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International Federation of Inspection Agencies

# Code of practice

## Preshipment inspection mandated by government

EDITION

6



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## CODE PRACTICE : PRESHIPMENT INSPECTION MANDATED BY GOVERNMENTS

### 1. COVERAGE, DEFINITIONS & ADMINISTRATIVE REQUIREMENTS

#### COVERAGE

1.1. This Code of Practice stipulates the obligations of IFIA PSI Members in carrying-out all preshipment inspection activities contracted or mandated by a User Government. It is based on (a) the WTO Agreement on Preshipment Inspection and subsequent recommendations thereof and (b) the WTO Agreement on Customs Valuation.

*NOTE 1 : The WTO Agreement on Preshipment Inspection (PSI) is only binding between WTO Members whereas this Code of Practice covers all PSI activities performed in all countries.*

IFIA PSI Members shall confirm their commitment to execute Pre-shipment Inspection (PSI) in accordance with the provisions of the WTO Agreement on PSI by either (a) the inclusion of a clause in the contract between the User Government and the IFIA PSI Member or (b) a separate statement to the User Government.

#### DEFINITIONS

1.2. **"User Government"** is a government or government body which contracts for or mandates the use of preshipment inspection activities.

1.3. **"Preshipment inspection (PSI) activities"** are all activities relating to the verification of the quality, the quantity, the price, including currency exchange rate and financial terms and/or the Customs valuation and classification of goods to be exported to the territory of the User Government.

1.4. **"IFIA PSI Member"** is a company, performing preshipment inspection activities contracted or mandated by a User Government, which is a member of IFIA.

1.5. **"External Expert"** is an individual engaged to provide additional resources or expertise.

1.6. **"Subcontractor"** is another company which is contracted to provide PSI activities in a particular geographical area or field of expertise.

1.7. In respect of Article 5, Customs Valuation Principles, the following definitions are applicable:-

1.7.1 **"WTO Agreement on Customs Valuation ("ACV")** is the WTO Agreement on Implementation of Article VII of GATT 1994.

1.7.2 **"Price actually paid or payable"** as per Agreement on Customs Valuation (ACV Article 1) is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The Payment need not necessarily take the form of transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. 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.

*NOTE 2 : Any advance deposits or partial payments made in advance by the buyer form part of the price paid or payable.*

1.7.3 **"Identical Goods"** (as per ACV Article 15.2) means goods produced in the same country as the goods being valued which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.

1.7.4 **"Similar Goods"** (as per ACV Article 15.2) means goods produced in the same country as the goods being valued which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.

1.7.5 **"Related Persons"** (as per ACV Article 15.4) are persons which shall be deemed to be related only if :

- they are officers or directors of one another's business
- they are legally recognised partners in business
- they are employer and employee.
- any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them
- one of them directly or indirectly controls the other
- both of them are directly or indirectly controlled by a third person
- together they directly or indirectly control a third person, or
- they are members of the same family.

## **ADMINISTRATIVE REQUIREMENTS**

### **1.8 Organisation and Management**

1.8.1 The IFIA PSI Member shall have an organisation with management systems integrating this Code of Practice.

1.8.2 The Management Systems shall :-

- (a) enable the IFIA PSI Member to maintain the capability to perform the PSI activities in conformance with this Code of Practice irrespective of the country in which the inspection is required to be carried-out.
- (b) require nomination of a manager who is qualified and experienced in the operations of the IFIA PSI Member and who has overall responsibility for the IFIA PSI Member's compliance with this Code of Practice.

### **1.9 Network of offices**

1.9.1 In all countries in which PSI is commonly required by the user government(s), the IFIA PSI Member shall maintain either an Office or a Focal Point.

1.9.2 The IFIA PSI Member shall maintain control of its PSI operations, activities and personnel in all countries of operation through, for example, distribution of common guidelines / instructions, internal audits and performance monitoring.

1.9.3 When an IFIA PSI Member subcontracts any part of the PSI activities, it shall ensure that the sub-contractor is competent and is able to perform the work in accordance with the requirements of this Code of Practice.

### 1.10 Personnel

The IFIA PSI Member shall have a sufficient number of permanent personnel with the range of expertise necessary to carry-out PSI activities including staff with appropriate qualifications and technical and/or product experience in all the key industry sectors relating to the goods which are required to be inspected for the user government(s). Examples of typical key product sectors include chemicals, pharmaceuticals, machinery, vehicles/transport equipment, industrial raw materials, paper/packaging, commodities, consumer goods, textiles. Qualifications, skills as well as evaluations shall be adequately recorded.

In addition to using its own permanent employees, the IFIA PSI Member's offices may use external experts provided that they are required to comply with this Code of Practice.

### 1.11 Facilities and equipment

The IFIA PSI Member shall have available to it suitable and adequate facilities and equipment to permit all PSI activities to be carried-out. This will, for example, include (a) computerised databases capable of recording and retrieving details of goods inspected, their values and Customs codes (b) facilities for communicating electronically between all offices in the IFIA PSI Member's network (c) where applicable a liaison office in the country of the user government for the purpose of liaising with the user government and importers and (d) other facilities as may be required by the user government.

### 1.12 Performance Standards

The IFIA PSI Member shall design its management system to ensure compliance with the performance Standards set, where applicable, by the User Government.

In any event, as a minimum requirement, the IFIA PSI Member shall ensure compliance with the following performance Standards in conformance with sections 2.15 and 2.16 of this Code:-

- (a) Date of physical inspection: to be either on the date requested by the exporter or within the advance notice period published by the IFIA PSI Member, whichever is longer.
- (b) Date of issuance of either a CRF or a Discrepancy Report (explaining reason for non-issuance of CRF): to be within 5 working days of receipt of final documents and completion of inspection.

## 2. EXECUTION OF USER GOVERNMENTS' MANDATES

### **NON-DISCRIMINATION**

2.1. Preshipment inspection activities shall be carried out in a non-discriminatory manner. The procedures and criteria employed in the conduct of these activities should be objective and applied on an equal basis to all exporters affected by such activities.

Differences in procedures and criteria may occur depending upon :

- (A) the type, location and circumstances of the Ship-ment, (but the rules of application shall be uniform and non-discriminatory) and

(B) the requirements and scope of the PSI programme of the User Government.

### **GOVERNMENTAL REQUIREMENTS**

2.2. In carrying-out preshipment inspection activities, IFIA PSI Members shall follow the applicable laws, regulations or requirements of the User Government.

*NOTE 3 : In situations, where the WTO Agreement on PSI is applicable and an IFIA PSI Member receives a complaint that, contrary to Article 2.2 of the WTO Agreement on PSI, the User Government's laws, regulations or requirements do not conform to Article III.4 of the GATT 1994, (which requires that imported goods be accorded treatment no less favourable than that accorded to products of national origin) the complainant should be advised that he may pursue the matter with his Government in accordance with the dispute procedure referred to in Article 8 of the WTO Agreement on PSI.*

### **SITE OF INSPECTION**

2.3.1 All physical inspection activities, shall be performed in the Customs territory from which the goods are exported or, if the inspection cannot be carried out in that Customs territory given the complex nature of the products involved, or if both parties agree, in the Customs territory in which the goods are manufactured.

#### **NOTES**

4. Inspection in the Customs territory in which the goods are manufactured: is typically necessary when, for example

(i) Tests which must be performed or witnessed by the IFIA PSI Member can only be done on the manufacturer's premises. For some "turnkey" projects individual items of equipment may be manufactured in a number of Customs territories and assembled in the Customs territory of exportation but tests such as pressure vessel testing, non destructive testing of welds, etc. must frequently be done at the manufacturer's premises prior to assembly.

(ii) Access to the goods is not possible in the Customs territory of exportation such as when the goods are in bond.

(iii) It is not practicable to unpack the goods in the Customs territory of exportation.

5. For inspection of stuffing and sealing of FCL containers, or to facilitate trade, by mutual agreement between the exporter and IFIA PSI Member, it may sometimes be necessary for

(i) the PSI activity to be carried out in one Customs territory and part in another Customs territory or

(ii) part of the goods to be inspected in one Customs territory and part in another or several other Customs territories or

(iii) goods to be presented for inspection in transit in a third country which is not in the Customs territory of exportation.

2.3.2 In each country in which the User Government commonly requires PSI, the IFIA PSI Member shall maintain either an Office or a Focal Point. The Focal Points shall serve as contact points for exporters which, as a minimum requirement, shall handle enquiries from exporters. In key countries of PSI activities, Main/Regional Administrative Offices shall be established to (a) coordinate all PSI activities including the work of any Focal Points and (b) ensure the prompt issuance of Reports of Findings (ROF), including advices of non-issuance of ROF, and availability of the data, preferably by electronic means, to exporters and importers

#### **NOTES**

6. For Customs clearance purposes, Reports of Findings (ROFs) may be printed in the country of importation based upon the ROF data from the IFIA PSI Member's Main/Regional Administrative Office

7. To facilitate trade, a ROF, Security Label or equivalent certification for payment purposes, may be issued, if possible using electronic means, in the Customs territory of the exporter, or another Customs territory, by mutual agreement between the exporter and the IFIA PSI Member.

## **STANDARDS**

2.4. Except as may be provided for by the regulations of the User Government, quantity and quality inspections shall be performed in accordance with the standards defined by the seller and the buyer in the purchase agreement and that, in the absence of such standards, relevant *International Standards* \* apply.

*NOTE 8 : An international standard is a standard adopted by a governmental or non-government body whose membership is open to all countries, one of whose recognised activities is in the field of standardisation. ISO, IEC and UIT standards should be considered in preference to other standards.*

## **TRANSPARENCY**

2.5. Preshipment inspection activities shall be conducted in a transparent manner.

2.6.1 When initially contacted by exporters, IFIA PSI Members shall provide to the exporters a list of all the information which is necessary for the exporters to comply with inspection requirements. The list shall at least refer to:

(i) **IFIA PSI Member's Guidelines for Exporters** outlining the procedures and criteria used for: physical inspection; price verification for export market price and Customs valuation purposes, currency exchange rate verification, customs classification; internal appeals as per article 2.21, etc.

(ii) **IFIA PSI Member's Country Data-sheets for Exporters** providing country specific information including the applicable valuation methodology and a reference to the laws and regulations of the User Government relating to preshipment inspection activities including details of the minimum order value subject to PSI and goods exempt from PSI.

(iii) **Independent Entity Guidelines on Independent Review Procedures** in accordance with Article 4 of the WTO Agreement on PSI.

2.6.2 The IFIA PSI Member shall (i) provide these documents when so requested by exporters (ii) automatically send to exporters, requiring PSI for the first time, an information pack and/or a notification of the availability of the information on the Internet (iii) endeavour to establish Internet web-sites to provide information on PSI for exporters and importers.

2.6.3 The IFIA PSI Member shall not introduce additional procedural requirements or changes to the existing procedures unless either (i) the exporter concerned is informed of these changes at the time the inspection date is arranged or (ii) the IFIA PSI Member is acting upon regulations or instructions received from the User Government.

*NOTE 9 : In accordance with Article 2.6 of the WTO Agreement on PSI, changes introduced by User Governments after the time the inspection date is arranged should be in emergency situations of the types addressed by Articles XX and XXI of the GATT 1994. Examples of emergency situations are measures necessary to: protect public morals; protect human, animal or plant life & health; secure compliance with laws & regulations including customs laws; protection of national security*

2.6.4 This assistance shall not relieve exporters from their obligations in respect of compliance with the import regulations of the User Governments.

2.7 The information referred to in Article 2.6 shall be made available to exporters in a convenient manner and the preshipment inspection offices maintained by the IFIA PSI Member shall serve as information points where this information is available.



2.8. When an IFIA PSI Member receives, from User Governments, copies of new or amended laws or regulations relating to preshipment inspection activities, the IFIA PSI Member shall, where appropriate, notify exporters and/or update their country Data-sheets for Exporters and ensure that the information is available at the information points as per Article 2.7.

### **PROTECTION OF CONFIDENTIAL BUSINESS INFORMATION**

2.9. IFIA PSI Members shall treat all information received in the course of the preshipment inspection as business confidential to the extent that such information is not already published, generally available to third parties, or otherwise in the public domain.

2.10. In pursuance of Article 2.9, IFIA PSI Members shall establish adequate security measures relating to their offices and personnel :-

#### **2.10.1 Staff Non-Disclosure Agreement :**

All personnel employed by IFIA PSI Members shall be required, as a condition of employment, to sign a Non-Disclosure Agreement prohibiting the disclosure of any confidential business information, obtained during the course of employment, to other parties. Potential personnel shall be notified of this requirement in the job offer and shall be required to sign the Agreement by the first day of employment.

#### **2.10.2 Office Security :**

IFIA PSI Members shall implement adequate security measures in their offices containing confidential business information to ensure that (i) access is restricted to authorised personnel only (ii) documents/data are stored in designated secure areas and disposed of by shredding, disintegration or incineration under supervision of authorised personnel.

#### **2.10.3 Specific Assurances :**

IFIA PSI Members shall be committed to providing, upon request, specific assurances to the trade concerning the protection of their confidential business information and to enter into specific security agreements where required.

2.11. IFIA PSI Members should not divulge confidential business information to any third party, except that IFIA PSI Members may share this information with the User Governments that have contracted or mandated them but only to the extent that such information is customarily required for letters of credit or other forms of payment or for Customs, import licensing or exchange control purposes.

2.12. IFIA PSI Members shall not request exporters to provide information regarding:-

- (i) manufacturing data related to patented, licensed or undisclosed processes, or to processes for which a patent is pending;
- (ii) unpublished technical data other than data necessary to demonstrate compliance with technical regulations or standards;
- (iii) internal pricing, including manufacturing costs;
- (iv) profit levels;

(v) the terms of contracts between exporters and their suppliers unless it is not otherwise possible for the IFIA PSI Member to conduct the inspection in question. In such cases, the IFIA PSI Member shall only request the information necessary for this purpose.

*NOTE 10 : This exception typically applies when the exporter is acting not as a principal but as the agent of another party, such as a commission agent for the supplier of the goods or a buying agent acting for the purchaser. In such circumstances, and depending on the requirements of the User Government, the terms of the contract between the agent and the supplier may be needed in order to verify the exact source and origin of the goods and or to verify certain terms of the transaction such as the amount of commission and the price exclusive of commission.*

2.13. The information referred to in Article 2.12, which IFIA PSI Members shall not otherwise request, may be released voluntarily by the exporter to illustrate a specific case.

### **CONFLICTS OF INTEREST**

2.14. IFIA PSI Members shall, bearing in mind also the provisions on protection of confidential business information in Articles 2.9 to 2.13, maintain procedures to avoid conflicts of interest:

- (i) between IFIA PSI Members and any related entities of the IFIA PSI Members in question, including any entities in which the latter have a financial or commercial interest or any entities which have a financial interest in the IFIA PSI Members in question, and whose shipments the IFIA PSI Members are to inspect;
- (ii) between IFIA PSI Members and any other entities, including other entities subject to preshipment inspection, with the exception of the government entities contracting or mandating the inspections;
- (iii) with divisions of IFIA PSI Members engaged in activities other than those required to carry out the inspection process.

### **DELAYS**

2.15. IFIA PSI Members shall avoid unreasonable delays in inspection of shipments. Once an IFIA PSI Member and an exporter agree on an inspection date, the IFIA PSI Member should conduct the inspection on that date unless it is rescheduled on a mutually-agreed basis between the exporter and the IFIA PSI Member, or the IFIA PSI Member is prevented from doing so by the exporter or by *force majeure* \*.

*NOTE 11 : \* Force majeure shall mean "irresistible" compulsion or coercion, unforeseeable course of events excusing from fulfilment of contract".*

2.16. Following receipt of the final documents and completion of the inspection, IFIA PSI Members shall, within five working days, either issue a Clean Report of Findings, or equivalent document, or provide a detailed written explanation specifying the reasons for non-issuance. In the latter case, IFIA PSI Members shall give exporters the opportunity to present their views in writing and, if exporters so request, arrange for re-inspection at the earliest mutually convenient date.

2.17. Whenever so requested by the exporters, IFIA PSI Members shall undertake, prior to the date of physical inspection, a preliminary verification of price and, where applicable, of currency exchange rate, on the basis of the contract between exporter and importer, the proforma invoice and, where applicable, the application for import authorisation/Inspection Order. Once a price or currency exchange rate has been accepted by a IFIA PSI Member on the basis of such preliminary verification it shall not be withdrawn providing the goods conform to the import documentation and/or import licence/inspection order.

After a preliminary verification has taken place, IFIA PSI Members shall immediately inform exporters in writing either of their acceptance or of their detailed reasons for non-acceptance of the price and/or currency exchange rate.

2.18. When required for payment purposes, IFIA PSI Members shall send to exporters, or to designated representatives of the exporters, a Report of Findings, Security Label or equivalent certification as expeditiously as possible in order to avoid delays in payment. In the event that the original CRF is required by the importer for Customs clearance, the IFIA PSI Member will provide a Report of Findings data advice to the seller upon request. IFIA PSI Members shall endeavour to use electronic means of communication when possible and appropriate (non mandatory but strongly recommended).

2.19. In the event of a clerical error in the Report of Findings or Security Label, IFIA PSI Members shall correct the error and forward the corrected information to the appropriate parties as expeditiously as possible.

### **PRICE VERIFICATION**

2.20. There are two distinct types of price verification which result in the provision of opinions/technical advice on either

- (i) An Export Price, which is used for foreign exchange or government information purposes or
- (ii) A Value for Customs purposes, which serves as a technical advice to Customs for assessment of import duty/tax purposes.

IFIA PSI Members shall conduct this price verification according to the respective guidelines of 2.20.1 or 2.20.2 below:

#### **2.20.1 Forming an opinion on the Export Price**

(A) IFIA PSI Members shall only reject a contract price agreed between an exporter and an importer if they can demonstrate that their findings of an unsatisfactory price are based on a verification process which is in conformity with the criteria set out in sub articles (B) through (E);

(B) The IFIA PSI Member shall base its price comparison for the verification of the export price on the price(s) of identical or similar goods offered for export from the same country of exportation at or about the same time, under competitive and comparable conditions of sale, in conformity with customary commercial practices and net of any applicable standard discounts. Such comparison shall be based on the following:

- (i) only prices providing a valid basis of comparison shall be used, taking into account the relevant economic factors pertaining to the country of importation and a country or countries used for price comparison;
- (ii) the price of goods offered for export to different countries of importation shall not be relied upon to arbitrarily impose the lowest price upon the shipment;
- (iii) the specific elements listed in sub-paragraph (C) shall be taken into account.
- (iv) the date of reference for verifying the export price shall be the date of contract or, in the absence of a contract, the date of the proforma invoice except for:

> Contracts stipulating that prices may vary in accordance with certain conditions (e.g. prices ruling at date of despatch) provided consistent with customary commercial practice and permitted under the regulations of the importing country.

> Sales by International Tender when the date of closing of the Tender should be used.

(v) where the contract price is expressed in a foreign currency and, for the purpose of price comparison, a conversion has to be made into the currency of the country of supply, the price comparison reference date will be used unless regulations in the importing country stipulate otherwise.

(vi) at any stage in the process described above, the IFIA PSI Member shall provide the exporter with an opportunity to explain his price;

(C) when conducting price verification, IFIA PSI Members shall make appropriate allowances for the terms of the sales contract and:

(i) generally applicable adjusting factors pertaining to the transaction; these factors shall include but not be limited to the commercial level and quantity of the sale, delivery periods and conditions, price escalation clauses, quality specifications, special design features, special shipping or packing specifications, order size, spot sales, seasonal influences, licence or other intellectual property fees, and services rendered as part of the contract if these are not customarily invoiced separately, they shall also include certain elements relating to the exporter's price, such as the contractual relationship between the exporter and importer;

(ii) the following ancillary charges, which are additional to the FOB value, where applicable and permissible under the regulations of the importing country: buying agents or confirming fees, finance or interest charges, transport insurance.

(D) the verification of transportation shall relate only to the agreed price of the mode of transport in the country of exportation as indicated in the sales contract;

(E) the following shall not be used for price verification purposes:

(i) the selling price in the country of importation of goods produced in such country;

(ii) the price of goods for export from a country other than the country of exportation

(iii) the cost of production;

(iv) arbitrary or fictitious prices or values.

## **2.20.2: Providing technical advice on a value for Customs Purposes**

When conducting price verification in order to form an opinion to facilitate the determination of value for Customs purposes, the IFIA PSI Member shall:

(A) follow the Customs valuation rules or applicable regulations or requirements of the User Government.

NOTE 12 : This is also in conformance with footnote 4 to Article 2.20 of the WTO Agreement on PSI.

(B) comply with the Customs valuation principles of Article 5 to the extent that these are not contrary to the requirements of the User Government.

### **APPEAL PROCEDURES**

2.21 IFIA PSI Members shall designate one or more officials who shall be available during normal business hours in each city or port in which they maintain a preshipment inspection administrative office to receive and give sympathetic consideration to, and render decisions on, exporters complaints or appeals which shall be carried out in accordance with the procedures of Articles 2.21.1 & 2 below.

#### **2.21.1 Complaints to IFIA PSI Member:**

- (i) in the first instance, exporters with any complaints concerning preshipment inspection activities shall be requested to contact the appropriate Department Manager of the IFIA PSI Member giving details of the case.
- (ii) the IFIA PSI Member shall undertake to investigate the complaint expeditiously.
- (iii) if the exporter is not satisfied with the response from the IFIA PSI Member, the exporter may proceed to an Appeal in accordance with the procedures of 2.21.2 below.

#### **2.21.2 Appeals to IFIA PSI Member:**

- (i) Exporters who have grievances concerning preshipment inspection activities, which have not been resolved by discussion with the appropriate department manager of the IFIA PSI Member, under the complaints procedure of Article 2.21.1 above, may appeal to the IFIA PSI Member's senior management by completing and submitting a "Preshipment Inspection Internal Appeal Form" giving details of the case. This form shall be issued by the IFIA PSI Member based on **Annex A**, attached hereto, which also takes into consideration the requirements of the WTO Agreement on Preshipment Inspection. The exporter shall send the completed form to the IFIA PSI Member's Senior Manager(s) whose name(s) shall be available upon request from the IFIA PSI Member.
- (ii) The IFIA PSI Member's designated Senior Manager shall undertake to investigate the dispute and respond to the exporter in writing, normally within two working days of receipt of a fully completed "Preshipment Inspection Appeal Form", by either (a) giving the result of the Appeal, with detailed explanations, or (b) advising that further investigation is required and that the result will follow as soon as possible but not later than within 10 days of receipt of the Appeal. For disputes on price verification the Result of the Appeal should set forth the basis of the IFIA PSI Member's opinion by reference to the specific applicable elements of the price verification criteria.

2.21.3 Details of the procedures of Articles 2.21.1 and 2.21.2 above shall be made available to exporters in accordance with Articles 2.6 & 2.7.

### **3. IMPLEMENTATION OF THE LAWS & REGULATIONS OF THE COUNTRY OF PRESHPMENT INSPECTION**

IFIA PSI Members shall abide by any laws and regulations, relating to preshipment inspection activities, in the country in which preshipment inspection is carried out. *(In the event of a dispute that these laws and regulations do not comply with the WTO Agreement on PSI, the government concerned should pursue the matter in accordance with the dispute procedure as per article 8 of the WTO Agreement on PSI).*

#### 4. INDEPENDENT REVIEW PROCEDURES

4.1 IFIA PSI Members shall, where applicable, abide by the procedures for Independent Reviews established in accordance with the provisions of Article 4 of the WTO Agreement on PSI.

4.2 IFIA PSI Members which have a contract with or mandate from a WTO Member shall ensure that an advance deposit, to cover the initial costs of one independent review, is lodged with the Independent Entity, WTO Secretariat, Rue de Lausanne 154, Geneva. This deposit should be replenished in the event that it is utilised to settle the costs of an independent review.

4.3 IFIA PSI Members shall make available to Exporters, as necessary, a copy of the document "Independent Entity Guidelines on Independent Review Procedures" in conformance with the requirements of Article 2.6.1.

#### 5. CUSTOMS VALUATION PRINCIPLES

##### **GENERAL PRINCIPLES**

5.1.1. When forming an opinion of a value for Customs purposes the IFIA PSI Member shall not require the seller to amend the price in the commercial invoice for payment purposes.

5.1.2. The Report of Findings (ROF) issued for Customs purposes shall state the IFIA PSI Member's opinion of value for Customs purposes in addition, where applicable, to the seller's invoice price.

##### **CUSTOMS VALUATION METHODS**

5.2. The Customs Valuation Methods commonly applied by User Governments are:

- (A) Brussels Definition of Value
- (B) WTO Agreement on Customs Valuation
- (C) Export Price

When forming an opinion of value for Customs purposes, using one of the above valuation methods, the IFIA PSI Member shall apply the following principle procedures to the extent that they are not contrary to the requirements of the User Government.

##### **BRUSSELS DEFINITION OF VALUE ("BDV")**

###### **5.3.1 Basis**

This Article 5.3 contains a summary of the basic principles of the Brussels Definition of Value which is to be used only as a guideline. The following official authoritative publications should be consulted for full details:-: "Customs Valuation: Convention, Recommendations, Opinions, Notes and Studies" and "Customs Valuation: Explanatory Notes to the Brussels Definition of Value" available from the World Customs Organisation (*formerly, Customs Cooperation Council*), Rue du Marché 30, 1210 Brussels, Belgium.

### 5.3.2 Definition

The value for Customs purposes shall be the normal price, that is to say, the price which the goods would fetch on sale in the open market between a buyer and a seller independent of each other.

### 5.3.3. Procedure for establishing the IFIA PSI Member's opinion of value for Customs purposes

(i) The IFIA PSI Member shall establish an opinion of a value for Customs purposes by comparing the seller's invoice price with the prices at which

(ii) identical or similar goods are sold or offered for sale to the country of importation taking into account, where applicable:

- > The conditions for determining the normal price: see Article 5.3.4.

- > The Adjusting Factors: see Article 5.3.5.

(iii) In the event that the seller's invoice price is:

- > Within the range of export prices of identical or similar goods:

- o the seller's invoice price will be utilised as the basis for the IFIA PSI Member's opinion of the value for Customs purposes.

- > Outside the range of export prices of identical or similar goods:

- o The IFIA PSI Member may request the seller to provide additional information to explain the price.

- o In the absence of satisfactory information, the IFIA PSI Member's opinion of value for Customs purposes will be based on the prices of identical or similar goods

### 5.3.4. Conditions for the determination of the normal price

(i) Assumptions :

- > The goods are delivered to the buyer at the port/place of introduction into the country of importation.

- > The seller bears all costs, charges and expenses incidental to the sale and to the delivery of the goods to the port or place of introduction, which are hence included in the normal price.

(ii) A sale in the open market between a buyer and seller independent of each other pre-supposes that:

- > The price is the sole consideration

> The price is not influenced by any commercial financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him, other than the relationship created by the sale itself.

> No part of the proceeds of any subsequent resale, other disposal or use of the goods will accrue, either directly or indirectly, to the seller or any person associated in business with him.

(iii) The declared price will not be accepted as an open market price when :

> Section (ii) above is not complied with or

> The price is lower (unless the variation in price is slight or corresponds with trade practice) than those of identical goods from the same seller to any importer in the country of importation or

> The price is considerably lower than those of:

o identical goods being sold by other sellers in the same country of exportation to any importer in the country of importation or

o similar goods being sold by sellers in the same country of exportation to any importer in the country of importation or

o identical or, failing this, similar goods being sold by sellers in other countries for

o exportation to any importer in the country of importation but taking into account, where applicable, variations in the costs

o of the factors of production in the countries of exportation.

### 5.3.5. Adjusting Factors

#### (i) Definition :

Adjusting Factors are the various elements, such as discounts, interest charges, commissions, advance payments, etc., which must be taken into account by addition or deduction, where applicable, in determining the normal price or value for Customs purposes.

#### (ii) Dutiable Factors :

The following Adjusting Factors are dutiable and, if applicable and not already included in the price, should be added to arrive at the normal price:

> Carriage and freight

> Insurance

> Commissions (including buying commissions) and brokerage costs, charges and expenses of drawing up, outside the country of importation, documents incidental to the introduction of the goods into the country of importation, including consular fees.

> Duties and taxes outside the country of importation except those from which the goods have been exempted or have been or will be relieved by means of refund.



- > Costs of containers, excluding those which are treated as separate articles for the purpose of levying duties of Customs, cost of packing (whether for labour, materials or otherwise).
- > Charges in respect of the right of use of a patent, design or trade mark in respect of the goods.
- > Not freely available discounts (discounts not available to any Buyer) e.g. sole agent's discounts, special/ abnormal discounts, etc.
- > Retrospective discounts and advance payment discounts
- > Advance payments
- > The value of "Free of Charge" goods or samples
- > Seller's expenses paid by the buyer

**(iii) Non-dutiable Factors :**

The following Adjusting Factors are non-dutiable and, if applicable and not already excluded from the price, shall be deducted to arrive at the normal price :

- > Discounts freely available to anyone (*e.g. quantity discounts, cash discounts, etc.*)
- > Interest charges for deferred payment
- > Post-entry charges (*e.g. inland transportation charges from the port or place of entry to the final destination, installation or erection charges, etc.*)

**(iv) Other Adjusting Factors**

In determining the normal price other Adjusting Factors, including but not limited to the following, are taken into account where applicable:

- > Quantity / unit size
- > Quality / specifications / trade mark
- > Packaging
- > Commercial level
- > Seasonal influences
- > Delivery periods and conditions

**WTO AGREEMENT ON CUSTOMS VALUATION ("ACV")****5.4.1. Basis**

This Article, 5.4, contains a summary of the basic principles of Customs Valuation as per the WTO Agreement and should be used only as a guideline. The following official authoritative publications should be consulted for full details:-

- (i) The WTO "Agreement on Implementation of Article VII of GATT (1994)" commonly known as the Agreement on Customs Valuation ("ACV") (formerly GATT Valuation Code).
- (ii) The WTO "Decision regarding cases where Customs administrations have reasons to doubt the truth or accuracy of the declared value".

**5.4.2. Methodology**

The ACV sets forth six different methods of valuation in order of preference. The first method should be used unless certain conditions are not complied with; in such case one proceeds to the other secondary methods (2 to 6) in hierarchical order of preference.

**Method 1 : Transaction Value of the Imported Goods** : the Customs Value should be the **Transaction Value**, i.e. the price actually paid or payable after adjustment, where applicable by **Adjusting Factors** (see Article 5.4.9 below) and subject to :

- > Compliance with the **Transaction Valuation Conditions** (see Article 5.4.4 below) and
- > Customs being satisfied with the truth or accuracy of the declared Transaction Value

If the Transaction Valuation Conditions are not fulfilled, or if Customs have doubts concerning the truth or accuracy of the declared information, the valuation shall be carried-out by one of the other methods in the following hierarchical order of application:

**Method 2 : Transaction Value of Identical Goods**: based on customs values, previously accepted in conformance with Method 1, of other transactions of identical goods sold for exportation to the country of importation at or about the same time taking into account, where applicable, differences in commercial level, quantity and cost of transport.

**Method 3 : Transaction Value of Similar Goods** : based on customs values, previously accepted in conformance with Method 1, of other transactions of similar goods sold for exportation to the country of importation at or about the same time taking into account, where applicable, differences in commercial level, quantity and cost of transport.

**Method 4 : Deductive** : based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity, at or about the same time, to unrelated persons with deductions (e.g. transport costs in country of importation, commissions or profit and expenses, customs duties, etc.) arrive at the CFR price at point of entry.

**Method 5 : Computed Value** : based on cost of materials, fabrication and profit in country of production.

**Method 6 : Fall-back** : based on the previous methods but with greater flexibility (e.g. for identical or similar goods: at or about the same time may be flexibly interpreted or goods produced in other countries may be used as a basis).

**NOTE 13 :**

*As per ACV Article 7, no customs value shall be determined under the provision of Method 6 on the basis of :*

- (a) the selling price in the country of importation of goods produced in such country*
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values*
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values*
- (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Method 5*
- e) the price of the goods for export to a country other than the country of importation*
- f) minimum customs values or*
- (g) arbitrary or fictitious values*

**5.4.3. Role of Preshipment Inspection**

The main role of IFIA PSI Members, in the context of ACV, is to provide technical advice to the Customs administration of the User Government by supplying them with a valuation opinion or valuation advice in the Report of Findings, which :

- (i) indicates if there is compliance with the Transaction Valuation Conditions, including relationships between buyers and sellers as per Article 5.4.4 below (ACV Article 1)
- (ii) indicates applicable Adjusting Factors (e.g. commissions, royalties and assists) as per Article 5.4.9 below (ACV Article 8)
- (iii) may give reasons to doubt the truth or accuracy of the declared transaction value thereby enabling Customs to focus on those transactions which may be worthy of further examination
- (iv) is a source of reference for other transactions of identical or similar goods in conformance with valuation methods 2 & 3 of ACV (Transaction Value of Identical Goods or Similar Goods)

*NOTE 14 : Normally, PSI activities only cover Methods 1, 2 and 3. However, technical assistance in respect of the other methods may be provided upon request of Customs in the importing country.*

**5.4.4 Transaction Valuation Conditions**

(i) The transaction Value Method may only be used if the conditions stated in Figure 1 below, in accordance with ACV Art. 1.1, are complied with.

(ii) In the event of :

- > Compliance with all Transaction Valuation Conditions or
- > Compliance with all Transaction Valuation Conditions except a relationship between buyer and seller

- o the IFIA PSI Member shall proceed to 5.4.5 to (a) verify the Declared Transaction Value and (b) for related buyers and sellers : verify that the relationship has not influenced the price.

*NOTE 15 : In accordance with ACV Art. 1.2b, if the buyer and seller are related, buyers (importers) are, at their initiative, entitled to request Customs that the DTV be compared with the Customs Value established by the Deductive or Computed Value Methods: in such situations, Customs may request technical assistance from the IFIA PSI Member.*

> Non-compliance with any conditions:

- o the IFIA PSI Member shall proceed to Valuation methods 2 or 3 (see Article 5.4.6 below).

Figure 1

| CONDITIONS  | EXCEPTIONS   |
|---|--|
| <ol style="list-style-type: none"> <li>1. No restrictions on use or disposition of the goods by the buyer.</li> <li>2. The sale or price is not subject to a condition or consideration for which a value cannot be determined (e.g. the sale is conditional upon the buyer also buying other goods, etc.)</li> <li>3. No part of the proceeds of the subsequent resale, disposal or use of the goods disposal or use of the goods accrues to the seller.</li> <li>4. Buyer &amp; seller are not related (see Article 1.5.4)</li> </ol> | <ol style="list-style-type: none"> <li>1. Restrictions               <ul style="list-style-type: none"> <li>- Imposed by law in importation country</li> <li>- limiting geographical area of resale</li> <li>- not affecting the value of the goods</li> </ul> </li> <li>2. Conditions or considerations relating to production or marketing of the goods</li> <li>3. Unless adjustment made as per Adjusting Factors (see Point 5.4.9)</li> <li>4. If related : the relationship should either not influence the price or the value should approximate to valuation by Methods 2,3,4 or 5 (see Point 5.4.5 (ii) below)</li> </ol> |

#### 5.4.5 Verification of the Declared Transaction Value ("DTV")

(i) The IFIA PSI Member shall, where possible, establish if either there are reasonable doubts concerning the DTV\* or, in the case of related buyers and sellers, whether the relationship influenced the price, by "testing" it against the IFIA PSI Member's price data bank of:

- > Other transactions with the country of importation, of identical or similar goods of the same country of origin, taking into account, where applicable, the Valuation Decisions received from the Customs Administration or Appeal Body in Country of Importation.
- > In the absence of information on other transactions, non-transactional data (e.g. quotations, prices lists, information from trade experts) relevant to the country of importation, of identical or similar goods of the same country of origin.

*NOTE 16 : \* For practical purposes, the DTV will be assumed to be the value stated in the sellers commercial invoice presented to the IFIA PSI Member during PSI.*

(ii) The IFIA PSI Member shall, when carrying-out the above mentioned test, take into account, where applicable:-

- > Adjusting Factors (see 5.4.9 below)
- > Differences in Commercial Level and Quantity

(iii) If the DTV is:

- > at the same level or higher than the lowest price in the range of identical or similar goods:
  - the DTV will be accepted by the IFIA PSI Member as the Customs Value (dutiable value).
- > below the lowest price in the range:
  - the IFIA PSI Member shall request the seller for additional information to explain the price. If satisfactory information is received, the DTV will be accepted by the IFIA PSI Member as the Customs Value.
  - in the absence of satisfactory information, the IFIA PSI Member shall confirm that it has reasonable doubts about the truth or accuracy of the DTV by stating in the Report of Findings either a:-
    - **Valuation Opinion:** based on other transactions of identical or similar goods or
    - **Valuation Advice:** based on non-transactional data of identical or similar goods.

(iv) In the absence of any information concerning identical or similar goods, in the IFIA PSI Member's price data bank, the IFIA PSI Member shall accept the DTV.

#### 5.4.6. Transaction Values of Identical Goods (Method 2) or Similar Goods (Method 3)

If the Transaction Valuation Conditions, as per Article 5.4.4 above, are not satisfied, the IFIA PSI Member shall, where possible, form a Valuation Opinion of the goods based on a comparison with the lowest price in the range of previously accepted transactions, at or about the same time, to the same country of importation, of identical goods or, if not available, similar goods of the same country of origin. Where applicable adjustments shall be made for differences in commercial level and/or quantity.

In the absence of information on other transactions, the IFIA PSI Member will indicate this in the ROF so that Customs may decide to proceed to the Deductive Value Method.

#### 5.4.7 The Report of Findings ("ROF")

For the guidance of Customs, the IFIA PSI Member shall issue the ROF stating:

**(i) The Declared Transaction Value (DTV):** adjusted by applicable Adjusting Factors and, where applicable, one of the following :

**(ii) A Valuation Opinion :** which is the IFIA PSI Member's opinion of value based on other transactions of identical or similar goods. This opinion is given when either :

> the Transaction Valuation Conditions are complied with but the IFIA PSI Member has reasonable doubts about DTV.

*NOTE 17 : In the absence of satisfactory evidence from the importer to support the truth or accuracy of the DTV, Customs may decide to proceed to Valuation Methods 2 or 3.*

or

> the Transaction Valuation Conditions are not complied with.

*NOTE 18 : Customs may proceed to the Valuation Methods 2 or 3 using the IFIA PSI Member's Valuation Opinion for guidance.*

**(iii) A Valuation Advice:** which is either :

> The IFIA PSI Member's advice based on non-transactional data of identical or similar goods as per Article 5.4.5 above. This may provide Customs with reasonable doubts about the DTV.

*NOTE 19 : In the absence of satisfactory evidence from the importer to support the truth or accuracy of the DTV and in the absence of information on other transactions thereby preventing valuation by Methods 2 or 3, Customs may decide to proceed to the Deductive Value Method (Method 4).*

or

> An advice that no information about other transactions is available: thereby preventing the IFIA PSI Member from establishing a value based on Methods 2 & 3.

*NOTE 20 : Customs may decide to proceed to the Deductive Method.*

#### 5.4.8 The Deductive, Computed and Fall-back Methods of Valuation

In cases where it is necessary for Customs to proceed to the Deductive, Computed or Fall-back Value Methods the IFIA PSI Member may, upon request of Customs, provide technical assistance.

#### 5.4.9. Adjusting Factors

##### (i) Definition

Under the ACV, Adjusting Factors are the various elements, such as commission, costs of packing, and buyer assists, that must be added to the price actually paid or payable for the imported goods to arrive at the Transaction Value of those goods.

##### (ii) Adjusting Factors Applicable in All Cases

In determining the Transaction Value, there shall be added to the price actually paid or payable for the goods :

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods :

(i) commission and brokerage, except buying commissions;

ii) the cost of containers which are treated as being one for Customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

(b) "Assists" : the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;

##### (iii) Adjusting Factors Applicable if Legislation of the Country of Importation so Provides:

The following adjusting factors may be taken into consideration, wholly or in part, as provided in the laws and regulations of the country of importation :

- (a) The cost of transport of the imported goods to the port or place of importation.
- (b) Loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (c) The cost of insurance.

#### **(iv) Exclusions**

No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Section. In particular, the following elements shall not be taken into account :

- (a) All discounts except retrospective discounts
- (b) The following charges, even if included in the commercial invoice, provided they are separately declared :
  - (i) Interest charges for deferred payment
  - (ii) Post-importation charges (*e.g. inland transportation changes from the port or place of entry to the final destination, installation or erection changes, etc.*)
  - (iii) Duties & Taxes in the country of importation.

#### **(v) Objective and Quantifiable Data**

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

#### **EXPORT PRICE**

5.5 The procedure for establishing an opinion of an export price for Customs purposes shall be identical to the procedure set out in Article 2.20.1 except that, subject to the requirements of the User Government, interest charges for deferred payment and post-entry charges are non-dutiable and may be deducted from the opinion of export price.

#### **Annex A**

#### **Preshipment Inspection Internal Appeal Form**





## NOTES :

A Exporters with complaints about preshipment inspection (PSI) activities are, in the first instance, requested to discuss the matter with the appropriate department manager of the IFIA PSI Member's office responsible for performing the PSI activity ("PSI office"). If, following discussions, an exporter is dissatisfied with the result, he is invited to appeal to the IFIA PSI Member's Senior Manager, at the PSI office, by completing and submitting this form.

B. The IFIA PSI Member's Senior Manager undertakes to investigate the grievance and will respond to the exporter, normally within 2 working days of receipt of this form fully completed, by either (a) giving the result of the appeal or (b) advising that further investigation is required and that the result will follow as soon as possible but in any case within 10 days.

(These procedures take into consideration the WTO Agreement on Preshipment Inspection, Article 2.21)

|  |   |
|--|---|
| <b>1. EXPORTER</b><br><b>Company Name :</b>    | <b>2. EXPORTER'S COMPLAINT DISCUSSIONS</b><br>Prior to completion of this form, the complaint should already have been discussed with the PSI office staff. Please advise PSI office location : |
| <b>Address :</b><br><br><b>Telephone No. :</b> | Person with whom complaint discussed :  |
| <b>Telefax No. :</b>                           | <b>3. REFERENCE NUMBERS</b> Inspection Order<br>Reference No.: (as advised by PSI office or importer)   |
| <b>Telex No. :</b>                             | <b>Contract/Order/Proforma Invoice/Final Invoice No.</b><br>(delete as applicable)  |
| <b>Contact person :</b>                        | <b>4. DESCRIPTION OF GOODS</b>  |

If you wish to appeal that the action of the PSI office is not in accordance with the WTO Agreement on Preshipment Inspection, please complete Section 5. If not applicable, please proceed to Section 6.

## 5. NATURE OF GRIEVANCE WITH THE PSI OFFICE

Please indicate, by marking an "x" in the appropriate box(es) below, which article of the WTO Agreement on

Preshipment Inspection ("API") have, in your opinion, not been complied with by the PSI office.

| Category                     | API Article No.: |  | Category :           | API Article No.: |  |
|------------------------------|------------------|--|----------------------|------------------|--|
|                              |                  |  |                      |                  |  |
| * Non-discrimination         | 2.1              |  | * Delays             | 2.15             |  |
|                              |                  |  |                      | 2.16             |  |
| * Site of inspection         | 2.3              |  |                      | 2.17             |  |
|                              |                  |  |                      | 2.18             |  |
| * Standards                  | 2.4              |  |                      | 2.19             |  |
|                              |                  |  | * Price Verification |                  |  |
| * Transparency               | 2.5              |  | (For export market   | 2.20 (a)         |  |
|                              | 2.6              |  | Price : not customs  | 2.20 (b)         |  |
|                              | 2.7              |  | Valuation purposes)  | 2.20 (c)         |  |
| * Protection of Confidential |                  |  |                      | 2.20 (d)         |  |
| Business Information         | 2.9              |  |                      | 2.20 (e)         |  |
|                              | 2.11             |  |                      |                  |  |
|                              | 2.12             |  | * Appeals Procedures | 2.21             |  |
|                              |                  |  |                      | 2.21 (a)         |  |
| * Conflicts of Interest      | 2.14 (a)         |  |                      | 2.21 (c)         |  |
|                              | 2.14 (b)         |  |                      |                  |  |
|                              | 2.14 (c)         |  |                      |                  |  |

Notes : If your grievance :

(i) Does not concern the above mentioned categories, please proceed to Section 6.

(ii) Concerns the above mentioned categories and also relates to PSI carried out in a WTO member country of goods for importation into a WTO member country: you are entitled to submit the dispute to an Independent Review, at least two working days after submission of this form to the PSI office, in accordance with Article 4 of the WTO Agreement on Preshipment Inspection. Further details are available from the PSI office upon request.

## SUMMARY of GRIEVANCE



**Please advise the facts of the case and summarise the reasons why, in your opinion, the decision or conduct of the PSI office is not acceptable. Please attach copies of relevant documents.**

## **7. PROPOSED SOLUTION TO THE GRIEVANCE**

Please state your proposed solution to the grievance.

## **8. EXPORTER'S DECLARATION**

I hereby declare that :

- a. I am an authorised employee of the exporter
- b. The information contained here is, to the best of my knowledge, correct.

|               |                |
|---------------|----------------|
| FULL NAME:    | POSITION:      |
| COMPANY NAME: |                |
| SIGNED        | DATE: __/__/20 |

**Please return this form to the PSI office responsible for performing the Preshipment inspection**