

D e c i s i o n

30 October 2012

No. 202

Moscow

On Rules of Application of Methods on Determination of Customs Value of Goods According to the Transaction Value of Identical Goods (Method 2) and According to the Transaction Value of Similar Goods (Method 3)

In accordance with paragraph 3 of Article 1 of the Agreement “On the Determination of Customs Value of Goods, Transferring 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 identical goods (method 2) and according to the transaction value of similar goods (method 3) (attached).

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

Chairman

Khristenko V.B.

RULES
**of application of methods on determination of customs value of goods according to
the transaction value of identical goods (method 2) and according to the transaction value
of similar goods (method 3)**

I. General provisions

1. These rules shall be used in the application of the methods on determination of customs value of goods established by Articles 6 and 7 of the Agreement “On the Determination of Customs Value of Goods, Transferring 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 transaction value of identical goods (method 2) and according to the transaction value of similar goods (method 3).

3. The order and conditions for determining the customs value of goods imported into the common customs territory of the Customs Union (hereinafter: the customs territory of the Customs Union) according to method 2 and method 3 are similar, except that in the application of one method information about identical goods are used, and in the application of the other - about similar goods. As a result, the term "identical or similar goods" is used in these Rules, as appropriate.

4. In determining the customs value of goods according to method 2 or method 3, the transaction value of identical or similar goods are used respectively.

Transaction value of identical or similar goods is the customs value of goods that has been previously determined under Article 4 of the Agreement and accepted by the customs body.

5. In the case of application of method 2 or method 3 in accordance with paragraph 1 of Article 2 of the Agreement consultation between the customs body and the declarant (customs representatives) can be held for justified choice of the cost basis for determining the customs value of goods according to one of these methods.

During consultations between the customs body and the declarant (customs representative) the requirement of commercial secret must be complied, as stipulated in paragraph 1 of Article 2 of the Agreement.

II. Identical and similar goods

6. Paragraph 1 of Article 3 of the Agreement stipulates that:
identical goods - goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall not constitute

grounds for recognition of goods as non-identical, if in other respects these goods meet the requirements of this paragraph and the fourth paragraph of this provision;

similar goods - goods that are not identical in all respects, but have similar characteristics and consist of similar components, made of the same materials, allowing them to perform the same functions as estimated (imported) goods, and to be commercially interchangeable. In determining whether the goods are similar, such factors as quality, reputation and existence of a trademark shall be considered;

goods shall not be regarded as identical or similar, if they are not made in the same country as estimated (imported) goods, or if engineering, development, artwork, design work, and plans and sketches, and other similar work were carried out in relation to these goods in the customs territory of the Customs Union. The term "produced" in relation to goods also means "grown", "mined", "manufactured" (including through the goods installation, assembly or disassembly)." Identical or similar goods produced by a different person other than the manufacturer of estimated (imported) goods, shall be taken into account only when there are no identical or similar goods of the same manufacturer, or the available information is not considered to be acceptable.

Example 1. 2 identical cars in all respects (the same brand, the same configuration, etc.), but that differ in color, which is a discrepancy in terms of appearance, are imported into the customs territory of the Customs Union.

If the discrepancy in color did not affect the price of goods, the discrepancy can be attributed to marginal differences and cars shall be recognized identical. However, if unique colors, airbrush, art toning, etc. were used during a painting of one of the cars under consideration, which had a significant influence on the price, these cars cannot be considered identical.

Example 2. Different buyers imported steel sheets of one brand, made of carbon steel, the same according to the accuracy of rolling of the material status and the edge type into the customs territory of the Customs Union, but they are to be used for different purposes.

Despite the fact that one buyer intends to use the sheets in the manufacture of car bodies, and the other - in the manufacture of stoves, these steel sheets shall be considered identical.

Example 3. Identical cotton in all respects of the same manufacturer is imported into the customs territory of the Customs Union by two buyers in the same amount, but at different prices. It was found that one of the buyers concluded a long-term contract with the manufacturer, providing repeated goods delivery, and the second buyer - a contract on a one-time goods delivery. Given these circumstances, the manufacturer fixes different prices for these buyers. Thus, the difference in the price of imported cotton fabric is caused by the difference in commercial levels of sales.

In this case, cotton fabric imported by a buyer will be identical to cotton imported by another buyer. However, in accordance with paragraph 1 of Article 6 of the Agreement the transaction value should be adjusted in light of differences in commercial levels of sales.

Example 4. 2 Lots of women's dresses are imported into the customs territory of the Customs Union. Dresses from both lots are similar in appearance (one style), sewn on one sample of the same quality, 100-percent pure silk, but have different sizes and colors. In addition, the dresses from one lot were produced under the famous fashion brand and dresses from the other lot were not.

In this case, a significant factor in determining the identity of the goods is the presence of the famous fashion brand, which affects the reputation of the product on the market. Name of a famous fashion designer provides for a different level of prices and other market unlike the dresses of the second lot, produced under the not so famous fashion brand. In this regard, dresses from the first lot and dresses from the second lot cannot be considered identical or similar.

Example 5. Rubber tires, identical in type (winter tires), size, speed rating, load index, made by two different manufacturers in the same country are imported into the customs territory of the Customs Union. However, each manufacturer has its own trademark. However, the tires produced by these manufacturers are made in accordance with the same standard, have the same quality, the same reputation in the market and are used for the production of cars in the customs territory of the Customs Union.

Due to the fact that these rubber tires are manufactured under different trademarks, they are not identical in all respects and cannot be considered as identical. However, the rubber tires have the same characteristics and the same reputation in the market, which gives them the ability to perform the same functions and to be commercially interchangeable. Thus, given the fact that rubber tires are manufactured in accordance with the same standard, of the same material and enjoy the same reputation in the market and are commercially interchangeable, they can be considered similar.

Example 6. Regular sodium peroxide for bleaching and special sodium peroxide (special quality) for laboratory studies are imported into the customs territory of the Customs Union. Special sodium peroxide is made of highly purified powdered form ingredients and therefore the price of special sodium peroxide is higher than the price of regular sodium peroxide. Regular sodium peroxide cannot be used instead of the special peroxide solution, as the level of purification of regular sodium peroxide is not suitable for use in the laboratory.

Whereas the goods are not the same in all respects, they cannot be considered as identical goods.

Due to the high prices of special sodium peroxide it is inappropriate to use it for bleaching, and the regular sodium peroxide is not suitable for use in the laboratory. Therefore, despite the fact that both types of sodium peroxide have similar characteristics and composition of the components, they are not commercially interchangeable goods. Thus, the regular sodium peroxide and a special sodium peroxide cannot be considered similar goods.

When making the decision to classify goods as identical or similar it is necessary to distinguish between the terms "the country in which the goods are produced" and "country of origin", as an important factor to recognize the goods as identical or similar is the country where the goods are produced, and not a country which is recognized as the country of origin in accordance with the rules for determining the country of origin of goods (Article 58 of the Customs Code of the Customs Union). The coincidence of the country in which the goods are produced, and their country of origin is more common than the situation when the country in which the goods are produced is not the country of origin, recognized as such in accordance with the rules for determining the country of origin of goods.

Example 7. Two cars are imported into the customs territory of the Customs Union, one of which is assembled at the plant in Turkey from components and assemblies, manufactured in Germany, and the other is made at the plant in Germany.

Car assembly operations in this case do not meet the criteria for sufficient processing. In this regard, the country of origin of the car, assembled in Turkey, is Germany and a country of manufacture is Turkey. Thus, whereas these vehicles are produced in different countries (one in Turkey and one in Germany), they are neither identical nor similar.

III. Conditions of application of method 2 and method 3

7. The customs value of goods imported into the customs territory of the Customs Union can be determined according to method 2, when the customs value cannot be determined according to the transaction value of imported goods (method 1), as follows:

a) when there are no sale and purchase transaction and the price actually paid or payable for the imported goods (goods are transported across the customs border of the Customs Union under the agreement, other than a contract of sale, for example under the gratuitous contract, the lease contract which fixes a monthly lease fee for the use of the product for a certain period of time) (paragraphs 1 and 2 of Article 4 of the Agreement);

b) when at least one of the conditions of application of method 1 imposed by paragraph 1 of Article 4 of the Agreement is not fulfilled;

c) when there is no reliable, quantifiable and documentary information about the customs value of goods, including the information required to confirm the price actually paid or payable, and the implementation of additional charges to the price actually paid or payable (paragraph 3 of Article 2 of the Agreement).

8. The customs value of goods imported into the customs territory of the Customs Union can be determined according to method 3, when their customs value cannot be determined according to method 1 and method 2 (for example, there is no information on the transaction value of identical goods or no documentary information confirming the validity and value adjustment accuracy that takes into account the differences in commercial levels of sales and (or) in quantities of identical goods).

9. According to paragraph 1 of Article 6, paragraph 1 of Article 7 of the Agreement in determining the customs value of estimated (imported) goods according to method 2 or method 3, the transaction value of identical or similar goods sold for export to the customs territory of the Customs Union and imported into the customs territory of the Customs Union at or about the same period of time, as estimated (imported) goods, but not earlier than 90 calendar days before the importation of the estimated (imported) goods should be taken as a basis.

Thus, the Agreement does not specify the period of time when identical or similar goods to be sold and imported into the customs territory of the Customs Union, but defines it as "at or about the same period of time".

As "at or about the same period of time" for the application of method 2 and method 3 a period of time not exceeding 90 calendar days before the importation of the estimated (imported) goods into the customs territory of the Customs Union shall be considered. In order to determine such period of time, importation date of estimated (imported) goods should be the date of arrival of goods into the customs territory of the Customs Union.

Fulfillment of the condition of identical or similar goods importation into the customs territory of the Customs Union within 90 calendar days before the importation of estimated (imported) goods does not entail automatic acceptance of the transaction value of identical or similar goods as the customs value of estimated (imported) goods. In this case, in the choice of "at or about the same period of time", a period of time when the prices for estimated (imported)

goods and for identical or similar goods are similar should be considered, i.e. market conditions of these goods should be considered.

In determining “at or about the same period of time” such factors as type and nature of the goods, a season of the import of the estimated and identical or similar goods, and trade practice (e.g., comparative value in the period of both high and falling demand for the goods) should be considered. Thus, for a time the price of goods changes with the change of supply and demand, or due to the obsolescence of the goods (the release of more modern and technically advanced goods), or due to changes in fashion for some goods, or due to the seasonal nature of the goods (e.g., the price for apples in late summer and the price for the same apples in winter), etc.

Based on the form and nature of the goods “at or about the same period of time” should be determined individually in each case taking into account the specific circumstances. Thus, seasonal goods should be considered in relation to the time of year (summer clothes collection, harvest time, etc.), technical goods (computers, monitors, TVs) – as applied to technical progress: the emergence of new, improvement and major distribution of current technology, etc.

Example. In the production of automobile batteries lead represents a large part of the cost of the finished product, which has a stable price on the world market. If the fluctuations in the price of lead are insignificant, the time period for the application of method 2 or method 3 may not be limited to the rigid framework (with comparable technical and functional characteristics of the batteries). However, if the price of lead will largely increased or declined, then in determining “at or about the same period of time” for the application of method 2 or method 3 the period of time should be taken into account when prices, in particular for lead, were comparable.

Thus, “at or about the same period of time” means the time period with the same (similar) situation on market of the goods with a stable market condition.

10. Method 2 or method 3 do not apply if there is no documentary information on the import into the customs territory of the Customs Union of identical or similar goods or documentary information confirming the validity and value adjustment accuracy of transaction value of identical or similar goods, taking into account the differences in commercial levels of sales and (or) in quantities of identical or similar goods, as well as a significant difference in the costs referred to in subparagraphs 4 – 6 of paragraph 1 of Article 5 of the Agreement due to differences in the distance they are moved (transported), and type of transport used.

IV. Adjustment of the transaction value of identical or similar goods

11. In the application of method 2 or method 3 to determine the customs value of estimated (imported) goods it is necessary as closely as practicable to use the transaction value of identical or similar goods sold at the same commercial level and in substantially the same quantities as estimated (imported) goods.

12. In considering the issue on adjustment of the transaction value, taking into account the differences in commercial levels of sales, it should be considered the position taken by the buyer in the sale of goods, namely, whether the buyer assumes:

- subsequent wholesale of goods;
- subsequent retail sale of goods;

use of goods for personal use.

The position occupied by the seller of the goods on the market should be also considered, that is, whether the goods are sold directly to the manufacturer, a wholesaler, an authorized dealer, etc.

13. The term "in substantially the same quantities" means that the number of units sold of identical or similar goods may be different from the estimated number of estimated (imported) goods, and the difference in the quantities is not reflected in the unit price, so a significant factor is the unit price. Thus, if the seller fixes the unit price depending on the number of sold units and identical or similar and evaluated (imported) goods, even if the difference in their quantities is covered by the same price range (unit price in respect of identical or similar and evaluated (imported) goods is the same), this means that the goods are sold in substantially the same quantities.

Example. A certain drug is sold; the unit price is fixed differentiated according to the number of packages in the purchased lot:

10 - 50 packages - 65 currency units per package,

51 - 100 packages - 60 currency units per package;

101 and more packages - 55 currency units per package.

In this case, the sale in substantially the same quantities means that the number of identical goods sold and the number of evaluated (imported) goods are covered by the same price range, for which a unit price is fixed: products actually may be sold in different quantities, but essentially, that is, in terms of unit prices shall be considered as sold in the same quantity. For example, 110 packages of the goods being valued are imported and there is documentary evidence to prove the value of two transactions with identical goods: by the transaction A the goods are imported in 150 packages, transaction B - in 100 packages. Besides, there is documentary information on the unit price depending on the number of unit in the sold lot. On the basis of this information (the price scale) it can be concluded that the estimated (imported) goods and the identical goods by transaction A are covered by the same price range (101 or more packages) with the price of 55 currency units per package, and identical goods by Transaction B - by different price range (from 51 to 100 packages) with the price of 60 currency units per package. Thus, in order to determine the customs value of goods by method 2 data of transaction A can be used.

14. If the transaction with identical or similar goods sold at the same commercial level and in substantially the same quantities as estimated (imported) goods is not identified, information about the transaction with identical or similar goods sold at a different commercial level and (or) in different quantities should be used, that is information about the transaction with either of the following conditions:

sale of identical or similar goods is carried out at the same commercial level as the sale of estimated (imported) goods, but in different quantities;

sale of identical or similar and estimated (imported) goods is carried out at a different commercial level but in substantially the same quantities;

sale of identical or similar and estimated (imported) goods is carried out at a different commercial level and in different quantities.

After identifying a transaction conforming one of these conditions, appropriate value adjustments should be made in respect of only a quantity factor, or only commercial level factors, or both the quantity and commercial level factors.

The expression "and (or)" for purposes of these Rules allows flexibility to use the sales and make the necessary adjustments if any one of these conditions are fulfilled.

15. The existence of differences in commercial levels of sales and (or) in the quantities of goods does not require adjustment. Adjustment is necessary, if these differences affect the price of goods as such. If the price difference is due to differences in commercial levels of sales and (or) in the quantities of goods, the adjustment is made in order to bring prices of compared goods to a comparable form.

Adjustment of the transaction value of identical or similar goods is carried out on the basis of reliable data that clearly establishes the reasonableness and accuracy of the adjustments regardless whether it leads to an increase or a decrease in the value. Thus, the adjustment of the transaction value of identical or similar goods in relation to the differences in commercial levels of sales may be carried out only in presence of a valid price list containing prices referring to different levels of commercial sales.

Example. Evaluated (imported) goods are supplied in quantities of 10 units, and identical or similar goods, the customs value of which has been determined according to method 1 and accepted by the customs body were supplied in quantities of 500 units. Under the terms of the purchase and sale contract of these products and documentary proven that the seller offers discounts for quantity (for example, a price list was attached to the contract).

In this case, the necessary transaction value adjustment can be carried out using the specified price list from which the selling price of goods in quantities of 10 units should be chosen. There is no need to search for sales of identical or similar goods in quantity of 10 units, if the current price list is compiled in such a way that the same price is fixed in relation to determining the range of products, such as 1 to 100 units.

16. The transaction value adjustment of identical or similar goods is also carried out in case of a significant difference in the costs referred to in subparagraphs 4 – 6 of paragraph 1 of Article 5 of the Agreement, as follows:

a) carriage (transportation) costs of goods to the airport, seaport, or other place of arrival of the goods into the customs territory of the Customs Union;

b) loading unloading and handling charges of goods and conduct other operations associated with carriage (transportation) of goods to the airport, seaport or other place of arrival of the goods into the customs territory of the Customs Union;

c) the cost of insurance in connection with these transactions.

Example. The export country has a large territory and estimated goods are imported into the customs territory of the Customs Union from the border region of the country, and identical or similar goods are imported from the region, which has a long distance from the border of the export country.

In this case, the carriage (transportation) costs of estimated (imported) goods and identical or similar goods are quite different.

In some seaports, through which the goods are exported or imported, higher seaport charges are collected for services related to the use of infrastructure, safety and order of navigation in the seaports than in others. Costs for loading, unloading and handling of goods at seaports, paying mooring, parking at the dock and on the roads and etc. can be different.

Depending on the type of transport estimated (imported) and identical or similar goods are transported, the carriage (transportation) costs may also vary significantly (e.g., estimated (imported) goods transported by rail, and identical or similar goods have been delivered by air, which is more expensive).

Insurance costs can vary significantly depending on the type of transport and the chosen route of carriage (transportation) of estimated (imported) and identical or similar goods, as well as the use of different types of insurance.

Adjustment for difference in cost is possible if there a documentary information on tariffs for the carriage (transportation) by different transport and insurance in the delivery of estimated (imported) and identical or similar goods.

17. In accordance with paragraph 3 of Article 6, paragraph 3 of Article 7 of the Agreement in the case of more than one transaction value of identical or similar goods (after appropriate transaction value adjustments, which takes into account the differences in commercial levels of sales and (or) in the quantities of goods, as well as costs referred to in paragraph 16 of these Rules) to determine the customs value of estimated (imported) goods the lowest transaction value shall be applied.
