

STUDIES

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(Adopted, 4th Session, 24 September 1982)

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(Adopted, 29th Session, 17 March 1995)

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(Adopted, 11th Session, 7 March 1986)

■ STUDY 1.1

Treatment of used motor vehicles

1. The valuation treatment of used motor vehicles under the Agreement raises in itself no particular question of principle, but does give rise to practical problems. It has therefore been considered helpful for Customs administrations that these problems should be made the subject of the present study, in which various possible solutions will be suggested.
2. The study is designed to cover the broad spectrum of vehicles regarded as used at the time of importation, whether purchased new or second-hand, and does not touch on the limited fields of special purpose vehicles and classic or vintage cars.
3. The criteria for determining whether or not a vehicle should be regarded as “used” are a separate matter. This matter must be left to the discretion of each administration because the widely differing situations which may arise in this field do not lend themselves to harmonization of the practices adopted. The problem can be illustrated by the following potentially difficult situations :
 - (a) In an importation by a trader the odometer of the imported vehicle reads 250 km, representing the distance travelled from the factory to the port of departure in the country of exportation.
 - (b) In an importation by a private individual the imported vehicle, purchased new and registered abroad by that individual a couple of weeks previously, has been driven a distance of 1,560 km, from the place of purchase abroad to the place of introduction in the country of importation.
4. The question of whether imported used vehicles should be regarded as having been further used since last sold has also to be treated as indicated in paragraph 3 above. Depending on the approach adopted in this respect, the vehicles concerned would fall either in category I or in category II, as defined below.

5. Basically there are two types of situation which need to be dealt with in the valuation of imported used vehicles. They are as follows, and will be discussed subsequently in the same order :

- I. The vehicle is imported pursuant to a purchase without intervening use.
- II. The vehicle is imported after additional use since the purchase.

I. The vehicle is imported pursuant to a purchase without intervening use

- 6. Given that importation follows upon a sale, the price actually paid or payable in connection with that transaction should serve as the basis for establishing transaction value whenever the requirements and conditions of Article 1 of the Agreement are fulfilled.
- 7. If the provisions of Article 1 cannot be applied, the Customs value must be determined by means of one of the other methods specified by the Agreement, in the prescribed order of application; regarding these methods, attention is drawn to paragraphs 10 to 23 below.

II. The vehicle is imported after additional use since the purchase

Article 1

- 8. Taking precedence over all other considerations concerning the applicability of the provisions of Article 1 is the question whether the vehicle to be valued, which the administration considers to have been used since the purchase, can still be regarded for valuation purposes as being the same vehicle as when last sold.

9. If it cannot be so regarded there is no price actually paid or payable for the vehicle in its condition at the time of valuation; thus the provisions of Article 1 cannot be applied and the value must be determined in accordance with the first Article applicable, following the order of application prescribed by the Agreement.

Articles 2 and 3

10. The application of the valuation methods envisaged in Articles 2 and 3 presupposes the existence of goods identical or similar to those being valued, exported at or about the same time as those goods. Furthermore, the value of these identical or similar goods must have been determined under Article 1 of the Agreement.
11. It seems doubtful whether these conditions can be fulfilled in the specific case of used vehicles imported by private individuals; however, there might occasionally be scope for applying Article 2 or 3, particularly in the case of importations by traders.

Article 5

12. Failing Article 2 or 3, if the imported used vehicles or identical or similar imported used vehicles are sold in the country of importation in the condition as imported, the provisions of Article 5, paragraph 1, should be applied whenever the requirements of that Article can be met.
13. In cases where Article 5, paragraph 1 fails, but the used vehicles are sold in the country of importation after further processing (for example, repair, reconditioning, fitting of accessories), valuation on the basis of paragraph 2 of that Article should be envisaged if the importer so requests; the deductions needed to take account of the value added by such processing or reconditioning will then have to be made.

14. One would however expect that situations as described under paragraphs 12 and 13 would normally only occur in respect of importations by traders.

Article 6

15. Since used motor vehicles are obviously not manufactured as such, the provisions of Article 6, based on the cost of producing the imported goods, cannot be applied.

Article 7

16. It follows from the foregoing that in many cases the Customs value of used motor vehicles will have to be determined under the provisions of Article 7 of the Agreement.
17. When valuing goods using this “fall-back” method, it is important to bear in mind certain broad principles laid down by the Agreement and in particular that :
 - for the purposes of Article 7 the value shall be determined using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of the GATT 1994, on the basis of data available in the country of importation;
 - certain methods of valuation are expressly excluded by paragraph 2 of Article 7;
 - the methods of valuation employed should be those laid down in Articles 1 to 6, inclusive, applied with reasonable flexibility, and should, to the greatest extent possible, be based on previously determined Customs values;
 - the Agreement recommends consultation between the Customs administration and the importer to establish the basis for valuation.

18. Although it may not be possible to envisage a standard method of valuation for used motor vehicles, nevertheless on the basis of the principles set out above and bearing in mind that, if disputed, a value determined under Article 7 must be defensible at law, several approaches remain open. Some of these are indicated in the following paragraphs. In the final analysis it must be left to each administration to choose a method compatible with the principles and general provisions of the Agreement and with Article VII of the General Agreement, so that account can be taken of each country's specific circumstances.
19. Customs value could, for example, be based on the price actually paid or payable for the vehicle. In this case, the goods would have to be valued with reference to their condition at the time of valuation. The price would therefore be adjusted to take account of the depreciation (with reference to age or use) incurred since purchase. The tables below exemplify the procedures which could be applied for making adjustments in the case of depreciation. To avoid arbitrariness some judgement would, of course, have to be exercised for the application of these adjustments, account being taken of the circumstances proper to each case; in particular, in the case of adjustments based on use, it should be borne in mind that the odometer reading cannot always be relied upon.

Time since date of purchase		Amount to be deducted from price paid
Less than 6 months		a percent
6 to 12 months		b percent
12 to 24 months	or	c percent
etc.		etc.
Use since date of purchase		Amount to be deducted from price paid
Less than 5,000 kilometers		x percent
5,001 to 15,000 kilometers		y percent
15,001 to 30,000 kilometers		z percent
etc.		etc.

It should be noted that any improvement made or accessories added after purchase would enhance the value of the vehicle.

20. In cases where there is no price actually paid or payable, the value might be determined in consultation with the importer on the basis of the transaction value previously accepted for imported new vehicles of the same make and model. This value would then have to be adjusted to reflect the vehicle's condition at the time of valuation by taking into account, on the one hand, depreciation resulting from age, wear and obsolescence and, on the other hand, additional accessories that do not form part of the equipment of the reference vehicle. Further adjustment might prove necessary, to take into account any differences in level and quantity between the transactions under comparison.
21. In the event of there being no importations of new vehicles of the same make and model, the method described in the previous paragraph could be applied using transaction values already accepted for similar new vehicles.
22. The method envisaged in paragraph 19 could also be applied on the basis of the catalogue price for a new imported vehicle of the same make and model on the market of the country of importation. In such circumstances, where the provisions of Article 5 are applied with reasonable flexibility, further adjustments may have to be made in accordance with subparagraphs (i) to (iv) of Article 5.1 (a).
23. Where it is possible to obtain catalogues or specialized periodicals indicating current prices in the used vehicle market of the country of importation, these prices can be used as a basis for valuation. In this case, of course, account should be taken of the vehicle's condition and of all elements affecting its value (for example, abnormal wear, repairs, reconditioning, accessories) as compared with that of the reference vehicle. Furthermore, it is important not to overlook the fact that the guideline prices given in these catalogues may be inclusive of import duties and taxes. However, Article 7, paragraph 2 (a) prohibits the application of this method to vehicles produced in the country of importation (insofar as duty may be chargeable on them, should they be reimported). In such cases, reference could perhaps be made to identical or similar vehicles made in other countries, through a flexible interpretation of the terms "identical" and "similar".

24. It has to be noted that one of the major difficulties that can arise in cases as examined in this study is the practical one of ascertaining the facts needed to establish the transaction value, given that purchases made by private individuals often involve not a commercial invoice but simply a receipt, a manuscript bill or a verbal agreement. In these circumstances the Customs will have to be satisfied as to the veracity of the declared purchase price. This question is part of the wider problem of trade in used or second-hand goods, which offer greater opportunities for fraud, particularly through the use of false invoices. This is primarily a Customs enforcement matter, whose treatment will depend on the relevant national provisions.
25. Depending on the national legislation of each Member, the elements listed in Article 8, paragraph 2 of the Agreement will be included in or excluded from the Customs value of used motor vehicles. If the transport is non-commercial or if the elements to be deducted or added cannot be determined from transport documents, the necessary adjustments should be based on the actual cost incurred for the conveyance of the imported goods; it is worth noting that these adjustments should be made on the basis of objective and quantifiable data (cf. Article 8, paragraph 3).

■ Supplement to Study 1.1

✓ Question 1

1. Is it possible to establish the Customs value under Article 7 of the Agreement according to the price of goods on the domestic market of the exporting country when a buyer of used cars (commercial or private), who resides in the importing country, goes to the domestic market of the exporting country and buys cars to be imported into the importing country?

✓ Answer

2. In accordance with Study 1.1 of the Technical Committee, basically there are two types of situations which need to be dealt with in the valuation of imported used automobiles. They are as follows :
 - (a) the vehicle is imported pursuant to a purchase without intervening use;
 - (b) the vehicle is imported after additional use since the purchase.

From the facts presented in the question, it is assumed that situation (a) would apply*
3. Following the view previously expressed by the Technical Committee in Advisory Opinion 14.1, if the importer can demonstrate that the immediate sale under consideration took place with the view to export the goods to the country of importation, there is no need to address Article 7 in this case as Article 1 can apply.
4. In these circumstances, given that importation immediately followed the sale, the price actually paid or payable in connection with that sale should serve as the basis for establishing transaction value under Article 1 if all other requirements and conditions of Article 1 are fulfilled.

* With respect to situation (b), guidance may be taken from the treatment of this situation under Articles 1 and 8 as provided by Case Study 5.1, “Application of Article 8.1 (b)” and Article 7 as provided in paragraph 19 of Study 1.1, “Treatment of used motor vehicles”.

✓ Question 2

5. How do you explain the relationship between Article 7.2 (c) and Article 1 if the price actually paid or payable is the price which applies in the domestic market of the exporting country? In this situation, the used cars are really being bought on this market directly and personally by the importing buyer and the price is the only indicator that can be taken as a basis for establishing the Customs value.

✓ Answer

6. Article 7.2 (c) does not prohibit the determination of Customs value on the basis of the price actually paid or payable by the buyer. It does, however, prohibit the use of other values derived from sales in the domestic market of the country of export as a basis for determining Customs value under Article 7. Examples of the types of activities that are prohibited by Article 7.2 (c) would include basing Customs value on the prevailing market price in the country of exportation or on the price at which the seller offers goods to other buyers on the domestic market of the country of export. The prohibitions contained in Article 7.2 of the Agreement apply only in respect of Customs value determined under Article 7 and they have no application to the determination of transaction value under Articles 1 and 8.

✓ Question 3

7. Could values listed in a foreign catalogue, published by an independent authority indicating prices of new and used cars, with and without tax, on the domestic market of the exporting country, be used as a basis (initial price) for establishing the Customs value of a used motor vehicle by applying the procedure in paragraph 19 of the Technical Committee's Study 1.1? Would the exclusion of internal taxes and duties from such prices, making them different from those actually paid on the domestic market in the export country, be the reason why those values could be used as a basis for establishing the Customs value of imported used motor vehicles?

✓ Answer

8. Article 7.2 (c) prohibits the use of the price of goods on the domestic market of the country of export as a basis for valuation. Study 1.1 of the Technical Committee outlines a procedure which involves using catalogue prices pertaining to the country of importation, from which adjustments would be made for duties, tax and certain other charges (i.e. a flexible application of the deductive method). In the absence of other data, any reasonable means consistent with the principles of the Agreement may be used in determining the Customs value.

■ STUDY 2.1

Treatment of rented or leased goods

1. Transaction value, the primary method of valuation under the Agreement, is based on the price actually paid or payable for the goods when sold for export to the country of importation.
2. Advisory Opinion 1.1 on “the concept of sale in the Agreement” states that hire or leasing transactions by their very nature do not constitute sales, even if the contract includes an option to purchase the goods. Therefore for such cases, the transaction value method is precluded and it becomes necessary to determine the Customs value under other methods, in the order prescribed by the Agreement.
3. Where goods which are identical or similar to the rented or leased goods are sold for export to the country of importation, it would be possible to establish the Customs value on the basis of Articles 2 and 3.
4. However, in cases where these two Articles cannot be used, Article 5 must next be considered. Since by their nature rented or leased goods would not themselves be sold in the country of importation, Article 5 would apply only if identical or similar imported goods were sold in the country of importation. If not, it will be necessary to try to establish the Customs value under Article 6.
5. Once the possibility of establishing the Customs value under Articles 2 to 6 has been exhausted, Article 7 must then be invoked under which various approaches are possible.

6. In the event of the goods being valued under Article 7, the methods laid down in Articles 1 to 6 inclusive, applied with reasonable flexibility, should be used first. In this respect, attention needs to be drawn to the Technical Committee's instruments on application of Article 7 (Advisory Opinions 12.1, 12.2 and 12.3) and the documents issued on practical application of Article 7.
7. If under Article 7 the Customs value cannot be determined by flexible application of Articles 1 to 6, it may be established using other reasonable means provided that they are not precluded by Article 7.2 and are consistent with the principles and general provisions of the Agreement and of Article VII of the GATT 1994.
8. For instance, valuation could be based on the use of valid list prices (for new or used goods) for exportation to the country of importation. In the case of goods which have been used, valuation may be based on a valid list price for new goods in the absence of a valid list price for used goods. However, since the goods would have to be valued with reference to their condition at the time of importation, such list prices for new goods must be adjusted to take into account the depreciation and obsolescence of the goods being valued.
9. Another possibility would be recourse to expert advice acceptable to both Customs and importer. The value so determined should be in conformity with the provision of Article 7 of the Agreement.
10. In some cases, rental contracts include an option to buy. This option may be given at the beginning, during or at the end of the basic contract period. In the first case valuation should be based on the option price. In the last two cases, rental payments provided for in the rental contract plus the residual sum required may provide a basis for the determination of the Customs value.

11. In cases where there is no option to buy, valuation under Article 7 could also proceed on the basis of the rental charges paid or payable for the imported goods. To this end, the aggregate rental expectations during the economic life of the goods may serve as a basis. Care needs to be taken with respect to certain cases where the rental charges can be quoted higher in order to secure amortization of the goods within a period shorter than the economic life of the goods.
12. Determination of the economic life of the goods may at times create practical problems, such as in industries where the rate of technology change is rapid. While the past experience of the life of identical and similar goods might be useful, in most cases a solution is likely to be found by consulting with specialized firms in co-operation with the importer.

It should also be noted that a distinction will have to be made with regard to economic life of new and used goods, such as using “the whole economic life” for new goods and “the remaining economic life” for used goods.

13. Once the total rental charges have been determined, certain adjustments may be necessary to establish the Customs value, in the form of either additions or deductions depending upon the terms of the contract and the principles underlying the Agreement. Where probable additions are concerned, dutiable elements not already included in the rental charges should be taken into account. In this respect, the factors listed in Article 8 could provide some guidance. In respect of deductions, any elements which are not part of the Customs value should be deducted.
14. The following example illustrates the determination of Customs value on the basis of rental charges payable. (For the purposes of this example, elements mentioned in Article 8 are ignored.) This approach could be applicable regardless of the duration of the contract. In case of re-exportation of the goods before the expiration of the estimated economic life, the refund of Customs duties and taxes would be possible if the national legislation allows it.

▪ Facts of transaction

15. As a result of its expanding business, firm A of country X decides to rent a new machine from rental company B of country Y for a minimum duration of 36 months, renewable. According to the terms of the contract the erection and maintenance costs in the country of importation incurred by the importer are 20,000 c.u. per annum for the first two years of operation and 30,000 c.u. per annum for the following years, payable to the rental firm. The machine is rented at 50,000 c.u. per month inclusive of these costs and of an interest charge of 10%.
16. In view of the specific nature of the machine, none of the valuation methods(Articles 1 to 6), even applied with reasonable flexibility are appropriate. As a result of consultation between the Customs and the importer, it is decided to base the Customs value on the total amount of the rent payable for the whole economic life of the machine. For that purpose it has been established that the machine can be used for five years.
17. The total amount of the rent payable over five years would, therefore, be taken as a basis for valuation. Once so determined, it is necessary to deduct from this amount the costs for erection and maintenance and the interest charges.

18. The symbols hereafter are used for the facility of calculation :

R = total rent payable during the full economic life of the goods

M = costs of erection and maintenance

I = interest*

Customs value = $R - (M + I)$.

* Interest to be deducted will have to be determined on the basis of a formula used for calculating compound interest.