

D e c i s i o n

12 December 2012

No. 273

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 computed value method (Method 5) (attached).

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

Chairman Khristenko V.B.

The Rules

On Application of Methods on Determination of Customs Value of Goods According to the Computed Value Method (Method 5)

I. General provisions

1. These Rules shall be used in the application of the computed value method (Method 5), established by Article 9 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 5.

3. The Method 5 shall be used, if the customs value of goods imported into the common customs territory of the Customs Union (hereinafter: customs territory of the Customs Union) cannot be determined in accordance with Articles 4, 6 and 8 of the Agreement, except that, at the request of the declarant (customs representative), the order of application of Articles 5 and 6 shall be reversed.

Determining the customs value of evaluated (imported) goods according to the Method 5, the computed value of these goods shall be used as a basis determined by adding the elements established by paragraph 1 of Article 9 of the Agreement.

Information on customs value of goods, determined according to the Method 5, shall be indicated in the customs value declaration in accordance with the Order on declaring 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.

4. As a general rule, the customs value of goods is determined on the basis of documents and information available in the customs territory of the Customs Union. In order to determine a computed value, however, it may be necessary to have the information on the expenses of production (production costs) of evaluated (imported) goods and other documents and information of the producer of the goods which is situated outside the customs territory of the Customs Union.

5. Taking into consideration the fact that the producer of the evaluated (imported) goods is situated outside the jurisdiction of customs bodies of the Customs Union Parties (hereinafter: CU Parties) and documents and information mentioned in paragraph 4 of these Rules are usually confidential and are not disseminated by the producer, the use of the Method 5 is generally limited to those cases where the buyer and seller are related. Furthermore, the producer agrees to submit documents and information on production costs and to provide possibility for any subsequent verification which may be necessary in accordance with paragraph 6 of Article 9 of the Agreement.

The meaning “related seller and buyer” shall be used in the meaning established by paragraph 1 of Article 3 of the Agreement.

6. Documents and information, submitted by the producer or on behalf of the producer, shall be in compliance with the generally accepted accounting principles applied in the country in the period of time when evaluated (imported) goods were produced. The generally accepted accounting principles are established by the legislation (normative legal acts of the authorized bodies in the country of production), as well as in the form of recommendations of professional associations or other organization, authorized in accordance with the legislation of the country of production to issue such recommendations.

For confirmation with regard to compliance of documents and information, submitted by the producer or on his behalf with the generally accepted accounting principles of the country of production of evaluated (imported) goods, the declarant (customs representative) has the right to submit, for example, a conclusion on compliance of the level of production costs, as well as the amount of profit and general expenses (commercial and management costs), mentioned in submitted documents and information, with the level of production costs and amount of profit and general expenses (commercial and management costs) typical for sale for export into the customs territory of the Customs Union of the goods of the same class or kind as evaluated (imported) goods. Such a conclusion shall be issued by the body of the country of production of evaluated (imported) goods authorized in the sphere of accounting or independent organization which in accordance with the legislation of the country of production of evaluated (imported) goods can be considered as an expert organization (for instance, accounting associations, chambers of commerce and industry, specific scientific research institutes, etc.)

II. Computed value of goods

7. Computed value of goods in accordance with paragraph 1 of Article 9 of the Agreement includes:

1) Costs of production or acquisition of materials and expenses on production and other operations related to the production of evaluated (imported) goods;

2) Amounts of profit and general expenses (commercial and administrative expenses) equal to that usually reflected in sales of goods of the same class or kind as evaluated (imported) goods which are produced in the exporting country for export into the customs territory of the Customs Union;

3) Expenses specified in Article 5, paragraph 1, subparagraphs 4–6 of the Agreement (hereinafter: expenses on the delivery of goods).

8. Determining the amount of costs of production or acquisition of materials and expenses on production, as well as other operations related to the production of evaluated (imported) goods, the following shall be considered.

Systems of accounting of the most countries, as a general rule, establish the list of types of assets which belong to materials. Usually, raw materials, direct and indirect materials, semi-finished products and components, fuel, container, spare parts, construction and other materials.

Costs of production of materials are equal to their actual production cost, the amount of which is provided in documents and information submitted by the producer or on his behalf.

Costs of acquisition of materials are expenses incurred by the producer buying them from non-related person.

Expenses on production and other operations related to the production of evaluated (imported) goods shall include direct and indirect costs. Allocation of costs to direct and indirect costs shall be carried out by the producer pursuant to his commercial account policy, established in accordance with generally accepted accounting principles applied in the country of production of evaluated (imported) goods.

9. In accordance with paragraph 3 of Article 9 of the Agreement, costs of production or acquisition of materials and expenses on production as well as on other operations related to the production of evaluated (imported) goods shall include:

a) the cost of containers if they are treated as being one for customs purposes with evaluated (imported) goods;

b) the cost of packing whether for labour or materials;

c) Pursuant to paragraph 5 of Article 5 of the Agreement adequately allocated cost of the goods and services, stipulated in sub-paragraph 2 paragraph 1 of Article 5 of the Agreement, which directly or indirectly provided by the buyer to the seller free of charge or at reduced price for the use in connection with the production and sale for export of evaluated (imported) goods, including:

- 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.

When the buyer supplies to the producer of evaluated (imported) goods any of the abovementioned goods and services free of charge in the cases when the producer does not include their costs in calculation of expenses for production of evaluated (imported) goods, the cost of such goods and services shall be included in customs value of evaluated (imported) goods.

If such goods and services as engineering, development, engineering and construction works, artwork, design, drafts and sketches were carried out in the customs territory of the Customs Union and supplied to the producer for the production of evaluated (imported) goods, their costs shall be included in calculated cost at the amount paid by the producer.

10. Expenses stipulated in paragraph 9 of the said Rules shall not be considered again when counting calculated cost of evaluated (imported) goods.

11. In accordance with paragraph 4 of Article 9 the Agreement, the amount of profit and general expenses (commercial and administrative expenses) shall be considered as a whole and determined on the basis of information submitted by the producer or on his behalf.

As general expenses (commercial and management expenses), direct and indirect expenses on production and sale of goods for export into the customs territory of the Customs Union, which are not mentioned in subparagraph 1 of paragraph 1 of Article 9 the Agreement, shall be considered. Allocation of the corresponding expenses to direct or indirect cost is carried out by the producer in accordance with his commercial account policy based on generally accepted accounting principles used in the country of production of evaluated (imported) goods.

The amount of profit and general expenses (commercial and management expenses) shall be considered, generally taking place for the goods of the same class and kind as evaluated (imported) goods produced in the country of export for export to the customs territory of the Customs Union when applying Article 9 the Agreement.

If the producer's profit figure is low and the producer's general expenses (commercial and management expenses) are high, the producer's profit and general expenses (commercial and management expenses) taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind for export into customs territory of the Customs Union.

Such a situation might occur, for example, if a product was being launched in the customs territory of the Customs Union and the producer accepted a nil or low profit to offset high general expenses (commercial and management expenses) associated with the launch.

Where the producer can demonstrate a low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness.

Where the producer's own figures for profit and general expenses (commercial and management expenses) are not consistent with those usually reflected in sales of goods of the same class or kind, the amount for profit and general expenses (commercial and management expenses) may be based upon relevant information available in the customs bodies based on the reliable, and computable information supported with documentary evidence.

12. Expenses on the delivery of goods shall include the following costs determined on the basis of information on the actual amount with documentary evidence:

- a) the cost of transport (transportation) of goods to the airport, port or other place of entry into the customs territory of the Customs Union;
- b) 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;
- c) the cost of insurance related to the operations mentioned in subparagraph "a" and "b" of this paragraph.

13. The control of customs value of goods shall be carried out by the customs bodies in accordance with the Order of control of customs value of goods approved by the Decision of Customs Union Commission No. 376 of 20 September 2010.

In the case if information is used other than that submitted by the producer or on his behalf for the purpose of the determination of calculated value, customs bodies shall indicate the source of information as well as calculation on such information in the Decision on correction of customs value of goods submitted by the declarant (customs representatives) in the order and form stipulated in the Decision of Customs Union Commission No.376 of 20 September 2010.

III. Examples of determination of customs value of goods pursuant to the Method 5

Example 1. A foreign company (hereinafter: producer) supplies to its affiliated organization registered in one of the Party of the Customs Union (hereinafter: importer) a turbine equipment. Since the customs value of the turbine equipment cannot be determined in accordance with Articles 4 and 6-8 of the Agreement, its determination shall be carried out pursuant to the Method 5.

The imported turbine equipment was tailor made requested by the importer.

For the production of the turbine equipment the importer supplied to the producer free of charge drafts and sketches specifically designed for the production of this equipment in value of 500 currency units and which were designed on the customs territory of the Customs Union.

Customs body was submitted documents and information obtained from the producer with the following figures:

Costs of production or acquisition of materials – 4 000 currency units;

Expenses on production – 3 500 currency units;

General expenses (commercial and management expenses) – 350 currency units;

Profit – 1 570 currency units.

Expenses on the delivery of goods are 80 currency units.

The customs body has also the information with documentary evidence obtained from the chamber of commerce and industry in the country of production that usual amount of profit and general expenses (commercial and management expenses) for the goods of the same class or kind destined for export into the customs territory of the Customs Union is approximately 25 % of the amount of costs of production or acquisition of materials and expenses on production of the turbine equipment. With regard to this situation this amount is 1 875 currency units $((4\,000 + 3\,500) * 25\%)$.

The amount of profit and general expenses (commercial and management expenses) in this situation is 1 920 currency units $(1\,570 + 350)$ or 25.6 %, which is approximately equal to the usual amount. Thus, the value of the stated figure is acceptable for the determination of the customs value of the turbine equipment.

Since drafts and sketches designed for the production of the turbine equipment were made in the customs territory of the Customs Union and supplied free of charge, their value (500 currency unit) shall not be considered when determining the customs value of the turbine equipment in accordance with the first subparagraph of paragraph 3 of Article 9 the Agreement.

The customs value of the turbine equipment shall be determined by adding the costs of production or acquisition of materials, the expenses on production and general expenses (commercial and management expenses), the profit, the expenses on the delivery of goods $(4\,000 + 3\,500 + 1\,920 + 80 = 9\,500)$ currency units).

Example 2. Organization registered in one of the CU Parties (hereinafter: buyer) bought from the foreign organization (hereinafter: producer) equipment and imported it into the customs territory of the Customs Union. Since the customs value of the equipment cannot be determined in accordance with Articles 4 and 6-8 of the Agreement, its determination shall be carried out pursuant to the Method 5.

Expenses on the delivery of goods are 5 currency units.

On the basis of commercial accounts submitted by the producer, the expenses at the amount of 31 currency units per the unit of goods were determined, including:

Costs of production or acquisition of materials – 10 currency units;

Labor expenses and allowances for social needs related to payment for labor - 8 currency units;

General factory expenses – 12 currency units;

Cost of packing – 1 currency unit.

The buyer supplied to the producer free of charge necessary sketches for the production of evaluated (imported) goods, designed outside of the customs territory of the Customs Union. Based on the calculated accordingly allocation of general cost of specified sketches, the cost of sketches per one unit of goods is 2 currency units.

The producer supplied to the buyer the documents containing information on the amount of profit and general expenses (commercial and management expenses), usually taking into account for the goods of the same class or kind as evaluated (imported) goods.

In accordance with these documents general profit and general expenses (commercial and management expenses) for the sale of goods of the same class or kind are 20 percent of the costs of production or acquisition of materials and expenses on production as well as on other operations related to the production of evaluated (imported) goods.

Stated amount of the profit corresponds to the amount taking place in other producers of the same country of production for sale of goods of the same class or kind supplied for export into the customs territory of the Customs Union (for instance, submitted relevant conclusion from a chamber of commerce and industry of the country of production of the equipment).

Taking into account the information above, the stated amount is acceptable for the determination of the customs value of the equipment.

The amount of profit and general expenses (commercial and management expenses) calculated percentage wise of the amount of expenses incurred by the producer in calculating on the unit of goods is 6,2 currency units (31 currency units * 20%).

Thus, the customs value of the equipment is determined by adding expenses specified by the producer and the cost of sketches ($31 + 2 = 33$ currency units), the amount of profit and general expenses (commercial and management expenses), calculated in percentage term of actual expenses accrued by the producer (6,2 currency units) and expenses on the delivery of goods (5 currency units)