

DRAFT LAW OF UKRAINE
On Amendments to Certain Legislative Acts of Ukraine

The Supreme Rada of Ukraine hereby r e s o l v e s:

I. To amend the following legislative acts of Ukraine:

1. In the Customs Code of Ukraine (Vidomosti Verkhovnoji Rady Ukrainy [*Bulletin of the Supreme Rada of Ukraine*], 2002, No. 38 — 39, page 288; 2005, No. 17, page 267):

1) To supplement Article 1 with 10¹ as follows:

“10¹) commercial terms shall mean an entirety of conditions, under which a commercial transaction is carried out formation basis.

Court decisions on customs affairs of a general nature, wh be subject to official promulgation pursuant to the procedures laid

Brief outlines of principal provisions of Ukrainian custo

If it is necessary to confirm the declared customs value of goods, the declarant shall be obligated to furnish the data necessary therefor to the customs au

The customs value by the price of the contract for goods that are imported is the transaction value, i.e., the price that has been in fact paid or is to be paid for the goods if they are sold for exportation into Ukraine as adjusted, if need be, pursuant to Part 2 in this Article herein. The price that has been in fact paid or is to be paid shall mean the total amount of all payments that have been made or must be made by the buyer of the goods being valued for the benefit of the seller. Such payments may be made directly or indirectly by wire transfer, letter of credit or by other methods of payment (promissory note, transfer of securities etc.). The term "price that has been in fact paid or is to be paid" shall relate only to the price of goods being valued. Dividends or other payments from the buyer for the benefit of the seller not related to the goods being valued shall not be part of the customs value. Additions to the price that has been in fact paid or is to be paid pursuant to this Article shall be made only on the basis of objective data that are documentarily confirmed and can be calculated.

In determining the customs value of goods, further expenses shall be added to the price that has been in fact paid or is to be paid, if such expenses have not been included into the price that has been in fact paid or is to be paid, in particular:

1) expenses born by the buyer:

a) commission and brokerage fees, except for commission fees for the purchase that are a payment by the buyer to its agent for services provided in connection with representing the buyer's interests abroad for purchasing the goods being valued;

b) the cost of containers, which are regarded as a single whole with the concerned goods for customs purposes;

c) the cost of packaging or the cost of packaging materials or work related to packaging;

2) duly allocated costs of the goods and services mentioned below if they are supplied directly or indirectly by the buyer free of charge or at discounted prices for use in connection with manufacturing or selling the goods being valued for exportation into Ukraine, if such costs are not included into the price that has been in fact paid or is to be paid:

a) raw materials, materials, parts, semi-manufactured products, components etc., which have been included into the goods being valued;

b) tools, dies, moulds and other similar commodities used in the course of manufacturing the goods being valued;

c) materials expended in the course of manufacturing the goods being valued (lubricants, fuel, etc.);

d) engineering, surveying, research and development works, designing, artwork, layouts and drawings that have been done outside of Ukraine's customs territory and are directly necessary for manufacturing the goods being valued;

3) royalties and licensing payments which relate to the goods being valued and which the buyer must pay directly or indirectly on condition that such goods being valued will be sold, if such payments are not included into the price that has been in fact paid or is to be paid. The said payments may include payments relating to patents and marks for goods and services and copyright. Expenses incurred in connection with a right to duplicate (reproduce) the goods being valued in Ukraine must not be added into the price that has been in fact paid or is to be paid for the goods being valued;

4) a respective portion of proceeds from any subsequent re-sale, transfer or use of goods being valued within Ukraine's customs territory, which portion directly or indirectly benefits the buyer;

5) expenses incurred as a result of transportation of the goods being valued to an airport, a sea port or other point of entry into the customs territory of Ukraine;

3) no portion of proceeds from any further re-sale, disposal or use of the goods by the buyer will accrue, directly or indirectly, to the benefit of the seller, unless a corresponding adjustment can be made pursuant to Part 2 in this Article herein;

4) the buyer and the seller are not affiliated parties or, even if they are affiliated parties, such affiliation has not affected the price of the goods. If there is sufficient ground to believe that such affiliation has affected the price of the goods being valuated, the customs authority must provide notice thereof to the declarant and give the declarant an opportunity to provide a response and prove the absence of impact as a result of such affiliation between the seller and the buyer upon the price that has been in fact paid or is to be paid for the goods being valuated. At a request of the declarant, such notice must be provided in written form.

For purposes of this Code, parties shall be regarded as affiliated only in the event that:

- 1) they are officers or managers of both companies;
- 2) they are partners in joint activities or other activities not prohibited by law;
- 3) they are an employer and a hired employee;
- 4) any person owns, controls or holds, directly or indirectly, 5% or more of the outstanding shares giving the right to vote or shares in both of them;
- 5) one of them controls the other directly or indirectly;
- 6) both of them are directly or indirectly controlled by a third party;
- 7) together they control directly or indirectly a third party;
- 8) they are members of one family.

If the costs and expenses mentioned in Clauses 5 – 7 in Part 2 of Article 267 of this Code are included into the transaction value, an adjustment shall be made in order to take account of a significant difference in such costs and expenses between the goods being valuated and the concerned identical goods, which is conditioned by a difference in distances and modes of transportation.

In determining amounts of commission fees or usual profits and general expenses, goods must be regarded as “goods of the same class or type” in each specific case with references to applicable circumstances;

2) usual expenses incurred in Ukraine as a result of loading, unloading, transportation, insurance and other expenses associated with such operations;

3) amounts of import duties, taxes, fees and other mandatory expenses that are to be paid in Ukraine in connection with the bringing-in (importation) or sale (alienation) of goods.

In the event that neither the valuated goods nor the identical or similar (analogous) goods are sold in Ukraine at the same time or at the time maximally approximated to the date of importation of the goods being valuated into Ukraine, the customs value of such goods shall be determined on the basis of the price for a unit of goods, at which respectively the valuated goods or goods identical or similar (analogous) to the goods being valuated are sold in Ukraine in quantities sufficient for determining the price of one unit of such goods and in the same condition, in which they had been imported, on the date that is closest to the date following the importation of the goods being valuated, but prior to the lapse of 90 days following their importation.

If there are no sales of the valuated goods, identical or similar (analogous) goods in the same condition, in which they were at the time they were imported into Ukraine, at a request of the declarant the customs value of such goods shall be determined on the basis of the price for a unit of goods, at which the said goods were sold in Ukraine upon

Customs value determined pursuant to this Article herein must be based as much as possible on the customs value earlier determined pursuant to methods 1 – 6, however, there shall be permitted flexibility in applying these methods of customs valuation pursuant to this Article herein.

The customs value of imported goods shall not be determined pursuant to this Article on the basis of:

- 1) the price of goods of Ukrainian origin in the domestic market of Ukraine;
- 2) the system that contemplates accepting a higher value of the two alternative values for customs purposes;
- 3) the price of goods in the domestic market of an exporting country;
- 4) the cost of manufacturing, other than the computed value as determined for the selling of identical or similar (analogous) goods pursuant to Article 272 of this Code;
- 5) the price of goods that are supplied from an exporting country to third countries;
- 6) minimum customs value;
- 7) arbitrary or fictitious value.

If this Article is applied by a customs authority, at a request of the declarant the customs authority shall be obligated to inform the declarant in writing about the customs value determined pursuant to this Article, and about the method used therefor”;

4) To restate Article 274 as follows:

“Article 274. Customs Valuation of Goods brought out (exported) from Ukraine

The customs value of goods that are brought out (exported) from Ukraine on the basis of sale-purchase contracts or barter contracts shall be determined on the basis of the price that has been in fact paid or is to be paid for such goods on the date of exit thereof through Ukraine’s customs border.

In determining the customs value of goods that are brought out (exported), the following actual expenses shall be included into the price indicated in a contract, if such expenses have not been included into such a price earlier:

- 1) expenses incurred as a result of transportation of goods to an airport, a sea port or another point of exportation of goods from the customs territory of Ukraine: transportation costs, costs of loading, unloading, re-loading of goods;
- 2) insurance costs;
- 3) expenses made by the seller:
 - commission and brokerage fees;
 - the cost of containers or other reusable packages, if they are regarded as a single whole with the goods being valued pursuant to the Ukrainian classification of goods in foreign economic activities;
 - the cost of packaging, including the cost of packaging materials and packaging work;
- 4) royalties, licensing and other payments for the use of intellectual property rights, which must be paid by the buyer directly or indirectly as a condition of sale (export) of the goods being valued;
- 5) a portion of proceeds from any subsequent re-sale of the goods, which portion is received by the seller directly or indirectly;
- 6) taxes that are levied within the customs territory of Ukraine, if under tax law they are to be compensated to the seller in connection with exportation of the goods from Ukraine’s customs territory.

The customs value of goods, which are brought out (exported) from Ukraine on the basis of contracts other than sale-purchase contracts or barter contracts, shall be determined on the basis of the price confirmed by commercial, transportation, banking, accounting and other documents containing information on the value of the goods being valued, taking into account the expenses of transportation and insurance of goods to the point of exit thereof of Ukraine’s customs territory.

For purposes of determining a base of indirect taxation, as well as if it is impossible to determine customs value and there are no data confirming the declared customs value of goods being brought out (exported), the value of such goods shall be calculated pursuant to the methods and procedures set forth in Articles 266 – 273 of this Code.

In the event that price restrictions are set at the time of bringing-out (exportation) of certain goods out of Ukraine (indicative prices, maximum price levels, prices set as a result of anti-dumping investigations etc.), the customs value of such goods shall be determined subject to the provisions setting forth procedures for applying the said restrictions”;

5) To restate Clause 6 in Article 278 as follows:

“6) products of sea fishing obtained and (or) produced in the world ocean by vessels of this country;

6) To restate Article 279 as follows:

“Article 279. Criterion of Sufficient Processing of Goods

In the event that two or more countries are involved in the manufacturing of goods, the origin of the goods shall be determined by the sufficient processing criterion, specifically: the country, in which the goods have been fully manufactured or the final stages of processing thereof have b

