

D e c i s i o n

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On Amendment to the Rules of Application of Methods on Determination of Customs Value of Goods According to the Transaction Value of Imported Goods (Method 1) and the Termination of the Recommendation of the Collegium of the Eurasian Economic Commission No.1 of 20 June 2012

In accordance with paragraph 3 of Article 1 of the Agreement “On the Determination of Customs Value of Goods, Transferred across the Customs Border of the Customs Union” of 25 January 2008, the Collegium of the Eurasian Economic Commission has decided:

1. To amend the Rules of Application of Methods on Determination of Customs Value of Goods According to the Transaction Value of Imported Goods (Method 1) (attached).
2. To establish that the Recommendation of the Collegium of the Eurasian Economic Commission No.1 of 20 June 2012 “On the Rules of Determination of the Influence of the Relationship between the Seller and the Buyer on the Transaction Value” is no longer in force.
3. The said Decision shall enter into force upon 30 calendar days after its official publication.

Chairman Khristenko V.B.

AMENDMENTS
to the Rules of Application of Methods on Determination of Customs Value of Goods
According to the Transaction Value of Imported Goods (Method 1)

1. Subparagraph "d" of paragraph 8, shall be supplemented by the following paragraph:

“The term “person” includes both juridical and natural persons.

Determination of the influence of the relationship between the seller and the buyer on the price actually paid or payable for the imported goods shall be carried out in accordance with Section IV of these Rules.”.

2. Add section IV as follows:

«IV. Determination of the influence of the relationship between the seller and the buyer on the price actually paid or payable for the imported goods.

13. Information about the relationship between the seller and the buyer, as well as its influence on the price actually paid or payable, shall be declared by the declarant (customs representative) in the declaration of customs value in accordance with the Order of declaration of customs value of goods, approved by the Decision of the Commission of the Custom Union No. 376 “On Orders of Declarations, Control and Adjustment of the Customs Value of Goods” of 20 September 2010. The fact that the buyer and the seller are related shall not in itself be grounds for regarding the transaction value as unacceptable for the purposes of determination of the customs value of goods. In order to confirm the absence of the influence of the relationship between the seller and the buyer on the price actually paid or payable, the declarant (customs representative) may submit in the declaration process the documents and information, which reflect the circumstances surrounding the sale in accordance with paragraph 4.1 of Article 4 of the Agreement, or documents and information demonstrating that the transaction value of imported goods closely approximates to one of the test values specified in paragraph 4.2 of Article 4 of the Agreement.

14. If in the process of control of the customs value of the imported goods, the customs body has not found signs of influence of the relationship between the seller and the buyer on the price actually paid or payable, i.e. the grounds for regarding the transaction value as unacceptable for the purposes of determining the customs value of goods, the customs value of imported goods declared by the declarant (customs representative) shall be accepted without additional examination stipulated in Article 69 of the Customs Code of the Customs Union (hereinafter: the Code) provided that there are no other signs of unreliability of information stated on the customs value of the goods, established in the Order of control of the custom value of goods, approved by the Decision of the Commission of the Custom Union No. 376 “On Orders of Declarations, Control and Adjustment of the Customs Value of Goods” of 20 September 2010 (hereinafter: the Order of Control). In particular, if the customs body has either reliable pricing information, or information about the customs value of identical or similar goods under comparable conditions of import of goods or information that previously examined pricing mechanism of imported goods has been proven of no influence on relationship between the seller and the buyer on the price of these goods, on the basis of such information, the customs body may conclude that the relationship between the seller and the buyer did not influence the price actually paid or payable.

15. If in the process of control of the customs value of the goods prior to release of goods in the terms, established by Article 196 of the Code, the customs body has found signs of the influence of the relationship between the seller and the buyer on the price actually paid or payable, the customs body shall take a decision on the additional examination in accordance with the Order of Control taking into account the provisions of paragraphs 17 - 25 of these Rules.

Also, if documents and information which reflect the circumstances surrounding the sale submitted by the declarant (customs representative) do not eliminate found signs of the influence of the relationship between the seller and the buyer on the price actually paid or payable for the imported goods, the declarant (customs representative) has the right to submit documents and information confirming that the transaction value of imported goods closely approximates to one of the test values.

If the declarant (customs representative) proves that the value of the transaction closely approximates to one of the test value, the customs bodies shall not require from the declarant (customs representative) to provide the documents and information, which reflect the circumstances surrounding the sale, in order to prove the absence of the influence of the relationship between the seller and the buyer on the price actually paid or payable for the imported goods. Conversely, if submitted by the declarant (customs representative) documents and information reflecting the circumstances surrounding the sale confirm the absence of the influence of the relationship between the seller and the buyer on the price actually paid or payable for the imported goods, the customs body shall not require from the declarant (the customs representative) an evidence that the transaction value closely approximates to one of the test values.

16. If the declarant (customs representative) has not submitted either documents and information confirming that the transaction value closely approximates to one of the test values, or the documents and information that reflect the circumstances surrounding the sale, including the additional information requested by the customs body, or any explanation of the reason why the requested documents and information cannot be provided, or submitted documents and information do not eliminate the found signs of the influence of the relationship between the seller and the buyer on the price actually paid or payable for the imported goods, the customs body shall make a decision on adjustment of the declared customs value of goods in accordance with paragraph 4 of Article 69 of the Code.

Proof of the absence of the influence of relationship between the seller and the buyer on the price actually paid or payable for the imported goods on the basis of examination of the circumstances surrounding the sale

17. In order to determine the influence of the relationship between the seller and the buyer on the price actually paid or payable for the imported goods, customs body shall examine and analyse the circumstances surrounding the sale, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at.

18. To confirm the absence of influence of the relationship between the seller and the buyer on the price actually paid or payable, the declarant (customs representative) shall provide the documents and information demonstrating, for example, that:

a) the considered price had been settled in a manner consistent with the normal pricing practices of the industry in question;

b) the considered price had been settled with the way the seller settles prices for sales to buyers who are not related to the seller;

c) the considered price is adequate to ensure recovery of all costs plus a profit which is representative of the seller's overall profit realized over a representative period of time (for instance, on an annual basis) in sales of goods of the same class or kind.

19. If in the result of the analysis the customs body has found that the buyer and the seller, being related parties, buy from and sell to each other on the same conditions, including the comparable prices (i.e. prices at the same level) as if they were not related persons, this fact is evidence that the relationship between the seller and the buyer did not influence the price actually paid or payable. In this case, the transaction value shall be acceptable for the purposes of determining the customs value of goods.

Proof of the absence of the influence of relationship between the seller and the buyer on the price actually paid or payable for the imported goods with the use of the test values

20. In order to prove the absence of the influence of relationship between the seller and the buyer on the price actually paid or payable for the imported goods, the declarant (customs representative) shall provide the documents and information demonstrating that the transaction value of imported goods closely approximates to one of the following test values occurring at or about the same time in which the imported goods crossed the customs border of the Customs Union:

a) the transaction value in sales to unrelated buyers of identical or similar goods for export to the customs territory of the Customs Union. In this subsection the term “related persons” is used according to the definition established in paragraph 1 of Article 3 of the Agreement;

b) the customs value of identical or similar goods as determined under Article 8 of the Agreement;

c) the customs value of identical or similar goods as determined under Article 9 of the Agreement.

21. Paragraph 20 of the Rules provides the opportunity for the declarant (customs representative) to demonstrate that the transaction value closely approximates to the test values, previously accepted by the customs body and therefore is acceptable for the determination of the customs value of the goods according to the Method 1.

If the customs body has already sufficient information that one of the test values closely approximates to the value of the transaction, it shall not request from the declarant (customs representative) additional information demonstrating that the transaction value closely approximates to this test value.

22. When using the test values to proof the absence of the influence of relationship between the seller and the buyer on the price actually paid or payable for the imported goods, it should be kept in mind that between compared values some differences are allowed. Thus, in determining whether the transaction value of the imported goods closely approximates to the test value, it should be noted that for one type of goods a small (insignificant) difference in the price might be unacceptable, whereas for the other type of goods a large (significant) difference in the price might be acceptable, i.e. in determining the degree of closeness of the transaction value of the imported goods to the test value it shall be assessed in particular, whether the difference in the price of goods is significant in commercial relations.

23. Since it is not possible to establish a uniform standard to all cases of determining the degree of closeness of the transaction value of the imported goods to the test value, it is necessary to take into account the influence of different factors in each case, including:

a) the nature of the goods.

The goods the price of which depends on the value of other goods (for example, the price of jewelry depends on the price of precious metals and precious stones made of them), the price difference might be substantial.

For certain types of goods small differences in specifications might substantially influence their price.

Example 1: Two computers can perform the same functions, but one of them has a capacity 512 MB of RAM, and the other 2 GB, as a result their price will be significantly different.

It should be noted that some goods have a quickly updated product range, but at the same time, they can be on the market for a long time. Thus, the longer these products are on the market, the lower the price. These products include mobile phones, computers, laptops, computer or video games, etc.;

b) the season in which the goods are imported, and the time of sale of goods.

Example 2: Vegetables, fruits, and flowers are sold at prices lower in the season than in other periods, and the price is more expensive in the pre-holiday period.

In the case of clothing and sports equipment situation is reversed. Thus, the prices of winter clothes and sports equipment (for example, skis, skates) at the beginning of winter i.e. in the season are higher than the prices for the same products in the summer.

The time of sale of goods can also influence the price. This refers to some goods sold in the market or auction (such as perishable goods), because the price of such goods in the morning can be higher than the price of the same goods in the evening, due to the change in status of goods;

c) the conditions of implementation of sale and purchase transaction.

In the analysis of the conditions of implementation of sale and purchase transaction it is necessary to examine any differences:

in the commercial level of sales. When taking into account information about the differences in the commercial level of sales, it is necessary to take into account the position occupied by the buyer in the sale of goods, in particular whether the buyer assumes the subsequent wholesale distribution of goods, the subsequent retail sale of goods or use of the goods for their own use. Moreover, it is necessary to take into consideration the position occupied by the seller on the market of these goods, i.e., whether the goods were sold directly by the manufacturer, wholesaler, authorized dealer and so on;

in the amount of goods. The unit price might be set according the amount of goods purchased by the buyer;

the costs usually incurred by the seller in sales if the seller and the buyer are not related persons, compared with the costs that is not incurred by the seller in sales if the seller and the buyer are related persons;

in terms of payment, i.e. whether the buyer pays for goods in advance (makes an advance payment before receipt of the goods) or to pay for goods after receiving (i.e., there is a subsequent payment);

in discounts made by the seller to the buyer due to their long-term relationships;

d) additional charges referred to in Article 5 of the Agreement. For example, the differences in the costs for containers and packing: estimated goods are imported into the customs territory of the Customs Union in rented (returnable) containers, and the goods used for the comparison are in the purchased container; therefore, the transaction value in the sale of the mentioned goods might be different.

24. Declarant (customs representative) if necessary, may submit the documents demonstrating the amount of difference between the transaction value and the test value, due to differences in factors, influence of which is taken into account in determining the degree of closeness of the transaction value of the imported goods to the test value.

25. If the declarant (customs representative) demonstrate that the transaction value closely approximates to one of the test value, the transaction value shall be accepted as acceptable for the purposes of determining the customs value of goods and the customs value of goods shall be determined by the Method 1.

In accordance with paragraph 6 of Article 4 of the Agreement the test values shall be used by the initiative of the declarant (customs representative) for the purpose of comparison only and cannot be used as a basis for determining the customs value of the goods.”.