated by Order No. 95 of the General Administration of Customs on December 31, 2001 and the Measures of Customs of the People's Republic of China for the Evaluation of Royalties of Imported Goods as promulgated by Order No. 102 of the General Administration of Customs on May 30, 2003 shall be repealed simultaneously.