

D e c i s i o n

13 November 2012

No. 214

Moscow

On Rules of Application of Methods on Determination of Customs Value of Goods According to the Deductive Value Method (Method 4)

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 approve the Rules on application of methods on determination of customs value of goods according to the deductive value method (Method 4) (attached).

2. The said Decision shall enter into force upon 30 calendar days after official publication.

Chairman

Khristenko V.B.

RULES

On Application of Methods on Determination of Customs Value of Goods According to the Deductive Value Method (Method 4)

1. These Rules shall be used in the application of the deductive value method (Method 4), established by Article 8 of the Agreement “On the Determination of Customs Value of Goods, Transferred Across the Customs Border of the Customs Union” of 25 January 2008 (hereinafter: the Agreement).

2. These rules are based on the provisions of the Agreement, the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, including Interpretative Notes thereto, as well as the materials of the Technical Committee on Customs Valuation of the World Customs Organization in order to ensure uniform application of the methods on determination of customs value of goods according to the Method 4.

3. The Method 4 shall be used, if the customs value of goods imported into the common customs territory of the Customs Union (hereinafter: the customs territory of the Customs Union) cannot be determined in accordance with Articles 4, 6 and 7 of the Agreement.

The customs value of evaluated (imported) goods shall be determined according to the Method 4, when evaluated (imported) or identical or similar goods are sold in the customs territory of the Customs Union in the same condition as imported into the territory. In the absence of such sales, at the request of the declarant (customs representative), sale of processed evaluated (imported) goods may be considered under paragraph 4 of Article 8 of the Agreement, except as provided by paragraph 5 of Article 8 of the Agreement.

4. For the purposes of determining the customs value of goods according to the Method 4, goods can be considered as being in the same condition as imported into the customs territory of the Customs Union, including in cases where they have undergone the following transformations:

shrinkage;

outage;

natural evaporation (for liquid);

small amount of rust;

receiving minor damage which does not affect the product characteristics influencing their value.

Goods are also considered to be in the same condition as imported into the customs territory of the Customs Union, if operations have been made in respect of them to remove the packing materials and (or) the conserving agent prior to the sale in the domestic market of the Customs Union.

5. Unit price at which the greatest aggregate quantity of evaluated (imported) or identical or similar goods is sold to persons who are not related to the persons involved in such sale in the customs territory of the Customs Union at or about the time when evaluated (imported) goods crossing the customs border of the Customs Union (paragraph 2 of Article 8 of the Agreement) shall be used as a basis for determining the customs value of evaluated (imported) goods.

The term "related persons" is used in the meaning defined by paragraph 1 of Article 3 of the Agreement.

6. In addressing the question what goods sales (evaluated (imported) or identical or similar goods) should be considered for determining the unit price, the following should be considered.

In case of availability of information on sales of evaluated (imported) goods in the customs territory of the Customs Union acceptable for the purposes of determining the customs value at the date of determining the customs value of goods, the appropriate information on the unit price and the quantities shall be used in relation to evaluated (imported) goods subject to deductions in accordance with paragraph 2 of Article 8 of the Agreement. In this case sales of identical or similar goods should not be considered.

If there is no information on sales of evaluated (imported) goods in the customs territory of the Customs Union at the date of determining the customs value of goods, but there is information on sales of identical or similar goods, the appropriate information about these sales shall be used. In this case the future sales of evaluated (imported) goods should not be considered.

Thus, unit price at which evaluated (imported) goods are sold, or the unit price at which previously imported identical or similar to those being evaluated (imported) goods are sold, shall be used as the basis for determining the customs value of evaluated (imported) goods.

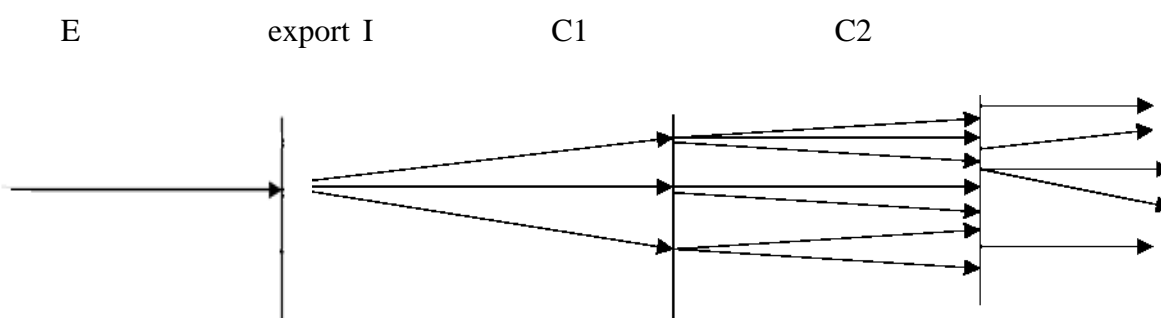
As a rule, the customs value of evaluated (imported) goods shall be determined by the declarant (customs representative) based on the unit price at which the estimated (imported) goods are sold in the customs territory of the Customs Union, or based on the unit price at which the declarant has previously sold imported identical or similar to those being evaluated (imported) goods, i.e. documents containing information on the previous supply of the declarant shall be used.

In most cases, sales documents in the customs territory of the Customs Union of previously imported identical or similar to those being evaluated (imported) goods by other economic entities are not available for the declarant. However, if the declarant has such documents and the information contained in them meets the requirements of paragraph 3 of Article 2 of the Agreement, the customs value of evaluated (imported) goods can be determined according to the Method 4, in case of meeting the requirements provided by Article 8 of the Agreement.

7. When considering the sales that meet the conditions specified in paragraph 6 of the Rules, for the purposes of determining the customs value of the goods according to the Method 4, sales of goods in the customs territory of the Customs Union to the first commercial sales level customers should be considered after the importation of goods into the customs territory of the Customs Union.

8. The first commercial sales level customers in the customs territory of the Customs Union are buyers who purchase goods from the seller, which is an importer of these goods (Scheme 1).

Scheme 1



sales in the customs territory of the Customs Union

where:

E - the seller (exporter) of goods;

I - the buyer (importer) of goods which is the seller of the goods in the customs territory of the Customs Union;

C1 - customers who purchase goods in the customs territory of the Customs Union directly from I, i.e. the first commercial sales level customers;

C2 - customers who purchase goods in the customs territory of the Customs Union from C1, i.e. at the next commercial sales level.

In this case, C1 and I must not be related persons.

9. For the purposes of determining the unit price of goods sold in the customs territory of the Customs Union, sales to person who, in connection with the manufacture and supply for export to the customs territory of the Customs Union of evaluated (imported) goods, directly or indirectly, free or at a reduced price provides for use the following goods and services referred to in subparagraph 2 of paragraph 1 of Article 5 of the Agreement shall not be considered:

a) raw materials, materials, components, parts and similar items incorporated in the evaluated (imported) goods;

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

c) materials consumed in the production of the evaluated (imported) goods;

d) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the customs territory of the Customs Union and necessary for the production of the evaluated (imported) goods.

10. The calculation of the unit price at which the evaluated (imported) or identical or similar goods are sold in the greatest aggregate quantity is carried out as follows.

For the purposes of determining the greatest aggregate quantity of items, sales of evaluated (imported) or identical or similar goods to the first commercial sales level customers in the customs territory of the Customs Union are selected and the total amount of goods sold for the same price per unit is calculated.

If the same amount of goods were sold at different prices per unit, the lowest price per unit shall be taken as the basis for determining the customs value.

Example. 1000 units were sold at the price of 75 currency units and other 1000 units - at the price of 70 currency units from the batch of 2000 units. For the purposes of determining the customs value of evaluated (imported) goods, the price of 70 currency units shall be taken.

11. A specific option of determining the greatest aggregate quantity of units depends on the price determination scheme for the product used by the seller and the sales organization.

In particular, the following options of calculating the unit price based on the greatest aggregate quantity of units sold at the same price can be used.

Example 1. In the customs territory of the Customs Union goods are sold from catalog (price list, price schedule) which grants favorable unit prices for purchases made in larger quantities.

<i>Sale quantity</i>	<i>Unit price (currency units)</i>	<i>Number of sales</i>	<i>Total quantity sold at each price</i>
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<i>1 - 10</i>	<i>100</i>	<i>10 sales of 5 units, 5 sales of 3 units</i>	<i>65</i>
<i>11 - 25</i>	<i>95</i>	<i>5 sales of 11 units</i>	<i>55</i>
<i>over 25 units</i>	<i>90</i>	<i>1 sale of 30 units, 1 sale of 50 units</i>	<i>80</i>

The greatest number of units sold at a price is 80 (30 units + 50 units). Thus, the unit price in the greatest aggregate quantity is 90 currency units.

Example 2. There is information on two sales - in the first sale, 500 units are sold at a price of 95 currency units each, in the second - 400 units are sold at a price of 90 currency units. The greatest number of units sold at a particular price is 500. Thus, the unit price in the greatest aggregate quantity is 95 currency units.

Example 3. Various quantities are sold at various prices.

<i>Sale quantity</i>	<i>Unit price (currency units)</i>
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<i>40</i>	<i>100</i>
<i>50</i>	<i>90</i>
<i>15</i>	<i>100</i>
<i>30</i>	<i>95</i>
<i>25</i>	<i>105</i>
<i>35</i>	<i>95</i>
<i>5</i>	<i>100</i>

The total quantity of units sold at the same price is determined as follows:

<i>Total quantity of units sold at the same price</i>	<i>Unit price (currency units)</i>
<i>50</i>	<i>90</i>
<i>65 (30+35)</i>	<i>95</i>
<i>60 (40+15+5)</i>	<i>100</i>
<i>25</i>	<i>105</i>

In this example, the greatest number of units sold at a particular price is 65 units. Thus, the unit price in the greatest aggregate quantity is 95 currency units.

12. Sales of evaluated (imported) or identical or similar goods in sufficient quantity for determination of the unit price of the goods concerned must be taken into account in calculating the unit price.

The decision on the sufficiency of the number of sold units must be made on an individual basis for each individual case.

So, when evaluated (imported) goods are sold to a buyer, the sale can be considered as a sale in sufficient quantity to determine the unit price.

When sale of expensive goods (large equipment, turbines, etc.) as a sufficient quantity of sales may be recognized in an amount of 1 - 2 units, while for small spare parts that are usually sold in large quantities (for example, 10 000 units) unit sales of 100 - 200 units will be insufficient to determine the appropriate unit price.

13. When selecting appropriate sales to determine the unit price in the greatest aggregate quantity, the following should be considered:

- a) the sale of goods in the customs territory of the Customs Union to the first commercial sales level customers;
- b) the sale of goods to persons who are not related to the persons engaged in the sale in the customs territory of the Customs Union;
- c) sales to person specified in paragraph 9 of this Rules are not considered;
- d) the sale of goods in sufficient quantity to determine the unit price.

14. When selecting appropriate sales for the purposes of determining the customs value of goods according to the Method 4, the period of time during which such sales are taken place must be taken into account.

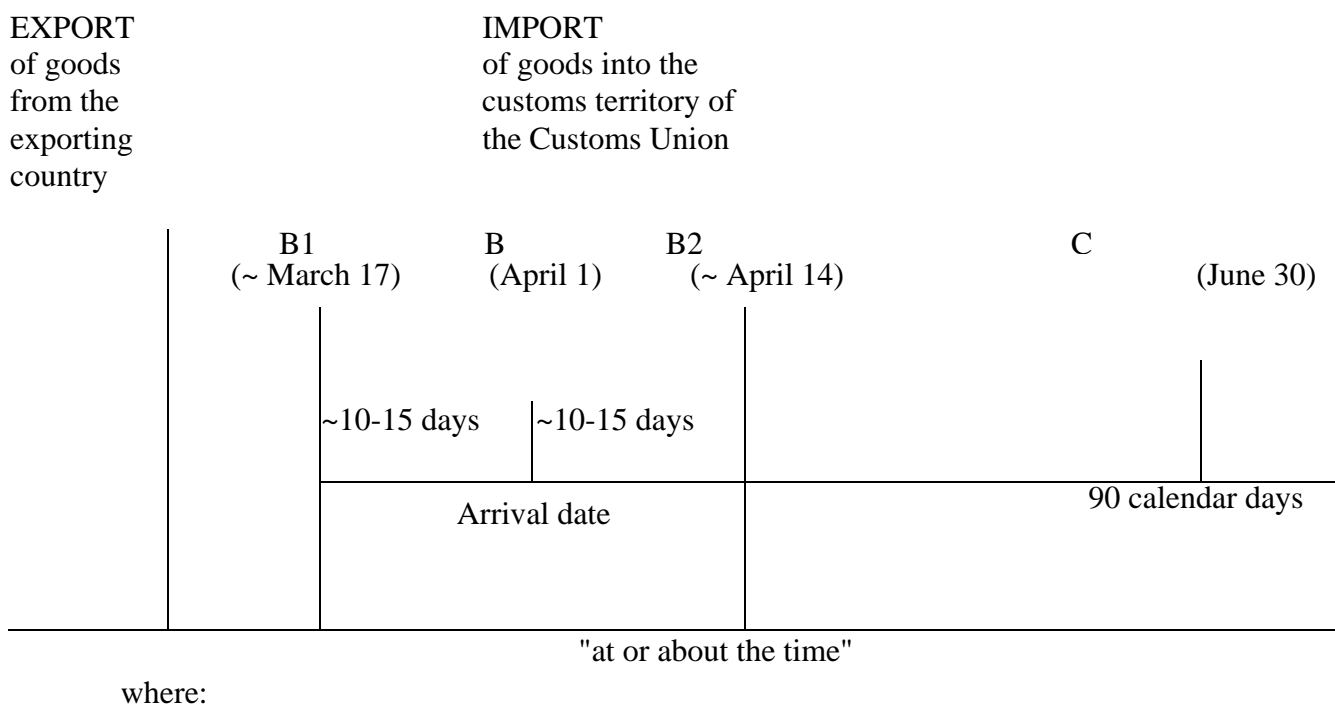
Paragraph 2 of Article 8 of the Agreement does not specify a precise period of time of sale of evaluated (imported) or identical or similar goods in the customs territory of the Customs Union, but defines it as "at or about the time", when evaluated (imported) goods crossed the customs border of the Customs Union.

For purposes of determining the customs value of evaluated (imported) goods according to the Method 4 as "at or about the time" a period that includes the date of arrival of evaluated (imported) goods into the customs territory of the Customs Union, a period of time before and after the arrival date of evaluated (imported) goods into the customs territory of the Customs Union should be considered.

So, as "at or about the time" can be considered the period that includes the date of arrival of evaluated (imported) goods into the customs territory of the Customs Union and, for example, 10 - 15 days before and 10 - 15 days after the arrival date of evaluated (imported) goods into the customs territory of the Customs Union.

If during "at or about the time" sales, acceptable for purposes of determining the customs value of goods according to the Method 4 were not identified, in accordance with paragraph 3 of Article 8 of the Agreement the sales of evaluated (imported) or identical or similar goods in the same condition as imported, at the earliest date in relation to the arrival date of evaluated (imported) goods into the customs territory of the Customs Union, but not later than 90 calendar days after that date (Scheme 2) shall be considered.

Scheme 2



B - arrival date of evaluated (imported) goods into the customs territory of the Customs Union;

B1 - B2 - "at or about the time" , which includes the arrival date of evaluated (imported) goods into the customs territory of the Customs Union and which is in this example 10 - 15 days before and 10 - 15 days after the arrival date of evaluated (imported) goods into the customs territory of the Customs Union;

C - 90th calendar day after the arrival date of evaluated (imported) goods into the customs territory of the Customs Union.

Thus, in determining the customs value of evaluated (imported) goods according to the Method 4 sales that took place in the period between B1 and B2 are firstly identified. If such sale is not found, in all other equal conditions sales that took place between B2 and C should be considered, with preference to sales made during the period of time that is closest to B2.

To ensure an objective selection of comparable transactions and proper comparison of prices it is advisable to consider the period of time when the market for such goods has been relatively stable. This is due to the fact that the price of some goods are not subject to significant fluctuations during the long period of time (machines, complex machines, turbines, etc.), the price of other changes monthly or often (fruits, vegetables, flowers, seasonal clothing, shoes, etc.).

Within the period of time set by Article 8 of the Agreement (90 calendar days) in the selection of suitable sales the circumstances of the transaction, the particularity of goods, a season of the import of goods, and other factors must be taken into account. In particular, the period of time for seasonal goods for the selection of suitable sales will be shorter than for the goods, the production and use of which are not related to a specific season (do not depend on time of year).

15. The following amounts shall be deducted from the estimated (selected) unit price as described in paragraph 2 of Article 8 of the Agreement:

a) the commissions to intermediaries (agents) usually paid or agreed to be paid, or additions to the price, usually made for profit and general expenses (commercial and administrative expenses) in the amount, usually taking place in connection with sales in the customs territory of the Customs Union of goods of the same class or kind, imported from the same country as evaluated (imported) goods, as well as from other countries;

b) the usual costs of transport and insurance and associated costs incurred within the customs territory of the Customs Union;

c) customs duties, taxes, fees, and other taxes payable in connection with the import and (or) sale of goods in the territory of the Member state of the Customs Union, including taxes and fees of the regions of that member state of the Customs Union and local taxes and fees in accordance with the legislation of the Member state of the Customs Union.

16. With regard to the deduction of amount of commissions to intermediary (agents) usually paid or agreed to be paid, or the amount of additions to price, usually made for profit and general expenses (commercial and administrative expenses), the following should be considered:

a) depending on the sales structure in the customs territory of the Customs Union only one type of deduction can be made – whether deduction of amount of commissions to intermediary (agent), where the sale of goods is carried out with the participation of the intermediary (agent) or deduction of amount addition to price, when the sale of goods is directly carried out without the intermediary (agent). Simultaneously these types of deductions cannot be made;

b) the additions to price, usually made for profit and general expenses (commercial and administrative expenses) mean additions in the amount which most often occurs in the market of goods of the same class or kind, imported from the same country as the evaluated (imported) goods, as well as from other countries;

c) the amount of profit and general expenses (commercial and administrative expenses) is determined on the basis of information of the declarant (customs representative), provided that information is consistent with similar data taking place in sales of goods of the same class or kind in the Member state of the Customs Union (paragraph 7 of Article 8 of the Agreement). The information shall comply with the requirements of paragraph 3 of Article 2 of the Agreement, i.e. based on reliable, quantifiable and documentary information. If the customs body has reliable, quantifiable and documentary information on the normal amount of profit and general expenses (commercial and administrative expenses), i.e. the amount of additions, which most often takes place on the relevant market at a particular time, and information used by the declarant (customs representative) are not comparable with the data available to the customs bodies, the customs bodies shall determine the amount of profit and general expenses (commercial and administrative expenses) on the basis of available information.

17. The usual costs of transport and insurance, and associated costs are deductible if they are not included in the additions to price, usually made for general expenses (commercial and administrative expenses) in the customs territory of the Customs Union.

The usual costs mean the costs based on the most typical (representative) prices (tariffs) of transportation and insurance used (proposed) by the majority of the representatives on a free and competitive services market. Transportation on the optimal (usually used) route and standard (the most typical, adopted for this type of insurance) insurance shall be taken into account.

18. Deduction of customs duties, taxes, fees, safeguard, anti-dumping or countervailing duties, as well as other taxes payable in connection with the import and (or) sale of goods in the territory of the Member state of the Customs Union, including taxes and fees of the regions of that Member state of the Customs Union and local taxes and fees in accordance with the legislation of the Member state of the Customs Union shall be made with documentary evidence and grounds of the amount claimed for deduction.

19. If neither the evaluated (imported) nor identical or nor similar goods are sold in the customs territory of the Customs Union in the same condition as imported into the customs territory of the Customs Union, in accordance with paragraph 4 of Article 8 of the Agreement at the request of the declarant (the customs representative) the customs value of evaluated (imported) goods shall be based on the unit price of goods at which the imported goods, after further processing, are sold in the greatest aggregate quantity subject to allowance of the value added by such processing, and the deductions provided for in paragraph 2 of Article 8 of the Agreement. In this case:

a) the declarant (customs representative) submits with the application the calculation of customs value of evaluated (imported) goods based on the unit price at which evaluated (imported) goods, after further processing, are sold in the greatest aggregate quantity;

b) the declarant (customs representative) submits information relating to the cost of processing, and other information necessary to determine the customs value of evaluated (imported) goods according to the Method 4;

c) submitted information relating to the cost of processing by the declarant (customs representatives) is based on reliable, quantifiable and documentary information. Information based on quantifiable data is considered information containing data on the structure and the amount of the cost for processing of evaluated (imported) goods.

20. In accordance with paragraph 5 of Article 8 of the Agreement, the use for the purposes of determining the customs value of the sale price in the customs territory of the Customs Union of processed evaluated (imported) goods is not allowed in the following cases:

a) as a result of the further processing evaluated (imported) goods lose their individual identity, except for cases when despite the loss of individual identity of the goods, the amount of the value added by processing can be accurately determined.

Example 1. Cotton not intended for sale in a pure form is imported to the customs territory of the Customs Union. As a result of further processing in the customs territory of the Customs Union there is a mixed fabric containing various synthetic additives, which is then sold in the customs territory of the Customs Union. Thus, the imported goods (cotton) as a result of complex operations during processing lose their individual characteristics.

In another case, despite the goods lose their individual identity, the amount of the value added by processing (processing) can be accurately determined.

Example 2. 160 tons of sugar are imported into the customs territory of the Customs Union. After further processing in the customs territory of the Customs Union, the sugar turns into syrup (200 tons) for selling in the customs territory of the Customs Union. In the composition of the syrup obtained from simple operations (addition of water and small amount of citric acid), it is impossible to separate the sugar from the syrup, i.e. sugar has lost their individual characteristics. However, if data on the cost of syrup, sugar, solvent, and labor costs are available, the amount of value added by processing of sugar can be calculated;

b) evaluated (imported) goods after processing do not lose their individual identity, but they form a minor element in the goods sold in the customs territory of the Customs Union, and the cost of evaluated (imported) goods has no significant influence on the cost of sold goods.

Example 3. Air filters are imported at a price of 1000 currency units, which are used for the production of cars sold in the customs territory of the Customs Union at a price of 250 000 currency units. In this case, the cost of air filter is a negligible part of the cost of the finished product, i.e. its value does not have a significant influence on the cost of sold cars.

21. Application of Method 4 requires an individual approach and analysis of each situation, as it follows from paragraphs 14, 19 and 20 of the Rules, in order to determine not only the possibility but also practicability of certain costs for search and use of the information necessary to determine customs value according to this method.