

D e c i s i o n

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

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 of Application of Methods on Determination of Customs Value of Goods According to the Transaction Value of Imported Goods (Method 1) (attached).
2. The said Decision shall enter into force upon 30 calendar days after its official publication.

Chairman

Khristenko V.B.

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

I. General Provisions

1. These Rules shall be used in the application of the Method of determination of the customs value of goods according to the transaction value of imported goods (Method 1), established by Article 4 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: 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 the Interpretative Notes thereto, as well as the materials of the Technical Committee on Customs Valuation of the World Customs Organization with the aim to ensure a uniform application of the Method 1.

3. The customs value of goods imported into the common customs territory of the Customs Union (hereinafter: the customs territory of the Customs Union), in accordance with paragraph 1 of Article 4 of the Agreement shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the customs territory of the Customs Union and adjusted in accordance with the provisions of Article 5 of the Agreement provided that the conditions specified in paragraph 1 of Article 4 of the Agreement are met.

Sale of goods for export to the customs territory of the Customs Union means that the goods are subject of contract of sale in accordance with the foreign economic agreement (contract) (hereinafter: sale and purchase transaction).

4. Price actually paid or payable is the total payment made or to be made by the buyer to seller directly or other person for the benefit of the seller. In this case, the payment need not necessarily take the form of a transfer of money and payment may be made by way of letters of credit or negotiable instruments (shares, bonds, checks, ordinary or exchanged bill, order, warrant, certificate, etc.). At the conclusion of transactions by related parties, payments between the seller and the buyer may be carried out without the actual funds transfer, which is confirmed by accounting documents.

These payments may be made not only directly, that is, directly to the seller, but also indirectly, to the third party that is for the benefit of the seller, for example, by discharging all or part of the debts of the seller.

Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in Article 5 of the Agreement, are not considered to be an indirect payment, even though they might be regarded as of benefit to the seller and the costs of such activities shall not be added to the price actually paid or payable in determining the customs value of the imported goods.

5. As a basis for determining the customs value of imported goods in respect of which at the date of registration of the declaration of goods by the customs body the price has not been

actually paid, the payable price for the goods in accordance with the sale and purchase transaction shall be used.

II. Conditions of Use of the Method 1

6. In cases where imported goods are not subject of contract of sale, the Method 1 shall not be applied for the purpose of determining the customs value.

In particular, such cases might be when importing goods into the customs territory of the Customs Union:

- by gratuitous contracts, especially by deeds of gift, gratuitous supply (for example, the contract of gratuitous supply of advertising, exhibition samples);

- by lease contracts;

- by intermediary contract, especially under the commission agreement, consignment agreement, agency agreement that are not contain the price at which goods are sold for export to the customs territory of the Customs Union;

- by loan agreements, trade credit, for which the goods or equivalent of the goods returned to the owner;

- for the examination, assessment (confirmation) of compliance (including research, testing, checking, experimentation, and display the properties and characteristics);

- as a contribution to the charter capital (fund).

7. The customs value of imported goods in accordance with paragraph 3 of Article 2 and paragraph 3 of Article 5 of the Agreement shall be determined by the Method 1 under the availability of reliable, quantifiable and documented information, including the information needed to confirm the price actually paid or payable, and implementation of additional charges to this price.

8. The customs value of imported goods shall be determined by the Method 1 under the following conditions provided in paragraph 1 of Article 4 of the Agreement:

- a) absence of restrictions on the rights of the buyer for the use and disposal of goods.

Thus, there may be a transaction under which the customer is limited in its rights to these goods despite the fact that he is a new owner of the goods.

Restrictions on the rights of the buyer for the use and disposal of imported goods shall not preclude the application of the Method 1, if such restrictions:

- are set by a joint decision of the Customs Union's Bodies;

- limit the geographical area in which the goods may be resold;

- do not significantly influence the value of the goods.

Example: The seller requires that the buyer will not sell cars or will not show them until the date specified as the launch of sales of the model. This restriction does not significantly influence the value of cars, so the Method 1 is applicable.

In all cases, when the result of the analysis of this transaction revealed the presence of restrictions on the rights of the buyer for the use and disposal of imported goods, the main criterion for determining the applicability of the Method 1 shall be the nature (entity) of this restriction and its influence on the price actually paid or payable for such goods. The Method 1 is applicable if the restriction had no influence on the price or the extent of this influence is insignificant, which is confirmed with documentary proof;

- b) the sale of imported goods or their price are not subject to some conditions or consideration for which a value cannot be determined quantitatively with respect to the goods.

The Method 1 shall not be applied if the sale and purchase transaction provides a condition that affects the sale or price of imported goods but determination and confirmation

with documentary proof of its quantitative (i.e., in terms of value) affect on the price of these goods are not possible.

In particular, the implementation of the sale and purchase transaction may provide the following:

- the seller sets the price for the imported goods under condition that the buyer will also purchase other goods in specified quantities;

- the price determination of the imported goods depends on the price (prices) at which the buyer of the imported goods sells other goods to the seller of the imported goods

- the set of price is based on the form of payment, not related to the imported goods, such as when the imported goods are semi-finished goods, which are provided by the seller under condition that the seller gives the buyer a certain number of finished products;

- the set of price of the imported goods depends on certain services provided by the buyer to the seller.

In such cases, the price of imported goods shall be affected by specific conditions of individual character that are specific to a particular sale to the buyer. Thus, there is some deviation from the normal trade practices in a free, competitive market of the goods.

If it is possible to determine the value of the deal, it is necessary to carry out an appropriate adjustment to the price actually paid or payable in the calculation of the customs value of imported goods. In this case the Method 1 is applicable.

The conditions related to the production or marketing of the imported goods, does not exclude the use of the Method 1, including the case if the buyer provides to the seller design documents carried out in the customs territory of the Customs Union, or the marketing of the imported goods at their own expense (including pursuant to the agreement with the seller) and marketing costs are not included in the price of the transaction;

- c) no part of the income or proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 5 of the Agreement.

Thus, the conditions of the sale and purchase transaction may stipulate that the buyer shall transfer to the seller a part of the proceeds of the subsequent resale of the imported goods.

If this condition is stipulated in such a way that it is possible to define in terms of value the amount to be transferred to seller of imported goods, and make the appropriate additional charge to the price actually paid or payable, the Method 1 shall be applied. The Method 1 shall not be applied if determination in terms of value of amount to be transferred is not possible (for example, set a percentage of the estimated income, which value is unknown at the date of registration of the declaration of goods);

- d) the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraphs 4, 4.1 and 4.2 of Article 4 of the Agreement.

The buyer and seller shall be considered as related if in accordance with paragraph 1 of Article 3 of the Agreement specified persons satisfy at least one of the following conditions:

- they are officers or directors of one another's businesses; they are legally recognized partners in business, that is bound by contractual relations, act for profit and jointly bear the costs and losses associated with the implementation of joint activities;

- they are employers and an employees, servants;

- any person directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting shares of both of them;

- one of them directly or indirectly controls the other;

- both of them are directly or indirectly controlled by a third person;

- together they directly or indirectly control a third person;

- are relatives or members of the same family.

III. Additional charges to the price actually paid or payable for the imported goods

9. In determining the customs value of imported goods by the Method 1 there shall be added to the price actually paid or payable for the imported goods:

a) The following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods:

- remuneration to intermediaries (agents) and brokers fees, except fees for the purchase, paid by the buyer to the agent (intermediary) for providing services of its representation abroad related to the purchase of the imported goods;

- the cost of containers which are treated as being one for customs purposes with the goods in question;

- the cost of packing whether for labour or materials;

b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods to the customs territory of the Customs Union, to the extent that such value has not been included in the price actually paid or payable:

- Raw materials, materials, components, semi-manufactured goods and similar goods incorporated in evaluated (imported) goods;

- Tools, dies, moulds and similar goods used in the production of evaluated (imported) goods;

- Materials consumed in the production of evaluated (imported) goods;

- Engineering, development, engineering and construction works, artwork, design, drafts and sketches undertaken outside the customs territory of the Customs Union and necessary for the production of evaluated (imported) goods.

c) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

d) the cost of transport (transportation) of goods to the airport, port or other place of entry into the customs territory of the Customs Union;

e) the cost of handling goods and other operations associated with the transport (transportation) to the airport, port or other place of entry into the territory of the Customs Union;

f) the cost of insurance related to the operations mentioned in subparagraph "d" and "e" of this paragraph.

g) royalties and licence fees (including payments for patents, trademarks, copyrights) related to the imported goods that the buyer must pay or will have to pay, either directly or indirectly, as a condition of sale of the imported goods, to the extent that such royalties and fees are not included in the price actually paid or payable.

10. In the apportionment of the price of the the elements referred to in the third paragraph of subparagraph "b" of paragraph 9 of these Rules, the value of the elements and the method of apportionment of value of imported goods shall be taken into account. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances depending on the availability of documents by the declarant (customs representative) and in accordance with generally accepted accounting principles.

Concerning the value of the element, if the importer acquires the element from the seller not related to the importer at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to the importer, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the

element. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods in one of the following ways:

- the value might be apportioned to the first shipment of the imported goods;
- the value of the elements might be apportioned over the number of units produced up to the time of the first shipment;
- the value of elements might be apportioned over the entire elements sold in accordance with the conditions of the sale and purchase transaction.

Example. The buyer provides the producer with a mould to be used in the production of goods and contracts with the producer to buy 10,000 units of goods. By the time of arrival of the first shipment of imported goods of 1 000 units the producer has already produced 4,000 units of goods. In this case the value of the mould shall be apportioned either on 1000 or 4000 or 10 000 units of goods.

11. In determining the additional charge for goods and services referred to in the fifth paragraph of subparagraph "b" of paragraph 9 of these Rules the data contained in the accounting documents of the buyer shall be used, provided that the data is in accordance with generally accepted accounting principles as far as possible.

For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, i.e. in state or municipal ownership, other than the cost of obtaining copies of them. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods

Example: The organization imports into the customs territory of the Customs Union, a variety of goods from Germany, France and the UK. For the production of goods design center of the organization, located outside the customs territory of the Customs Union, the patterns are available free of charge for use in the manufacture of these goods to organizations in Germany, France and the UK. At the same time accounting policy design center allows the organization to provide the importing cost data patterns for each product separately. In this case, the additional charge to the price actually paid or payable for the goods shall be made on the basis of data received from the design center.

In another case, the accounting policy design center allows us to provide information on the total costs without reference to individual goods. In this case, additional charge in respect of imported goods shall be based on the total cost design center for all products, which are used in the manufacture of patterns design center, apportioned on the basis of unit price.

Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the customs territory of the Customs Union.

12. In determining the customs value of imported goods additions to the price actually paid or payable, not specified in paragraph 9 of these Rules, shall not be added.