

PART XI

Customs Value of Goods. Methods of Determining the Customs Value of Goods.

Chapter 49. General Provisions

Article 307. System of determining the Customs Value of Goods Imported into Ukraine.

The system of determining the customs value (customs valuation) of goods applies to goods transferred through the customs border of Ukraine.

The procedure for applying the system of customs valuation of goods transferred through the customs border of Ukraine is determined by this Code.

In exceptional cases, with the purpose of protecting the economic interests of the state, according to current legislation, minimum prices may be set for certain goods transferred through the customs border of Ukraine.

Article 308. Information on the Customs Value of Goods.

Information on the customs value of goods declared by the declarer when transferring goods through the customs border of Ukraine and accepted by the customs body are used to calculate duty, custom charges and other customs payments, for collecting customs data and also, in appropriate cases, for settlements when applying fines, other sanctions and penalties established by the legislation of Ukraine.

Article 309. Declaration of the Customs Value of Goods.

The customs value of goods shall be declared by the declarer to the customs body when transferring goods through the customs border of Ukraine.

The procedure and terms for declaring the customs value of goods transferred through the customs border of Ukraine and also the form of declaration and the procedure for making a declaration shall be determined by the State Customs Committee of Ukraine according to the current legislation of Ukraine.

The customs value of goods shall be determined by the declarer according to the provisions of this Code.

The customs body engaged in customs clearance of goods shall review the accuracy of the declaration of customs value of goods.

Article 310. Confidentiality of Information.

Information presented by the declarer when stating the customs value of goods and defined as being a commercial secret or being confidential, may be used by the customs body only for customs purposes and cannot be disclosed or transferred to third persons including other state bodies, without the special permission of the declarer

except in cases provided for by the legislation of Ukraine.

According to the current legislation of Ukraine, officials of customs bodies incur liability for spreading information which is a commercial secret or confidential.

Article 311. Rights and Obligations of the Declarer when Declaring Customs Value of Goods.

The customs value of goods and the information needed for valuation, declared by the declarer, shall be based upon credible, quantitative information which is supported by documents.

When it is necessary to confirm the customs value of goods declared by the declarer, the declarer is obliged, upon the request of the customs body, to supply the latter the necessary data. If the customs body has any doubts concerning the reliability of the information presented by the declarer for determining the customs value of goods, the declarer has the right to prove their credibility.

In cases where evidence of the credibility of data used by the declarer is not provided, the customs body is entitled to reject the method of customs valuation used by the declarer.

In cases where it is necessary to verify the customs value of goods declared by the declarer, the latter is entitled to request the customs body to release the declared goods for use, under guarantee of an authorized bank or to pay customs duty according to the customs valuation of goods made by the customs body of Ukraine.

Additional expenses incurred by the declarer when verifying the declared customs value or when submitting additional data to the customs body of Ukraine, shall be borne by the declarer. In addition, an extension of the period for customs registration of goods due to the process of customs valuation, shall not be used by the declarer for obtaining an actual postponement in paying duty or other customs payments.

Article 312. Rights and Obligations of the Customs Body when Reviewing Customs Valuation of Goods.

The customs body reviewing the accuracy of the customs valuation of goods is entitled to make a decision on the accuracy of the customs value of goods declared by the declarer, taking into consideration the provisions of this Code.

In the absence of data proving the accuracy of the declared customs value of goods or if there are grounds to consider information submitted by the declarer unreliable and (or) insufficient, the customs body may independently determine the customs value of declared goods, successively applying the methods for determining the customs value of goods established by this Code on the basis of the data available (including the information regarding prices for identical or similar goods) with corrections being made according to this Code.

The customs body, upon the written request of the declarer, is obliged within a three-month term, to submit a written explanation of reasons why the customs value of goods declared by the declarer cannot be accepted by the customs body as a basis for collecting duty.

If the declarer does not agree with the decision of the customs body concerning the determination of the customs value, this decision may be appealed according to the procedure determined by this Code.

Chapter 50. Methods of Determining the Customs Value of Goods Imported into Ukraine and the Procedure for their Application.

Article 313. Methods of determining the Customs Value of Goods imported into Ukraine.

Determining the customs value of goods imported into the customs territory of Ukraine shall take place by employing the following methods:

- a) by the value of contract for imported goods (method 1);
- b) by the value of contract for identical goods (method 2);
- c) by the value of contract for similar goods (method 3);
- d) on the basis of subtracting values (method 4);
- e) on the basis of adding up values (method 5);
- f) reserve method (method 6).

The main method of determining the customs value of goods is by the value of the contract for the imported goods.

If the main method cannot be used, the methods, listed in the first part of this Article, shall be applied in consecutive order. The next method is applied if the customs value of goods cannot be determined by applying the previous method.

Methods of subtracting and adding up values may be applied in any order.

Article 314. Method by the Value of Contract for Imported Goods.

The customs value of imported goods is the actual value of the contract or the price which will be paid for the imported goods at the moment of crossing the customs border of Ukraine.

When using the contract value for determining customs value, the following expenses, if they were not included earlier, shall be added to the contract value:

1. Expenses for delivering goods to the airport, port or other place of importing

goods into the customs territory of Ukraine:

- a) transportation costs;
- b) cost of loading, unloading, reloading and transhipment of goods;
- c) cost of insurance;

2. Expenses of the buyer:

- a) commission and brokerage except commission on purchasing goods;
- b) cost of containers and (or) other reusable glass containers if, according to the category of goods, they are considered a part of the goods under valuation;
- c) cost of packaging including the cost of packaging materials and labour;

3. The appropriate part of the value of the following goods and services, which were directly or indirectly provided by the importer free of charge or at a reduced price when manufacturing or selling (alienation) the valued goods for export:

- a) raw materials, materials, details, semi-finished goods and other associated items which are an integral part of the valued goods;
- b) instruments, stamps, forms and other similar items used when manufacturing the valued goods;
- c) materials used when producing the valued goods (lubricants, fuel, etc.);
- d) engineering developments, experimental and design works, design, artistic design, sketches and drafts made outside of the territory of Ukraine and directly necessary for producing the valued goods;

4. License fees and other payments for using intellectual property which the buyer (importer) shall pay directly or indirectly as part of the terms of sale (alienation) of the valued goods;

5. The appropriate percentage of profit from any further resale, transfer or use of the valued goods on the territory of Ukraine, which the seller receives directly or indirectly.

The indicated method cannot be used for determining the customs value of goods if:

- 1. There are restrictions concerning the rights of buyer (importer) to the valued goods, except:
 - a) restrictions provided for by the legislation of Ukraine;
 - b) restrictions of the geographical region where goods can be resold (alienated for the

second time);

c) restrictions which do not significantly influence the price of goods;

2. The sale (alienation) and the value of the contract depend on adherence to conditions, the influence of which cannot be taken into account;

3. Information used by the declarer when determining the customs value of goods is not confirmed by the documents or is not determined quantitatively and is not credible;

4. Parties to the contract (exporter and importer) are mutually dependent persons, except in cases where their mutual dependence has not influenced the price of the contract which should be proved by the declarer. Persons are considered mutually dependent if one of the following conditions is present:

a) one of the contractors (a natural person) or a representative of one of the contractors is at the same time a representative of the other contractor;

b) both contractors are co-owners in an enterprise;

c) both contractors are connected by working relations;

d) one of the contractors holds share or stocks of value no less than 5% of the authorized capital of the other contractor with the right to vote;

e) both contractors are under direct or indirect control of a third party;

f) both contractors together, directly or indirectly, control a third person;

g) one of the contractors directly or indirectly controls another contractor;

h) both contractors or their representatives are related.

Article 315. Method of Valuation by the Value of Contract for Identical Goods.

When applying method of valuation by the value of the contract for identical goods, the value of the contract for identical goods is taken as a basis for determining the customs value of goods complying with the terms and conditions indicated in this Article. Identical goods mean goods similar in every respect to the valued goods, including following features:

a) physical characteristics;

b) quality and reputation on the market;

c) country of origin;

d) producer.

Slight differences in outward design cannot be a reason to refuse to consider goods identical if in other respects goods meet these requirements.

The value of the contract for identical goods is taken as a basis for determining the customs value of goods if these goods are:

- a) sold (alienated) to be imported on the territory of Ukraine;
- b) imported at the same time as valued goods or not earlier than 90 days before importing the valued goods;
- c) imported approximately in the same amount and on the same commercial terms and conditions. If identical goods are imported in different amounts and (or) on different commercial terms and conditions, the declarer should make appropriate adjustments to their prices, taking these differences into account and provide documentary support to confirm reasons for the price change to the customs body.

The customs value of goods determined by the value of contract for identical goods shall be adjusted taking into account expenses indicated in Article ____ of this Code.

Corrections shall be made by the declarer on the basis of credible information with supporting documentation.

If, when applying this method, there is more than one value of the contract for the identical goods, then the lowest value is applied for determining the customs value of the imported goods.

Article 316. Method of Valuation by the Value of Contract for Similar Goods.

When applying the method of valuation by the value of contracts for similar goods, the value of the contract for goods similar to the imported goods is taken as a basis for the determining customs value of goods, in conformity with the terms and conditions indicated in this Article. Similar, means goods which, although not the same in all respects, have similar characteristics and consist of similar components which allows them to perform similar functions in comparison with the valued goods and may be interchangeable with them commercially.

When determining if goods are similar, the following features are taken into account:

- a) quality, presence of a trademark and reputation on the market;
- b) country of origin;
- c) producer.

When applying the method of evaluating customs value by the value of contract for similar goods, the provisions of Parts 3-6 of Article ____ of this Code shall apply.

Article 317. Provisions concerning Conditions of applying Methods of Valuation of Goods by the Value of Contract for Identical Goods and by the Value

of Contract for Similar Goods.

When applying methods of customs valuation of goods by the value of contract for identical goods and by the value of contract for similar goods:

- a) goods are not considered identical or similar to the valued ones if they were not produced in the same country as the valued goods;
- b) goods which were not produced by the producer of the valued goods, but by another person, are taken into account only if there are no other identical or similar goods produced by the manufacturer of the valued goods;
- c) goods are not considered identical or similar if their planning, engineering research, their design, artistic design, sketches or drafts, or similar works have been performed in Ukraine.

Article 318. Method on the Basis of Subtracting Values.

Customs value is determined by the method of subtracting values, if valued identical or similar goods will be sold (alienated) on the territory of Ukraine in unchanged form.

When applying the method of subtracting value, the per-unit cost at which valued identical or similar goods are being sold in the largest lots on the territory of Ukraine at the time nearest to the time of importing, but no later than 90 days from the date of import of the valued goods, to the buyer, who is not mutually dependent with the seller, is taken as a basis for determining the customs value of goods.

The following components, if they can be separated, are subtracted from the price of the goods:

- a) expenses for paying commissions, the usual added value on profit and general expenses connected with sales of goods of the same class and type on the territory of Ukraine;
- b) import duty, taxes, charges and other payments which are to be paid in Ukraine in connection with bringing in (or importing) or selling (or alienating) goods;
- c) usual expenses borne in Ukraine for transportation, insurance, loading, and unloading.

Where there are no cases of selling (or alienating) valued identical or similar goods in the same condition as they were at the time of import, by request of the declarer, the unit-price of the processed goods with adjustments made for the added value, and in conformity with the provisions of Parts 2 and 3 of this Article can be used.

Article 319. Method on the Basis of Adding up Values

When using the method of adding up values, the price of goods which is calculated by adding the following components shall be used as a basis for determining custom value of goods:

- a) the cost of materials and expenses borne by the producer in connection with producing the valued goods;
- b) general expenses typical for selling (alienating) into Ukraine from the country exporting goods of the same type, including expenses for transporting, loading, unloading, insuring to the place of crossing the customs border of Ukraine and other expenses;
- c) profit usually earned by exporter after exporting these goods to Ukraine.

When determining the customs value using the method of adding up values, the price of goods shall include all expenses included in the price of goods according to Part 2 of Article ____ of this Code.

Article 320. Reserve method

If the customs value cannot be determined by the declarer when using, successively, the methods of determining the customs value of goods indicated in Articles ___, ___, ___, of this Code, or the customs body justifiably considers that these methods of determining customs value cannot be used, the customs value of the valued goods is determined by taking into account international practice.

The determination of the customs value of the valued goods using the reserve method shall be based on the legislation of Ukraine and shall correspond to the provisions of the GATT Article VII, 1994.

When using the reserve method, the customs body shall provide the declarer with available information concerning prices.

The following prices cannot be used as a basis for determining the customs value of goods by the reserve method:

- a) the price of goods on the domestic market of the exporting country;
- b) the price of goods supplied from the exporting country to third countries;
- c) the price on the domestic market of Ukraine for goods of Ukrainian origin;
- d) prices of goods, which are arbitrarily determined or not credibly confirmed.

Chapter 51. Customs Value of Goods Exported from Ukraine.

Article 321. Determination of the Customs Value of Goods exported from Ukraine.

The customs value of goods, exported from Ukraine on the basis of a purchase or barter contract, shall be determined on the basis of the price which was actually paid or will be paid for these goods at the moment of crossing the customs border of Ukraine.

When determining customs value, the following shall be included:

1. Actual expenses which were not included earlier;
 - a) for transportation, loading, unloading, reloading and insurance up to the point of crossing the customs border of Ukraine;
 - b) commission and brokerage;
 - c) license fees and other payments for use of intellectual property which the buyer shall make directly or indirectly as a term of sale (or export) of the valued goods.

The customs value of goods exported from Ukraine on the basis of contract different from the purchase or barter contract, shall be determined on the basis of a price confirmed by commercial, transportation, banking, accounting or other documents containing information on the value of the valued goods, taking into account expenses for transporting and insuring goods up to the point of crossing the customs border of Ukraine.

In cases where price restrictions are established when exporting certain goods (indicative prices; maximum prices; prices established as a result of anti-dumping investigations, etc.), the customs value of such goods shall be determined by taking into account the provisions determining procedures for applying the given restrictions.

Article 322. Declaring Customs Value

When exporting goods on which import duty, antidumping, countervailing duty or special types of duties are imposed, customs value shall be declared.

Customs value shall be based on the value of the contract, on the amount which was actually paid or will be paid for the goods if it was not influenced by the following factors:

1. there are restrictions on the seller's (exporter's) rights to the goods which will be valued, except for:
 - a) restrictions provided by the legislation of Ukraine;
 - b) restrictions which do not substantially influence the price of goods;
2. the sale (alienation) and the value of the contract depend upon adhering to the terms and conditions, the influence of which cannot be determined;
3. the information used by the declarer when determining the customs value of goods is not supported by documents or is not quantitatively defined or credible;
4. parties to the contract (the exporter and importer) are mutually dependent entities except in cases where their interdependence has not influenced the price of the contract, which should be proved by the declarer. Entities shall be considered

mutually dependent if one of the following features is present:

- a) one of the contractors (or natural person) or representative of one of the contractors is, at the same time, a representative of the other contractor;
- b) contractors are co-owners of an enterprise;
- c) contractors are connected by a working relationship;
- d) one of the contractors holds share or stocks of value no less than 5% of the authorized capital of the other contractor with the right to vote;
- e) both contractors are under direct or indirect control of a third person;
- f) both contractors directly or indirectly control a third person;
- g) one of the contractors directly or indirectly controls another contractor;
- h) contractors or their representatives are related.