

DRAFT

LAW OF UKRAINE

On Amendment of the Customs Code of Ukraine

Verhovna Rada of Ukraine (VR) hereby **resolves:**

. To amend the Customs Code of Ukraine (Vidomosti of VR, 2002, # 38 - 39, p. 288; 2003, # 6, p. 51; 2004, # 17 - 18, p. 250; 2005, # 7 - 8, p. 162) as follows:

1. Article 31 of Chapter 4 of Section shall read:

„Article 31. Information regarding Normative-Legal Acts and Court Decisions on Customs Practice

Information regarding normative legal acts on customs practice (the name of the act, its main provisions, information about its publication) shall be provided customs authorities on free of charge basis upon request of interested persons.

General court decisions on customs practice, which came into legal force, shall be officially published in accordance with the procedure prescribed by Ukrainian legislation.

Brief information regarding main provisions of Ukrainian legislation on customs practice shall be placed for general familiarization at the customs bodies' locations.

2. Chapter 46 and 47 of Section X shall read:

Chapter 46. General Provisions

Article 259. Customs Value of Goods

The customs value of goods crossing the customs border of Ukraine is the price actually paid (or imposed) for these goods, which is calculated in accordance with the provisions of this Code.

without a special permission of person or body provided this information, except for the disclosure of such information in accordance with the procedure established by the law to the court or law enforcement authorities in connection with the court examination or pre-court investigation.

Officials of customs authorities shall be liable for disclosure of information constituting commercial secret or being confidential, as determined by the law.

Article 264. Rights and Responsibilities of Declarant Declaring Goods Customs Value

The goods customs value as reported by a Declarant and information pertaining to its determination must be based on accurate, documented and verifiable data.

Should a need in confirmation of the goods customs value as declared by a Declarant arise, the Declarant shall be obliged to provide a customs authority with all necessary information and to ensure the possibility of its verification in accordance with the procedure established by the Cabinet of Ministers of Ukraine.

Should a need to specify the goods customs value as reported by a Declarant arises, the Declarant shall have a right to approach the customs authority requesting that the latter releases the declared goods for free circulation against the guarantee of an authorized bank, or to pay taxes and fees (compulsory payments) in accordance with the goods customs value determined by the customs authority.

Upon written request a Declarant has a right to receive written clarifications as to how the customs authority determined the customs value of goods being evaluated within a week period.

The validity term of the guarantee obligations defined hereunder shall not exceed 90 calendar days as of the date of goods release for free circulation.

Upon the provision by the Declarant of the guarantee, mentioned in part three of this article, the customs authority shall be obliged to release goods for free circulation. In case of payment by the Declarant of taxes and fees in accordance with the goods customs value determined by the customs authority, the decision will be made to use the customs value reported by the Declarant, the customs authority must reimburse to the Declarant the amount equal to the excess of taxes and fees payment.

The Declarant shall bear all additional expenses incurred to him in connection with specifying declared customs value or providing additional information to the customs authority.

A Declarant has a right to challenge decisions of the customs authority regarding the determination of customs value of goods being evaluated at the higher customs authority or at the court. Filing a claim shall not constitute a basis for applying a penalty upon Declarant. The notification provided by higher customs authority regarding results of claim consideration shall contain the justification of the decision and information on the rights of Declarant to challenge this decision at the court.

The procedure of challenging decisions of the customs authority regarding the customs value determination at the higher customs authority shall be established by the Cabinet of Ministers of Ukraine.

Article 265. Rights and Responsibilities of Customs Authority Controlling the Accuracy of Goods Customs Value Determination

The customs authority shall control the accuracy of the goods customs value determination considering provisions hereof. Such control may be exercised within the framework of the customs control measures or in accordance with the Articles 60, 69 of the Code after completion of the customs control and clearance transactions and release of goods and vehicles.

The customs authority has a right to verify the truth and accuracy of any application, document or declaration filed for the purposes of customs value determination.

Chapter 47. Methods of Determining Customs Value of Goods imported into Ukraine, Procedure of their Application.

Article 266. Methods of Determining Customs Value of Goods Imported Into Ukraine

The customs value of goods brought into the customs territory of Ukraine shall be determined using the following methods:

- based on the price of agreement (transaction value) covering the goods being imported (Method 1);
- based on the price of agreement covering identical goods (Method 2);
- based on the price of agreement covering similar (analogous) goods (Method 3);
- based on value deduction (Method 4);

- based on value addition (calculated value) (Method 5);
- reserve method (Method 6).

The method based on the price of agreement covering the goods being imported shall be the principal method for the goods customs value determination.

If the customs value can't be determined using Method 1, in accordance with the provisions of Article 267 of the Code, the procedure of consultations between a customs authority and a Declarant shall take place in order to justify the grounds for determining customs value in accordance with the requirements of Articles 268 and 269 of the Code. In the process of consultations the customs authority and the Declarant may exchange available information provided the confidentiality requirements are adhered.

If it is impossible to determine the customs value of goods imported to Ukraine, in accordance with the provisions of Articles 268 and 269 of the Code, either price at which goods being evaluated, identical or similar (analogue) goods were sold in Ukraine to unrelated buyer in accordance with provision of Article 271 or value of goods calculated in accordance with provision of Article 272 shall be used as a basis for customs value determination.

In so doing each subsequent method shall be applied inasmuch as the customs value of goods may not be determined through applying the preceding method.

The value deduction and addition (calculated value) methods may be used in optional sequence at the Declarant's sole discretion.

If it is impossible to apply any mentioned method for the purposes of customs value determination, the customs value shall be determined using reserve method in accordance with requirements established by Article 273 hereof.

Article 267. The Method of Customs Value Determination Based on Price of Agreement Covering Goods Being Imported (transaction value)

In accordance with the method based on the price of agreement covering the goods being imported, the customs value is the transaction value, in particular the price actually paid (or imposed) for goods if the goods are sold for export to Ukraine corrected, if necessary, in accordance with the Part 2 of this Article. The price actually paid (or imposed) is the total amount of payments made or shall be made by buyer to or in favor of seller of goods being evaluated. Such payments can be made directly or indirectly by wire transfer, letter of credit or commercial documents. The term "price actually paid (or imposed)" is only related to the price

of goods being evaluated. The dividends or other payments made by buyer to seller, which are not related to the goods being evaluated, are not a part of customs value. The addition to price actually paid (or imposed), in accordance with this Article, shall be only made based on accurate, documented and verifiable data.

At determining goods customs value, the following costs shall be added to the price actually paid (or imposed) for goods being evaluated, unless these costs are included to the goods price actually paid (or imposed):

4) the relevant part of profits from any subsequent resale, disposal or use of goods being evaluated which directly or indirectly is allocated to the seller.

5) costs associated with the delivery of goods being evaluated to the airport, port or another point of goods' entry into the customs territory of Ukraine;

6) costs of loading, unloading and handling associated with delivery of goods being evaluated to the airport, port or another point of goods' entry into the customs territory of Ukraine;

7) costs associated with goods insurance.

For determining the customs value no additions to the price actually paid (or imposed) shall be made except for those stipulated by this Article. The customs value shall not include the following expenses

3) neither part of the profit from any subsequent goods resale, disposal or use by the buyer shall directly or indirectly be received by the seller unless the relevant corrections were made in accordance with the provisions of the Part 2 of this Article.

4) buyer and seller are not related or in case when buyer and seller are related, these relations didn't affect the goods price. If there are any reasons to believe that these relations affected the price of goods being evaluated, the customs authority shall communicate these reasons to the Declarant and provide him an opportunity to respond and prove that the relations between buyer and seller didn't affect the price actually paid (or imposed) for the goods being evaluated. On Declarant's request such notification shall be provided in written form.

For the purposes of this Code the persons shall be deemed "related" if:

- a) they are officials or directors of one another enterprise;
- b) they are legally recognized business partners;
- c) they are an employer and an employee;
- d) any person directly or indirectly owns, controls or holds 5% or more of issued shares, which give the voting authority, or shares of both of them;
- e) one of them directly or indirectly controls the other;
- f) they both either directly or indirectly are controlled by a third person;
- g) they jointly control directly or indirectly a third person;
- h) they are the members of the same family.

Persons related in business in such a way that one of them acts as an exclusive agent, exclusive distributor or exclusive concessionaire of another whatever it is called shall be deemed related for the purposes of this Code if they meet the criteria of the Part 5 of this Article.

In case of sale between related persons, the transaction value is accepted as a basis for determining customs value of goods being evaluated using Method 1, if a Declarant proves that this value is the closest to value of one of the following transactions which were conducted at the same time or about the same time:

) in case of sale to non-related buyers, transaction value of identical or similar (analogue) goods intended for the export to Ukraine;

b) customs value of identical or similar (analogue) goods as defined in accordance with Article 271 hereof;

c) customs value of identical or similar (analogue) goods as defined in accordance with Article 272 hereof.

To apply the provisions of part 7 of this Article the following information provided by a Declarant shall be considered: regarding distinctions in commercial terms of sales, distinctions in quantitative levels, elements and expenses listed in Part 5 of this Article and expenses incurred by seller at selling, when the seller and buyer are not related and expenses not-incurred by seller at selling, when the seller and buyer are related.

The examinations of transaction values mentioned in items “a”-“c” of Part 7 of this Article shall be carried out on Declarant’s initiative and for the comparison purposes only. The value of such transactions shall not substitute the value of transaction covering goods being evaluated.

The information used by Declarant shall be accurate, documented and verifiable.

Article 268. Method of Customs Value Determination Based on the Price of Contract Covering Identical Goods

If customs value of imported goods can’t be determined in accordance with the provisions of Article 267 of the Code, the customs value shall be the transaction value of identical goods sold for export to Ukraine from the same country and exported at the same time (or about the same time) as the goods being evaluated.

This method of customs value determination is based on value of transaction covering identical goods with observance of conditions contained in this Article. Goods are deemed identical if they are similar in every respect to goods being evaluated, including:

- a) physical characteristics;
- b) quality and market reputation;
- c) country of origin;
- d) manufacturer.

Minor exterior distinctions shall not prevent to deem the goods identical, if in whole these goods meet the requirements of Part 2 of this Article.

The price of contract covering identical goods shall be used as a basis for determining the customs value of goods as long as these goods have been imported in approximately the same quantities and on the same commercial terms as the goods being evaluated.

If such sale is unavailable, the value of transaction covering identical goods which were sold to Ukraine in other quantities or on other commercial terms shall be used. The value shall be corrected considering the mentioned above distinctions regardless of whether this correction increases or decreases the value. The information used for correction must be documented.

If the costs and expenses mentioned in items 5-7 of Part 2 of Article 267 hereof shall be included to the transaction value, the relevant corrections shall be made to take into account considerable distinctions in costs and expenses associated with goods being evaluated and relevant identical goods. These distinctions arise from the difference in distances and means of transportation.

If for the purposes of applying this method more than one value of transaction covering identical goods is identified, the least value shall be used to determine customs value of goods being evaluated.

Article 269. Method of Customs Value Determination Based on Price of Contract Covering Similar (Analogous) Goods

If customs value of imported goods can't be determined in accordance with the provisions of Articles 267 and 268 hereof, the customs value is the value of transaction covering similar (analogues) goods which are sold for export to Ukraine and exported at the same time (or about the same time) as the goods being evaluated.

The similar (analogous) goods mean the goods, which are though not identical according to all characteristics, have similar features and are composed of similar components for which reason they perform similar functions as the goods being evaluated and are deemed commercially interchangeable.

The following characteristics shall be considered for determining whether the goods are similar (analogue):

- 1) quality, trade mark availability and market reputation;
- 2) country of origin;

3) manufacturer.

The price of contract covering simila

If customs value of imported goods can't be determined in accordance with the provisions of Articles 267-279, the customs value shall be determined according to the provisions of this Article [using the method of customs value determination] based on value deduction save for the cases when upon Declarant's request the provisions of Articles 271 and 272 shall be applied in reverse order.

If the goods being evaluated, identical or similar (analogous) goods are sold (alienated) at the customs territory of Ukraine featuring same condition, the goods customs value shall be determined based on the price of a goods unit at which the largest consignment of goods being evaluated is sold in Ukraine to a buyer - non-related to a seller at the time or about the time of importation goods being evaluated provided that the following coAr

goods are sold in Ukraine in amounts which are sufficient to determine the unit price of such goods in the same condition as was recorded at the earliest date after importation of goods being evaluated however not later than after 90 days following the date of goods importation

If there were no precedents of sale of goods being evaluated, identical or similar (analogous) goods featuring same condition as was recorded at the time of the goods importation, upon Declarant's request, the customs value of these goods shall be determined based on the price of goods unit at which the largest consignment of mentioned goods having undergone further processing (treatment) is sold to the persons in Ukraine which are not related to the persons from which they buy these goods. The proper adjustments shall be made for the value added by processing (treatment) and for deductions envisaged by Items 1-3 of Part 2 of this Article.

The calculation of the value added by the further processing (treatment) shall be based on accurate, documented and verifiable data associated with the cost of such work. The industrial formulas, construction methods and other practice shall serve as a basis for calculations.

The provisions of Part 4 of this Article shall not be applied if:

a) as a result of further processing the imported goods lost their identity, except for the cases when despite the loss of identity of imported goods the value added by processing can be accurately determined;

b) imported goods preserve their identity but the goods constitute so minor portion of the goods sold in Ukraine that the application of this valuation method shall be unreasonable.

The possibility to apply the provisions of Part 4 of this Article shall be determined in each particular case considering specific circumstances.

Article 272. Method of Customs Value Determination Based on Value Addition (calculated value)

For determining customs value of goods using the method based on value addition (calculated value) the information provided by the producer of goods being evaluated (or on his behalf) concerning the cost of goods shall be considered. It shall include the following:

1) costs of materials and expenses incurred by a producer in connection with the production of goods being evaluated. Such information shall be based on producer's commercial invoices provided that such invoices are compatible with the accounting principles recognized in the country where the goods were produced.

2) amount of profit and general costs, which is equal to the sum which is typically presented when the goods of the same class or type as the goods being evaluated and which are produced by a manufacturer in exporting country for export to Ukraine are sold;

3) general costs associated with selling goods of the same class or type from exporting country into Ukraine in particular costs of loading, unloading and processing of goods being evaluated, costs associated with the delivery of goods to the airport, port or another point of goods' entry into the customs territory of Ukraine, costs of insurance as well as other costs associated with bringing such goods into Ukraine;

The official of the customs authority shall not require or force any person who is non-resident in Ukraine to submit for examination or to provide access to any account or other records for the purposes of determining calculated value. Information provided by goods' producer for the purposes of determining customs value in accordance with the provisions of this Article may be verified in the country – goods' producer by the bodies of state power of Ukraine upon producer's consent and on conditions of providing advance notification to the government of the country – goods' producer if no objections against such investigation are available.

The customs value determination method based on value addition (calculated value) shall be applied in cases when seller and buyer are related and there are no facts of selling identical and similar goods are established.

Article 273. Reserve method.

If the customs value may not be determined through sequential application of methods described in Articles 267 – 272 hereof, the goods customs value shall be determined using methods which are agreed with the laws of Ukraine and are compatible with the principles and general provisions of General Agreement On Tariffs and Trade (GATT) and Agreement On Application of Article VII of GATT (1994) and on the basis of data available in Ukraine.

The customs value determined in accordance with the provisions of this Article shall be as much as possible be based on customs values determined earlier using methods 1-6. But at determining customs value in accordance with the provisions of this Article these methods should be applied in flexible

accordance with the provisions of the Customs Code of Ukraine; the provisions of the

2) system which anticipates accepting the highest of two alternative values for customs purposes;

3) goods price on the exporting country's domestic market;

4) production costs deviating from those determined for the calculation of price of identical or similar (analogous) goods as per provisions of Article 272 hereof;

5) price of goods intended for export from exporting country to other countries;

6) minimum customs value;

7) arbitrary or fake value.

If a customs authority applies provisions of this Article, upon a Declarant's request, the customs authority shall inform the Declarant in writing about customs value determined in accordance with the provisions of this Article and about the method used for determination of the value.

3. In Section XII:

1) Supplement Article 277 with the following part:

"The decision of customs authority regarding determination of the country of origin of the goods for customs purposes shall be mandatory for enterprises and citizens.

Upon request of exporter, importer or any other interested person the customs authority shall adopt a preliminary decision regarding country of origin of goods.

The procedure of adoption of preliminary decision regarding country of origin of goods shall be established by the Cabinet of Ministers of Ukraine".

2) Item 6 of Article 278 shall read:

„ products of sea fishing, obtained and (or) produced in the world ocean by the vessels of this country

3) Article 279 shall read:

Article 279. Criterion of Sufficient Processing of Goods

The packing in which the goods are br