

**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 Article 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 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 following symbols are adopted for formulating the calculation :

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

M = costs of erection and maintenance

I = interest \*

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

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

