

Methodological recommendations

for using certain provisions of the Customs Code of Ukraine relating to the determination of the customs value of goods brought into the customs territory of Ukraine

1. General provisions

1.1. These Methodological Recommendations have been developed pursuant to the provisions of Section XI of the Customs Code of Ukraine of 11.07.02 No. 92-which is based on the main provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 and the Explanatory Notes that are an inalienable part of the said Agreement.

1.2. The customs value of goods brought into the customs territory of Ukraine shall be determined in accordance with the requirements of Sections 46 and 47 of the Customs Code of Ukraine.

1.3. Articles 266 to 273 shall stipulate the manner in which the customs value of goods brought into the customs territory of Ukraine shall be determined. The methods for determining of the customs value of goods brought into the customs territory of Ukraine are listed in a consistent manner as regards their application. The main method for determining of the customs value of goods brought into the customs territory of Ukraine is contained in Article 267 stipulating that the goods brought into the customs territory of Ukraine must be valued in accordance with the provisions of the said Article if the conditions stipulated therein are met.

1.4. If the customs value cannot be determined in accordance with the provisions of Article 267 based on the price indicated in the contract under which the goods are imported, it shall be determined by sequentially applying Articles until the first Article is applied pursuant to which the customs value can be determined. Only if the customs value cannot be determined in accordance with the provisions of a specific Article, the provisions of the following Customs Code Article may be

1.6. If the customs value cannot be determined in accordance with the provisions of Articles 267 to 272, it shall be determined in accordance with the provisions of Article 273 using the backup method.

1.7. „The moment of crossing the customs border of Ukraine” shall mean the moment of bringing goods into the territory for customs purposes.

1.8. In accordance with Article 264, the declarant shall be entitled to challenge decisions concerning the determination of the customs value of goods approved by the customs body. Initially, a complaint may be lodged with a higher-ranking customs body, but the declarant shall be entitled to ultimately challenge such decision in court.

1.9. The declarant shall not be subject to a penalty or threatened with a penalty only because he decided to avail itself of the right to challenge the decision. Payment of ordinary legal costs shall not be considered a fine.

1.10. However, the provisions of the Customs Code of Ukraine based on the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 do not prevent the customs body from making full payment of fees and duties (obligatory payments) before challenging the decision of the customs body.

2. Application of the Generally Accepted Accounting Principles

2.1. To control the correctness of determining the customs value, information shall be used that has been prepared in a manner compatible with the Generally Accepted Accounting Principles adopted in a relevant country that are pertinent to a certain method of determining the customs value.

2.2. The term “generally accepted accounting principles” refers to a recognized consensus or significant official support in a country during a certain period of time pursuant to which economic resources must be accounted for as assets and liabilities, what changes in assets and liabilities must be accounted for, in what manner assets and liabilities and changes thereto must be measured, what information in what manner must be disclosed and how financial statements must be prepared. These standards may be both broad benchmarks of general application and detailed practical methods and procedures.

2.3. For example, ordinary profits and general costs in accordance with the provisions of Article 271 will be determined using information prepared in a manner compatible with the generally accepted accounting principles of Ukraine. On the other hand, ordinary profits and general costs in accordance with the provisions of Article 272 will be determined using information prepared in a manner compatible with the generally accepted accounting principles of the country of their manufacture. As another example, the costs specified in

subparagraph b) of paragraph 3) of Article 267, added in the country of import, will be determined using information prepared in a manner compatible with the generally accepted accounting principles in Ukraine.

3. Explanations to Article 267

3.1. A price actually paid or payable for goods imported to Ukraine for a specific purpose is a general payment that is made or to be made by the purchaser to the seller of imported goods or for his benefit. Such payment must not necessarily take the form of a money transfer. Payment may be made by the use of credit or negotiable instruments. Payment may be made directly or indirectly. As an example of an indirect payment, the purchaser may, in full or in part, settle seller's debentures.

3.2. An activity undertaken by the purchaser using shown funds, except the activity in respect of which adjustments are stipulated by Article 267, shall not be considered indirect payment to the seller, even though it may be considered profitable for the seller. The value of such activity shall not be added to the price actually paid or payable on determination of the customs value.

3.3. The customs value shall not include the costs or funds listed below provided they are separate from the price actually paid or payable for the imported goods:

- a) payment for the construction, erection, assembly, technical maintenance or technical assistance performed after bringing the imported goods into the territory of Ukraine, such as industrial installation of machines or equipment;
- b) transport costs after bringing the goods into the territory of Ukraine;
- c) customs duty and taxes payable in Ukraine.

3.4. The term "price actually paid or payable" refers to the price of imported goods. The flow of dividends or other payments from the purchaser to the seller that does not concern the imported goods shall not be part of the customs value of these goods.

3.5. The restrictions that do not make the price actually paid or payable unacceptable include restrictions that do not have a materi

- b) where the price of imported goods depends on the price or prices at which the purchaser of imported goods sells other goods to the seller of these goods;
- c) where the price is established based on the form of payment that does not concern the imported goods, for example, if imported goods are semi-finished goods provided by the seller on condition that the seller receives a specified quantity of finished products.

3.7. However, conditions or considerations concerning the manufacture or sale of imported goods must not result in an unacceptability of the value of the transaction. For example, the purchaser's providing the seller with equipment and plans made in the country of import must not result in an unacceptability of the value of the transaction for the purposes of Article 267. Similarly, where the purchaser undertakes a certain activity relating to the sale of imported goods at its own cost, even if such activity has been the subject of an agreement with the seller, the value of such activity shall be part of the customs value and such activity must not result in an unacceptability of the value of the transaction.

3.8. Article 267 stipulates different means of establishing the acceptability of the value of the transaction.

3.8.1. Paragraph 7) of part three of Article 267 stipulates that where the purchaser and the seller are interdependent, that is, are related persons, the circumstances of sale must be studied and the value of the transaction shall be accepted as the customs value provided such relations had no impact on the price. It is not stipulated that circumstances must be studied in all cases where the seller and the purchaser are related to each other. Such inquiry would be needed only where there are reasonable doubts regarding the acceptability of the price. If the customs body does not have any doubts regarding the acceptability of the price, it must be accepted without requesting further information from the declarant. For example, the customs body had studied the relations before or after as detailed information on the purchaser and the seller and may be convinced as a result of studying this information that these relations had no impact on the price of the goods brought into the customs territory of Ukraine.

3.8.2. If the customs body considers the value of the transaction unacceptable, it shall provide the declarant with an opportunity to submit such additional detailed information as may be required to study the circumstances of the sale. In this connection, the customs body must be prepared to study the relevant aspects of the transaction including the manner, in which the seller and the purchaser organize their trade relations, and the manner used to determine the price in question, to establish whether or not these relations had an impact on the price. If it can be shown that the purchaser and the seller, even though they are interdependent in accordance with the provisions of paragraph 5) part three of Article 267, carry out the purchase and sale of each other, as if they were not interdependent, it would be a confirmation that such relations had no impact on the price. For example, if the price has been established in a manner compatible with the usual pricing practices in the industry in question or in a manner used by the seller to establish prices to purchasers that are not interdependent with the seller, it would be a confirmation that such relations had no impact on the price. Another example: if it has been proved that the price is acceptable for the purposes of covering all costs plus profit, which represents the overall profit of the firm generated over a representative period of time (for example, one year) to sell the goods of the

same class or type, it would be a confirmation that the mutual dependence had no impact on the price.

3.8.3. In accordance with the provisions of paragraph 7) of part three of Article 267, the declarant is provided with opportunity to prove that the value of the transaction is approximated as much as possible to the "benchmark" value that had earlier been accepted by the customs body and, therefore, is acceptable in accordance with the provisions of Article 267. If the inspection results show that the value of the transaction is appropriate, there is no need to study the impact of the mutual dependence on the price in accordance with the provisions of paragraph 5) of part three of Article 267. If the customs body already has sufficient information to ascertain itself without requesting further detailed information that one of the comparisons stipulated in paragraph 7) of part three of Article 267 has been made, there are no reasons to request the declarant to show such comparisons. In paragraph 5) of part three of Article 267, the term "parties to a transaction that are not interdependent persons" means purchasers that are not related to the seller in any specific instance.

3.9. A number of factors shall be taken into consideration in determining that any value is "approximated as much as possible" to another value. These factors include the nature of imported goods, the nature of the industry, and the season during which the goods are imported and whether or not the difference between values is commercially significant. Since these factors may differ in each specific case, it would be impossible in each case to apply a uniform standard like a fixed percentage. For example, a small difference in values in each

these elements must be made in a rational manner in accordance with the circumstances and pursuant to the generally acceptable accounting principles.

3.13.1. As to the value of the element, where the purchaser acquires this element from the seller unrelated to the purchaser for a certain price, the value of this element is this price. If the element has been manufactured by the purchaser or by purchaser-related person, its value shall be its production costs. If the purchaser had used the element previously irrespective of whether or not it was purchased or manufactured by such purchaser, to determine the value of the element, the original value of the purchase or manufacture must be adjusted by way of reduction to take account of its use.

3.13.2. If the value of the element has been determined, this value must be distributed to the imported goods. To do this, various possibilities exist. For example, this value may be distributed to the first shipment, if the purch

3.14.4. In another case, the firm may incur costs to support the design center outside Ukraine in the form of general overheads distributed to specific goods. In this case, a relevant adjustment may be performed in accordance with the provisions of Article 267 regarding the imported goods by distributing the costs of the design center to the entire production benefiting from the design center and adding such distributed value to the imports for each unit.

3.14.5. Variations of the above circumstances should certainly require taking into consideration different facts in determining the proper method of distribution.

3.14.6. In cases where the manufacture of said element includes a number of countries and a certain period of time, this adjustment must be limited to a value actually added to this element outside Ukraine.

valuated goods. If no such goods have been identified, the sale of identical goods may be used that is occurring under any of the following three conditions:

- a) the sale on the same commercial level but in different quantities;
- b) the sale on a different commercial level in approximately the same quantities;
- c) the sale on a different commercial level and in different quantities.

4.2. After identifying a sale under any one of these three conditions, adjustments are made depending on the circumstances:

- a) for quantitative factors only;
- b) for commercial level factors only; or
- c) for both commercial level and quantitative factors.

4.3. The expression "and / or" provides flexibility in using the sale and permits making necessary corrections to any of the three conditions described above.

4.4. For the purposes of Article 268, the value of the transaction with identical imported goods shall mean the customs value that already been accepted in accordance with Article 267 and adjusted in accordance with part three of Article 267.

4.5. An adjustment for different commercial levels or different quantities, whether it results in an increase or decrease in value, shall be performed only if it is demonstrated

are incompatible with the figures obtained in connection with sales in Ukraine of imported goods of the same class or type. If importer's data are incompatible with these figures, the amount of profit and general costs may be based on relevant information other than that provided by the importer or on its behalf.

6.7. "General costs" shall include direct and indirect costs related to the sale of the said goods.

6.8. Local taxes payable on sale of goods, for which no withholding is made in accordance with the provisions of paragraph 2) of part three of Article 271, shall be withheld in accordance with the provisions of paragraph 1) of part three of Article 271.

6.9. In determining commissions or ordinary profits and general costs in accordance with the provisions of parts one and two of Article 271, the issue of whether or not certain goods belong to "the same class or type" as other goods must be determined on a case-by-case basis with reference to relevant circumstances. Sales in Ukraine of the narrowest group or range of imported goods of same class or type must be determined including the valuated goods, for which relevant information may be provided. For the purposes of Article 271, "goods of the same class or type" include goods imported from the same country as the valuated goods as well as goods imported from other countries.

6.10. For the purposes of part two of Article 271, "the earliest date" is a date before which sales of imported goods or identical or similar imported goods had been made in sufficient quantities to establish a unit price.

6.11. If the method is used specified in part four of Article 271, withholdings that are made for the value added in further processing based on objective and measurable data relating to the value of such work. Accepted industrial formulas, recipes, construction methods and other industry practices must be the basis for calculations.

6.12. It is recognized that the valuation method laid down in part four of Article 271 would normally not be applied if, as a result of further processing, imported goods lose their identity. However, cases are possible where, even though imported goods lose their identity, the value added by processing may be easily identified without unjustified complexities. On the other hand, there may be cases where imported goods preserve their identity but constitute so marginal a percentage of goods sold in the importing country that the use of this valuation method would be unjustified. Given the above, each such situation must be considered on a case-by-case basis.

7. Explanations to Article 272

7.1. As a general rule, the customs value is determined in accordance with this Agreement based on information available in Ukraine. However, to determine the calculated value in accordance with the added value method, it may be necessary to consider production costs of the valuated goods and other information that should be obtained from outside the importing country. Moreover, in most cases the manufacturer of goods would be located

outside the jurisdiction of Ukrainian authorities. The use of the customs value determination method in accordance with Article 272 of the Customs Code would normally be restricted to cases where the purchaser and the seller are related to each other and

