

STATE CUSTOMS COMMITTEE OF THE KYRGYZ REPUBLIC

No 15-12/372
08.29.98

To: Heads of Offices of the State Customs Committee (SCC)
of the Kyrgyz Republic

Heads of Customs Bodies

ORDER

On Customs Valuation of Goods Imported to the Kyrgyz Republic

For the implementation of the Customs Code of the Kyrgyz Republic, in compliance with the WTO/GATT requirements, and following the generally accepted norms and rules of international economic relations

I AM HEREBY ORDERING:

1. In work to follow and take notice of the Regulation on Methods for Determining Customs Value of Goods Imported to the Kyrgyz Republic (Explanatory Note on Customs Valuation of Goods).
2. Heads of the SCC's Offices and Heads of the customs bodies to inform their personnel of the mentioned normative act.
3. A.A.Azemova, Head of the Secretariat, to provide the customs bodies with this Order and normative documentation thereto.
4. A.A. Maldybaev, Manager of Press-Service, to provide publication of this Order and the Regulation on Methods for Determining Customs Value of Goods Imported to the Kyrgyz Republic (Explanatory Note on Customs Valuation of Goods) in mass media.
5. N.T. Turganbaev, Deputy Chairman, to control the implementation of this Order.

Attachment: Regulation on Methods for Determining Customs Value of Goods Imported to the Kyrgyz Republic.

K. Zakirov
First Deputy Chairman

GENERAL NOTES

Basic Provisions

The system of determining customs value of goods shall be based on general principles of customs valuation accepted in international practice and shall apply to goods imported to the Kyrgyz Republic.

Customs value of goods shall be declared by declarant to Customs Body while transferring goods through customs border of the Kyrgyz Republic.

Customs value of the good shall be determined by the declarant according to customs valuation methods established by the Customs Code of the Kyrgyz Republic.

The customs body that performs customs clearance of the good shall control the accuracy of determining customs value.

This Regulation shall use the concepts as defined by the Customs Code of the Kyrgyz Republic.

The concept “Generally Accepted Rules of Accounting” shall mean established rules of referring relevant expenses (costs) to labor and materials, or their reflection in the composition of general burden (overhead costs).

First of all rules on taking into account the following elements of costs are mentioned:

- lease;
- capital investments;
- amortization;
- utility expenses;
- fees to consultants;
- maintenance of a managing staff;
- maintenance of buildings and constructions;
- advertising and marketing;
- research.

Customs bodies shall utilize information which is consistent with the generally accepted accounting rules in the Kyrgyz Republic which is appropriate for the valuation method in question.

For example, the determination of usual profit and general expenses under the provisions of the deductive value method shall be carried out by utilizing information consistent with the generally accepted accounting rules of the Kyrgyz Republic.

On the other hand, the determination of usual profit and general expenses under the provisions of the computed value method shall be carried out by utilizing information which is consistent with the generally accepted accounting rules in the country of production.

As a further example, the determination of the cost or value of tools, dies, moulds or similar items undertaken in the Kyrgyz Republic and provided by the buyer to the seller, free of

charge or at a reduced price, for use in the production of the imported goods for the purposes of calculating a transaction value shall be carried out by utilizing information consistent with the generally accepted accounting rules of the Kyrgyz Republic.

Rights and Obligations of Declarant

The customs value of a good declared by the declarant and information that he supplies concerning its determination shall be based on reliable and quantifiable information that can be confirmed by documents.

If it is necessary to confirm the customs value of the good declared by the declarant, he shall be obliged, upon the customs body's demand, to provide the latter with the necessary information. Where the customs body doubts the truth of information supplied by the declarant to determine the customs value of the good, the declarant shall have the right to prove the accuracy of the information.

Where evidence confirming the truth of data used by the declarant is not provided, the customs body shall have the right to take a decision on impossibility to apply the method of customs valuation chosen by the declarant.

Where it appears necessary to verify further the customs value of the good declared by the declarant, the declarant shall refer to the customs body requesting to provide him the good being declared for use on the security of property or against other guarantee in compliance with legislation of the Kyrgyz Republic, or shall have the right to make customs payments in compliance with customs valuation of goods performed by the customs body.

Additional expenses which result from verification of the customs value of goods declared by the declarant or presentation of any additional information to the customs body are to be borne by the declarant. In that respect, the extension of the period of customs clearance of the goods caused by conducting customs valuation may not be used by the declarant to obtain actual deferral of payment of customs duties and taxes.

Rights and Obligations of the Customs Body

The customs body which controls the accuracy of customs valuation of goods shall have the right to take a decision concerning the accuracy of the customs value declared by the declarant on the basis of the provisions established by the Customs Code of the Kyrgyz Republic.

Where information confirming the accuracy of the customs value of the good declared by the declarant does not exist, or there are grounds to believe that the information supplied by the declarant is not reliable and (or) sufficient, the customs body may ask the declarant to provide further explanation, including documents and other evidence, that the declared customs value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of the transaction value method.

If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may be deemed that the customs value of the imported goods cannot be determined under the transaction value method. Before taking a final decision, the customs administration shall communicate to the importer, in writing if so requested, its grounds for doubting the truth or accuracy of the particulars or documents produced, and the importer shall be given an opportunity to respond. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor.

The customs body may independently determine customs value of the declared good by sequentially applying the methods of customs value established by the Customs Code of the Kyrgyz Republic on the basis of the available information (including price information relating to identical or similar goods) with adjustments made in accordance with the Customs Code of the Kyrgyz Republic.

The customs body shall within 3 months of a written request of the declarant, present a written explanation of the reasons for which the customs value of goods declared by the declarant may not be accepted by the customs body as the basis for assessment of customs payments and taxes.

Upon a written request from the declarant, which must be submitted no later than 90 days after Customs release of the goods under valuation, the customs body shall provide a written explanation of how the value of the imported goods was determined.

If the declarant does not agree with the decision of the customs body in respect of the determination of the customs value of the goods, this decision can be appealed according to the procedure determined by the Customs Code of the Kyrgyz Republic.

METHODS FOR DETERMINING CUSTOMS VALUE OF IMPORTED GOODS AND ORDER OF THEIR APPLICATION

Sequential Application of Customs Value Methods

Customs value of goods imported to customs territory of the Kyrgyz Republic shall be determined by applying the following methods:

1. transaction value method of imported goods;
2. transaction value method of identical goods;
3. transaction value method of similar goods;
4. deductive value method;
5. computed value method;
6. reserve method.

The primary and basic method for customs valuation of imported goods shall be the transaction value method. Where the basic method can not be applied, then each of the mentioned methods shall be sequentially applied. And, where customs value of a good can not be determined by applying the previous method, then each subsequent method shall be applied.

Upon the declarant's request, the deductive and computed value methods can be applied in any order of the sequence (*i.e.*, reversed). If the importer does not request that the order of deductive value method and computed value method be reversed, the normal order the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the computed value method, the customs value is to be determined under the deductive value method, if it can be so determined.

Where the customs value cannot be determined under the provisions of transaction value, transaction value of identical goods, transaction value of similar goods, deductive value or computed value methods, inclusive, it is to be determined under the provisions of the reserve method.

Transaction Value Method of Imported Goods (1st method)

In compliance with the Customs Code of the Kyrgyz Republic the primary and basic method of customs valuation shall be transaction value of imported goods.

Under this method the customs value of imported goods shall be transaction value actually paid or payable for the imported good when sold for export to the Kyrgyz Republic at the time when it crosses customs border of the Kyrgyz Republic (to the port or other point of importation).

The price actually paid or payable is the total payment for the imported goods made or to be made by the buyer to or for the benefit of the seller. Payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or securities.

Payment may be made directly or indirectly. An example of an indirect payment may be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Example.

Company A in the Kyrgyz Republic pays \$2,000 to Toy Factory B abroad for a shipment of toys. The usual price for toys is \$2,200. However, because B owed Company A \$200, B charges only \$2000 for the toys.

What is the transaction value?

The transaction value of the imported goods is \$2,200, that is, the sum of the \$2000 plus the \$200 indirect payment.

This method shall be applied in those cases only where there is a sale of goods to the Kyrgyz Republic.

In determining the customs value of a good the transaction value shall include the following components unless they have already been included:

Charges for Delivery of Goods to the Airport, Port or Other Point of Importation of Goods to Customs Territory of the Kyrgyz Republic:

- the cost of transport;
- loading, unloading, transshipment and handling costs (including warehousing costs);
- insurance amount;

Costs Incurred by the Buyer:

- commissions and brokerage, except buying commissions;
- the cost of containers and (or) other reusable tare, if under the goods nomenclature of foreign economic activity they are considered as one with the goods under valuation;
- the cost of packaging, including the cost of packing and labor;

Relevant Part of the Value of the Following Goods and Services, which were Directly or Indirectly Supplied by the Buyer Free of Charge or at a Reduced Cost for Use in Connection with Production or Sale for Export of the Goods under Valuation.

- raw materials, components, parts, semi-finished goods and other components which are incorporated in the goods under valuation;

- tools, dies, moulds and other similar items used in the production of the goods under valuation;
- materials consumed in the production of the goods under valuation (lubricants, fuel and other);
- engineering, development, design work, artwork, plans and sketches undertaken elsewhere than in the Kyrgyz Republic and directly necessary for the production of the goods under valuation.

License and Other Payments [Fees] for the Use of Intellectual Property Objects, that the Buyer will Pay Either Directly or Indirectly as a Condition of Sale of the Goods under Valuation.

The Relevant Part of Direct or Indirect Proceeds of the Seller of any Subsequent Resale, Disposal or Use of the Goods under Valuation on the Territory of the Kyrgyz Republic.

These costs should be added to the price.

However, these amendments or additions to the price should be made only if:

- a) these expenses or payments were actually incurred and, therefore, are confirmed by documents, *i.e.* they should be made on the basis of objective and quantifiable data. If these data cannot be determined the customs value cannot be determined by method 1;
- b) these payments have not already been included in the price of the product;
- c) these payments are made by the buyer.

At the same time the declarant may exclude from transaction value expenses actually incurred for delivery of goods after importation to the customs territory of the Kyrgyz Republic, *i.e.* from the point of importation to the point of delivery of the goods, if these expenses are confirmed by documents.

The Customs Code of the Kyrgyz Republic also provides that method 1 shall not be applied to determine customs value of goods if:

- there are restrictions as to the buyer's right to dispose or use the goods under valuation, except:
 - restrictions established by the Kyrgyz Republic legislation;
 - restrictions of a geographical area in which goods may be resold;
 - restrictions which do not substantially affect the value of the goods.
- the sale or price is dependent upon conditions, the influence of which cannot be calculated;
- information used by the declarant is not confirmed by documents or is not quantifiable and reliable;

- participants to transaction are related except cases where their relationship did not influence the transaction value that should be proved by the declarant.

To confirm the declared customs value the declarant should submit the following documents:

- foundation documents of a person who transfers the goods;
- agreement (contract) and supplementary agreements thereto (if provided);
- invoice and banking documents of payment (if bill has been paid), or pro forma invoice (for conditionally - cost-based transactions), and other documents of payment and (or) accounting which confirm the value of the goods;
- transport and insurance documents, if there are such, according to the conditions of delivery;
- transportation bill or officially certified calculation of transport costs in cases where transport costs were not included in invoice;
- customs declaration of the exporting country (if there is one);
- packing lists;
- license for goods the importation of which is carried out on the basis of licenses in compliance with established procedure;
- certificate of origin, quality, and safety, *et cetera*.

If necessary, the customs body may require the following supplementary documents:

- contracts with third parties incidental to the transaction;
- bills for payments by a third party for the benefit of the seller;
- commissions and brokerage incidental to the transaction of the goods under valuation;
- documentation of accounting;
- licensing or authors' agreements;
- export (import) licenses;
- warehouse receipts;
- orders for delivery;
- catalogues, specifications, price-lists of manufacturer firms;
- manufacturer's calculation for the good under valuation (if the firm agrees to supply it to the Kyrgyz buyer);
- other documents which may be used to confirm the information declared in customs value declaration.

In reviewing the documents submitted for the confirmation of the customs value it is necessary to verify very carefully the consistency of figures in different documents. If inconsistent data is found in the submitted documents, method 1 cannot be applied.

In order to use documents as documents confirming the customs value, they shall contain:

- detailed particulars of a seller and a buyer;
- terms of delivery;
- schedule of goods with a unit price for each of them and total cost of the good;
- required signatures and stamps;
- particulars of a contract which they relate to;
- if terms and conditions of the contract provide for discounts they should be shown in the contract and invoice, specifying conditions for their granting;

In addition to that, the contract and (or) annexes thereto which are its integral part should contain information on:

- a the nature of a transaction (*i.e.* is the transaction in question a sale-purchase transaction or a consignment agreement (credit against goods), or Agreement of Commission, or a lease agreement, *et cetera*);
- b terms of delivery of goods;
- c a schedule of imported goods at the level of assortment;
- d volume (quantity) of imported goods;
- e a unit price (in currency of the contract) and total amount of the contract;
- f its quality requirements;
- g established procedure of presenting claims in connection with actual noncompliance of quantity and quality of the good with terms and conditions of the contract;
- h procedure and a place for the settlement of disputes between a seller and a buyer (arbitral conditions);
- i conditions and date of payment.

Additions to the Price Actually Paid or Payable

The initial point of determining customs value shall always be the determination of actual costs incurred by the buyer. In determining the customs value the transaction value actually paid or payable for the imported goods, at the moment when they cross customs border of the Kyrgyz Republic, shall include the following five elements (additions), unless already included:

A - cost of delivery of the goods to the airport, port or other point of importation of the goods to customs territory of the Kyrgyz Republic;

B - costs incurred by the buyer;

C - the relevant part of the cost of the goods and services which were provided by the buyer, directly or indirectly, free of charge or at a reduced price, for use in connection with the production or sale for export of the goods under valuation;

D - license and other fees for the use of intellectual property objects which the buyer is required to pay directly or indirectly as a condition of sale of the goods under valuation;

E - the amount of a part of direct or indirect proceeds of the seller from any further resale, disposal or use of the goods under valuation in the territory of the Kyrgyz Republic.

A□ Costs of Delivery of Goods

Costs of delivery of goods to the buyer shall include all costs of transportation to the point of importation on the territory of the Kyrgyz Republic.

“Point of Importation” shall mean:

- for air transportation - an airport of destination or the first airport on the territory of the Kyrgyz Republic where the plane carrying the goods lands and the goods are unloaded;
- for transportation by other types of transport - point at which the goods cross the border of the Kyrgyz Republic;
- for goods delivered by mail - a point of international mail exchange.

Delivery costs of imported goods shall include the following components (if they took place prior to importation to customs territory of the Kyrgyz Republic):

- the cost of transport;
- loading, unloading, transshipment and handling costs, including warehousing costs;
- insurance amount.

a□ The Cost of Transport

The cost of transportation shall include costs of transportation of the goods to the point of importation in the customs territory of the Kyrgyz Republic if in compliance with terms of delivery they have not been included in the transaction value (e.g., EXW term of delivery. FOB – port of an exporting country or a transit country, and other).

If transportation is carried out by different kinds of transport then costs for each kind of transport shall be taken into account.

Transportation costs shall also include additions to freight, charges for registration [validation] of the importation of goods (costs for issuing goods accompanying documents), and costs of processing of the goods during their transportation (costs of maintaining necessary temperature and humidity, ventilation, food, and medical treatment of animals en route, *et cetera*, which are necessary to provide safe-keeping of the goods).

In addition, the transportation costs shall include the cost of containers and pallets used as facilities for the transfer of goods during transportation, or the cost of their lease.

Under EXW and FAS terms of delivery, the costs of customs clearance of goods incurred by the buyer at the time of exportation from the exporting country shall be taken into account.

If delivery was carried out free of charge or by using the buyer’s own transport facilities, customs value, as a rule, would include the amount of transportation costs calculated for relevant kinds of transport on the basis of tariffs valid in the period of transportation of goods.

As an exclusion, it shall be allowed, if there is no information on tariffs for transportation by cars, to determine an amount of transportation costs on the basis of documents of accounting of the enterprise (organization) incidental to the cost of transportation.

b Loading, Unloading, Transshipment and Handling Costs, Including Warehousing Costs

These costs shall be included in customs value if they have occurred prior to the point of importation to customs territory of the Kyrgyz Republic.

For example, if delivery of goods does not enter the obligation of the seller according to the terms of delivery, and therefore relevant costs are not included in the price of a good, then the delivery shall be carried out at the expense of the buyer. During the transshipment of the goods en route from one transport to another (if delivery has been carried out by using different kinds of transport facilities) and their unloading somewhere en route, *et cetera*, all these costs should be included in the customs value. If the goods have been stored in a warehouse (e.g., the goods have been stored in a warehouse for 2 days in the time of their transshipment from a car to a ship in the exporting country), warehousing costs should also be included in the customs value.

c Insurance Amount (Insurance Costs)

This element shall include insurance costs incidental to delivery of goods, *i.e.* insurance for the period of transportation and loading and unloading of the goods and transactions incidental to loading or unloading and warehouse works.

If the Agreement provides for CIF, CPT, DDP, and DDU terms of delivery, and therefore the invoice cost includes costs of delivery of goods to the point of destination, in order to single out this part of costs from transaction value or from total amount of these costs and to separately calculate transportation costs to the point of importation to the territory of the Kyrgyz Republic and from this point to the point of delivery, they should be separately given in the invoice and the contract should have a relevant proviso.

In this case the declarant can list costs of delivery of the goods after importation to the territory of the Kyrgyz Republic to the point of destination in order to exclude these costs from the transaction value in those cases where they are separately given in the invoice, *i.e.* the declarant may declare only the amounts confirmed by documents as the amounts to be deducted from the transaction value.

If they are not separately given in the invoice, costs of transporting goods at the section “point of importation - point of destination” can be deducted from total cost of transportation costs, only provided the customs body is provided with valid evidence concerning the price being determined on the basis of “Franco -Border” which would be much lower than the price determined on the basis of “Franco-Point of Destination”.

In addition, the customs body shall control validity of their inclusion and accuracy of determining the amounts declared.

It should be noted that the amounts of transportation costs which can be excluded from transaction value in compliance with current legislation shall not be declared by the declarant and are not to be excluded from the transaction value.

B. Costs Incurred by the Buyer

The Customs Code of the Kyrgyz Republic provides for three cases:

- commissions and brokerage, except buying commissions;

- the cost of containers and (or) other reusable tare, if under the goods nomenclature they are considered as one with the goods under valuation;
- the cost of packaging, including the cost of packing and labor.

Commissions and Brokerage, Except Buying Commissions

In cases where the seller or buyer uses the services of an intermediary in the sale or purchase of goods, the question arises as to whether the costs of the intermediary's services must be included in the customs value. The agent's (intermediary's) fee is in the form of a commission which is, generally, a percentage of the total price of the goods.

Agents who work on behalf of the buyer are called buying agents; agents who work on behalf of the seller are called selling agents. Accordingly, their fees are buying or selling commissions.

The Customs Code of the Kyrgyz Republic provides that customs value includes commissions for sale of a good, *i.e.* those costs incurred by a seller in order to find a buyer and sell the good to him. Generally, these costs are already included in the seller's price. [But] if for any reason they have not been included, they should be additionally charged on the basis of relevant agreements with intermediaries, accounts and documents of payment.

In case of "buying commissions". This term shall mean fees paid by an importer to his agent for the service of searching for goods necessary for him and representing him abroad in the purchase of the goods under valuation (imported goods).

Buying commissions shall not be included in the customs value of goods declared by the declarant in the importation of the goods to customs territory of the Kyrgyz Republic.

Agent's *buying commissions* shall be paid by the buyer and they should be distinguished from payment for the goods. With the participation of an intermediary in a transaction, an Agreement of Commission should be concluded. In particular, this Agreement reflects functions of the agent on buying and the form of paying for his services.

Selling commissions obtained by the agent shall be paid by the seller and, as a rule, shall be shown in the seller's invoices.

A broker is an intermediary who assists in implementing different transactions (commercial, loan, insurance, freight, *et cetera*) between interested parties - clients, upon their instruction and at their expense. The broker receives a fee in the form of commissions for the mediation. The broker shall mean the same intermediary but he independently carries out mediation. The broker works in order to bring a seller and a buyer together. For his activity the broker charges commissions both from the buyer and the seller. All the broker's payment should be included in the customs value of imported goods.

It should be noted that a trilateral agreement (Seller - Broker - Buyer) may be concluded in a transaction which involves the participation of a broker.

In the declaration, the declarant shall specify costs of commissions and brokerage (except buying commissions), if they have not already been included in the transaction value.

If goods of several descriptions which are a part of one shipment are declared, the costs of commissions and brokerage shall be apportioned between each description of the goods in proportion to their cost (in the case where the agreement relates to all or several goods from this shipment).

Containers, Tare and Packing

Tare shall mean items (containers) for packing, storing and transporting goods.

Packing shall mean tare or a material in which a good is contained. Packing shall be intended for keeping properties of goods after their manufacture and compactness of goods for a convenient transportation. One can distinguish external (cases, boxes, bags, containers, *et cetera*) and internal packing (inseparable from the good itself without violating its quality), usual (generally accepted in trade in this good) and special packing (used in specific cases by wish of a buyer), hard and soft packing, and other.

Containers, tare and packing shall be considered as one whole with the goods being valued where they are inseparable from the good.

In compliance with notes to the Goods Nomenclature of Foreign Economic Activity the following rules should be taken into account:

A. Cases [covers] and cases for camera, musical instruments, rifles, drawing accessories, necklaces and similar tare (packing) that have a specific form and are intended for storing relevant articles or sets of articles, suitable for a extended use, and presented together with the articles with which they are intended, should be classified jointly with the articles they contain.

This rule shall not apply to tare (packing) which, forming one with the packed articles, provides essentially a different nature to the latter.

This rule shall apply only to such containers which:

- a have a form or are adjusted so in order to contain a specific article, *i.e.* they are designed for a specific kind of articles. Some containers repeat the form of articles which are contained in them;
- b are suitable for extended use, *i.e.* they have the same longevity as the articles themselves for which they are intended. These containers are also intended for providing safety of the articles when they are not used (e.g., during transportation or storage). Such features distinguish them from usual packing;
- c are presented with the articles for which they are intended, irrespective of whether the articles themselves may be packed separately for convenience during transportation;
- d are usually sold with articles;
- e on the whole do not reveal the basic feature of a good.

The following are the examples of containers presented together with an article for which they are intended, and should be classified in accordance with this rule:

- boxes and caskets for jewelry (7113);
- cases for electric shavers (8510);
- cases for binoculars and telescopes (9005);
- covers and cases for musical instruments (9202);
- covers for weapons (9303).

Examples of containers which do not fall under this rule shall be containers of the kind of silver caddies or decorative ceramic vases for sweets.

Containers presented separately shall be classified under their relevant headings.

B. According to the provisions of the aforementioned rule A, packing materials and packing containers supplied together with goods shall be jointly classified if they are of such kind which is usually used for packing these goods.

This rule shall regulate classification of packing materials and packing containers usually used for packing goods to which they relate.

However, this provision shall not be used in those cases where packing materials and packing containers can obviously be used repeatedly, *e.g.*, metal containers or tanks for compressed or liquefied gas.

Packing containers (bottles, large bottles, cans, *et cetera*) of a 10-liter capacity or less used for the transportation and storage and consumption and sale of goods shall be classified under the same goods heading as the goods themselves contained in them even if such packing containers are obviously good for reuse.

Packing containers of a 10-liter capacity shall be classified jointly with the goods contained in them, provided these packing containers are not suitable for reuse.

Packing containers of a 10 liter capacity shall be classified separately from the goods which are contained in them, provided these packing containers are obviously suitable for reuse.

Customs value shall include Buyer's costs of containers (tare) and packing in case where they have not been previously included in the transaction value and where in accordance with the Goods Nomenclature of Foreign Economic Activity they are considered as one whole with the goods being valued.

In this case containers shall mean containers as a kind of tare. Containers used for the transportation of goods shall be considered in costs of delivery of the goods.

Packing containers of usual types such as cases, bags, boxes, *et cetera* which are not of independent importance (without the basic good) or cannot be used otherwise but for putting in them relevant goods, are in compliance with such requirement.

Where reusable containers are used, their cost, if goods are supplied many times, shall be distributed in proportion to the quantity of goods in each shipment. A pro rata distribution of costs of containers (*i.e.* transfer of their cost to each shipment in installments) shall be accepted by the customs body, provided this provision has been reflected in the contract or confirmed by any other document.

Costs of containers shall not include separately paid amounts for the return of containers to the seller.

For example, if a good is supplied in a packing which is one whole with the good (jam in glass cans), the good and the packing will be classified under one tariff heading (one heading of the Goods Nomenclature of Foreign Economic Activity). In this case costs of packing shall be included in the customs value of the good under valuation (jam).

Other alternative - a good is supplied in a container or tank which is reusable and classified under a heading of the Goods Nomenclature of Foreign economic Activity other than the heading of the good (*i.e.* containers and tanks are used for the transportation of goods). In this

case the cost of such a container, if it has not entered the transaction value, should be taken into account as “Costs of Delivery (transportation)”, e.g. the cost of leasing this container or tank.

Note: containers and tare being considered separately from imported goods can be declared under regime which is different from regime of release for free circulation (e.g., a temporary importation), provided there is a possibility for their reliable identification in accordance with the Customs Code of the Kyrgyz Republic. Containers and tare of such kind will be classified separately from goods, and if necessary, their customs value will also be determined and declared separately as if independent goods.

In determining costs of this element for customs valuation purposes, all expenses incidental to providing with packing and containers should be taken into account, in particular:

- a internal packing cases or boxes (such as “retail” packing: bags, cases, blister packing, plastic covers, cardboard boxes, *et cetera.*);
- b external packing cases or boxes (such as “export” packing which includes cardboard boxes, wooden cases, metal cases, *et cetera.*).
- c packing materials (cardboard padding, bubble bags, straw, ground paper, chips, or sheets, *et cetera.*);
- d cost of labor in putting goods in containers (*e.g.*, packaging and sealing of cases and boxes, turning, creating appropriate environmental conditions, vacuum packaging, placing goods on hooks or shelves, *et cetera*)

All costs incurred by the buyer should be included in the price actually paid or payable to such extent to which they have not been included yet and are not costs incurred by the seller.

In order to avoid double taxation the cost of containers should not be included in customs value where according to national legislation these containers should be separately included in the declaration and are subject to customs payments or not in accordance with current customs legislation.

C. Goods and Services which were Supplied Directly or Indirectly, Free of Charge or At a Reduced Price by the Buyer to the Seller for Use in Connection with Production or Sale of Goods under Valuation for Exportation

The Customs Code of the Kyrgyz Republic shall establish a schedule of goods and services whose cost is to be included in customs value.

As a rule, such situation occurs in cases where goods being valued are imported on the basis of a turnkey contract or turnkey contract on the manufacture of the goods by using materials of a customer (buyer), and in addition, the buyer (directly or indirectly, *i.e.* through third parties) has supplied to the seller, free of charge or at a reduced price, goods and services for use in the production and/or sale of the goods being valued for export to the Kyrgyz Republic, including equipment which is provided by the buyer to the seller for lease and the order which is performed by the seller on the basis of the buyer’s plans or moulds, *et cetera*; on the basis of agreements on processing with subsequent exportation. The question is about the cost of goods and services which have been provided by the buyer to the seller, directly or indirectly, free of charge or at a reduced price, for use in connection with the production or sale of the goods being valued for export.

The Customs Code of the Kyrgyz Republic provides for four possibilities:

- the cost of raw materials, components, parts, semi-finished goods and other components which are incorporated in the goods under valuation;

- the cost of tools, dies, moulds and other similar items used in the production of the goods under valuation;
- the cost of materials consumed in the production of the goods under valuation (lubricants, fuel and other);
- the cost of engineering, development, design work, artwork, plans and sketches undertaken elsewhere than in the Kyrgyz Republic and directly necessary for the production of the goods under valuation.

In determining the issue on including relevant costs in customs value, the general requirements for making additions should be taken into account. In this case one should keep in mind that goods and/or services can be directly or indirectly supplied by the buyer.

The Cost of Raw Materials, Components, Parts, Semi-Finished Goods and Other Components which are Incorporated in the Goods under Valuation

Here the cost of raw materials, components, parts, semi-finished goods and other components which have been provided by the buyer to the seller, free of charge or at a reduced price, for use in the production or sale of the goods being valued and which are incorporated in them shall be taken into account.

The value of such goods (services) shall be a purchase price that the buyer has paid when buying them from third parties.

If these goods are manufactured by the buyer himself or a person related to him, then the cost of their production confirmed by the buyer's relevant documentation of accounting shall be accepted as their value.

If the buyer supplies to the seller goods already used, their value shall be determined by taking into account the degree of wear and tear according to the buyer's data on accounting.

If the buyer rendered some services on processing of raw materials and materials and components, or their delivery or storage, *et cetera*, the cost of these services (in calculating customs value) would be taken into account on the basis of a price at which they were produced or acquired by the buyer.

For example, a buyer enterprise gives an instruction to its subsidiary in a third country concerning delivery to the seller of components for the production of goods to be purchased. The cost of these components should be extra added to the price actually paid for the good.

Also a mandatory condition for taking into account costs of this entry shall be the requirement that the goods and services to be supplied by the buyer be used by the seller in the production and sale for export of the goods being valued.

In examining additions taken into account according to this entry the following points should be considered. The cost of raw materials and materials and components should not include the cost of materials and components which have been rejected as defective or damaged or wastes, i.e. they cannot be considered "included in the goods being valued".

Example 1.

Firm A of the Kyrgyz Republic buys from Firm B in Germany a good and sends cardboard cases for its packing. Does the customs value of the imported good include costs of cardboard cases which are usual packing tare and not of independent importance (without the basic good)?

In this case the customs value of the imported good should include the cost of the cardboard cases.

Example 2.

A Kyrgyz Republic Importer, Firm A, has carried out a gratis delivery to Firm B in Germany of fabric for sewing jackets that it imports. Seller Firm B, having produced a lot of jackets, sells them to firm A and submits a bill for the amount of \$20000. What will be the customs value of the good being valued?

The price given in the bill is the amount of costs and profit of the producer seller of the jackets. But the seller has not included in this price the cost of the fabric as it has been supplied to it free of charge.

However, in accordance with the requirements of the Customs Code of the Kyrgyz Republic the customs value should also include the cost of the fabric supplied by Firm A. How is the cost of the material supplied determined?

If the buyer, Firm A, produced itself the fabric, its cost would be made of costs of its production (on the basis of accounting, calculation, et cetera).

If the buyer bought this fabric, i.e. it is not a producer of this fabric, e.g., for \$10000 from Firm B, the cost of this fabric for customs purposes shall be \$10000.

So, the customs value of the good being valued shall be equal with the amount of the cost of the material and cost given in the bill submitted by the buyer:

$$\$20000 + \$10000 = \$30000.$$

The Cost of Tools, Dies, Moulds and Other Similar Items Used in the Production of the Goods under Valuation

Here the cost of instruments and dies and moulds and other similar equipment shall be taken into account, which were provided by the buyer to the seller, free of charge or at a reduced price, for use in the production or sale for export of the goods being valued.

Unlike the first case, here the question is about providing the means of production.

When including in customs value the costs of instruments and dies and moulds and other similar equipment used in the production of the goods being valued two factors are important:

- a□ the cost of these elements;
- b□ the procedure (methods) of distribution of this cost to goods being valued.

Example 1

A buyer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. When determining customs value, upon the buyer's request, the value of the mould may be apportioned either over 1,000 units, 4,000 units or 10,000 units.

Example 2.

A Kyrgyz Republic importer, Firm A, supplied free of charge to Firm B in Germany four sewing machines to produce 4000 shirts. The seller, Firm B, having produced the shirts, sells them to the buyer, Firm A. According to the contract between Firms A and B four deliveries

of the shirts should be carried out within two years in equal lots for the amount of \$80000. A bill has been submitted for the first delivery for \$20000.

The cost of one new sewing machine is \$15000. Its useful life according to the technical specifications is 6 years. At the time of delivery of the sewing machines all 4 have been in exploitation for 4 years. After the order has been performed (4000 shirts have been produced) the exploitation of the sewing machines is completed.

What will be the customs value of the first lot of the good being valued (imported)?

The price given in the bill is costs and profit of the seller from the production of the first lot of the shirts without taking into account costs of amortization of the sewing machines.

Let us calculate these costs:

a \square *amortization of one sewing machine per year: $\$15000:6$ (years) = $\$2500$;*

b \square *amortization of one sewing machine for four years: $\$2500 \times 4$ (years) = $\$10000$;*

c \square *residual value of one sewing machine on the date of its delivery to Firm B: $\$15000 - \$10000 = \$5000$;*

d \square *amortization of one sewing machine for the production of one lot of the shirts: $\$5000 : 4$ (deliveries) = $\$1250$;*

e \square *amortization of four sewing machines for the production of one lot of the shirts: $\$1250 \times 4$ (sewing machines) = $\$5000$;*

So, the customs value of the goods being valued (imported) shall be equal to the amount of costs and profit of the seller from the production of the first lot of the shirts (without taking into account costs of amortization of the sewing machines) and amortization of four sewing machines referred to the value of the first lot of the goods:
 $\$20000 + \$5000 = \$25000$

The Cost of Materials Consumed in the Production of the Goods Being Valued

Here the cost of auxiliary materials shall be taken into account which are directly or indirectly provided by the buyer to the seller, free of charge or at a reduced price, for use in the production or sale for export of the goods being valued.

The question is about the materials which are fully used in production.

Materials consumed in the production of the goods being valued shall include different products used in production, but they are not surely to be identified in the imported goods (final products). This in particular refers to chemical catalysts which will not be in the final product.

The same category shall include such products as benzene which will be used for testing engines of final cars, if such testing is a part of the process of production of a special car model.

It may be gas, e.g. freon used in the production of semi-conductors, *et cetera*.

The Cost of Engineering, Development, Design Work, Artwork, Plans and Sketches undertaken Elsewhere than in the Kyrgyz Republic and Directly Necessary for the Production of the Goods under Valuation

Here the cost of engineering and development, design work, artwork, plans and sketches shall be taken into account which are undertaken by the buyer for the seller, used by the seller in the production of the goods being valued, and supplied by the buyer free of charge or at reduced prices.

In calculating the customs value the cost of these works and services shall be taken into account according to the price at which they have been acquired or produced by the buyer.

Costs of the aforementioned services can be taken into account only if they are declared by the declarant. If the declarant has not declared them and the customs bodies have reasonable suspicion that they took place, an external examination of this participant of foreign economic activity is necessary.

The customs value of the imported goods shall not include the cost of engineering, development, design work, artwork, plans and sketches undertaken in the Kyrgyz Republic.

If the product was produced by the buyer or by a person related to him, its value would be the cost of producing it confirmed by the buyer's relevant accounting documentation. If the product had been previously used by the buyer, regardless of whether it had been acquired or produced by such buyer, the original cost of acquisition or production would have to be adjusted, taking into account the degree of its wear and tear on the basis of the buyer's accounting data. In case where the buyer leases a product, the cost of lease will be an addition to the price actually paid or payable.

Once a value has been determined for the relevant component, it is necessary to apportion that value to the imported goods. The buyer can use various alternatives.

For example, the value of a relevant component might be added to the first shipment if the buyer decides to pay customs duties and taxes on the entire added value at one time. In another case, the buyer may request that the value be apportioned over the number of units produced up to the time of the first shipment. Or, as a further example, he may request that the value be apportioned over the entire anticipated production for which contracts or firm commitments already exist.

The application of this or that method of apportionment will depend upon the documentation provided by the buyer.

D. License and Other Payments [Fees] for the Use of Intellectual Property Objects, that the Buyer should Pay Either Directly or Indirectly as a Condition of Sale of the Goods under Valuation

As such payments shall be considered fees paid for the use of rights to:

- the manufacture of imported goods (as well as designs or models of manufacturing products; designs of fashion qualities, "know-how");
- the sale for exportation of imported goods as well as trademarks (goods marks), industrial designs;

- the use or resale of imported goods (as well as patents, copyright to works of literature, belles-lettres or scientific works, including cinematographic products; manufacturing technologies [processes] inseparably embodied in the imported goods).

Frequently, rights to the use of goods containing an intellectual product are marked by trademarks (goods marks), copyright and patents.

Trademark

Trademark shall mean a special mark or “logo” which serves to identify goods of an industrial or commercial enterprise. Usually, protection through a trademark, in contrast to copyright, requires the registration of the trademark in the relevant state organization.

Copyright

Copyright shall be a reserved right which protects its owner against a non-sanctioned use of his work (usually belles-lettres or works of literature), reproduction, copying or translation. It shall protect such works as:

- works of literature (novels, articles, works, *et cetera*),
- musical compositions (melody and lyrics),
- art works (pictures, plans, sculptures, *et cetera*),
- maps and technical plans,
- photos,
- films.

Patents

A patent may be defined as a document issued by a special governmental institution that describes an “invention” and enumerates legal situations in which a patented invention can be used only by the patent-holder’s permission (doing that a reserved right). An invention shall mean a new idea which is a result of inventive activity and shall be used, as a rule, in industry.

Know-how shall mean any knowledge and practical technical, commercial and other experience not provided with patent protection.

Know-how shall include technical documentation (plans, designs, schemes, methods, instructions, *et cetera*), patterns of articles, commercial information, information on the organization of production, training of personnel, *et cetera*.

License and other charges should be added to transaction value only where those charges:

- a concern the goods being valued (imported). This means that fees for the use of an author’s property or a license fee should directly refer to the imported goods either because these goods include the use of a trademark or copyright, or because these goods contain a patented process or some rights properly protected;

b□ are terms and conditions of a purchase-sale transaction between a seller and a buyer.

This means that a purchase of goods shall include fees for the use of an author's property or license fees; in order to receive goods a buyer is required to pay for the use of the author's property or to pay a license fee.

License fees to be paid by the buyer either directly to the seller or for his benefit to a third party shall be taken into account. Where the buyer pays a license fee to the third party, this fee should be paid by order of the seller or a person who acts on behalf of the seller. So, it is not important whom the fee is paid to, the important thing is that this payment should be made as a condition of sale.

License fees for the right to reproduce goods in the territory of the Kyrgyz Republic shall not be included in the customs value.

Note: License fees shall be fixed on the basis of economic effect from the use of a license or an expected profit of a licensee which is not incidental in time to the actual use of the license.

The first case provides for interest deductions (royalty) from the value of a licensed purchase being produced and sold or from share in the licensee's profit..

The second case provides for payment of firmly fixed amounts of lumpsum payment, transfer of a part of the licensee's securities or a counter-transfer of technical documentation.

Royalties shall be periodical deductions by the licensee in the form of fixed rates in agreed periods of time.

Royalties shall be calculated in percent on the cost of *pure [net]* sales of licensed goods or their cost or gross profit and shall be determined for a unit of produced goods.

The rate of royalty shall be determined according to the following formula:

$$Rs=100 \times R/S,$$

where Rs - rate of royalty; R - an annual amount of royalty; S - an annual cost of *pure [net]* sales less indirect taxes, fees [levies] and duties.

Lump sum payment shall mean a lump sum payment of compensation (fees [remuneration]) for the right to use a license before getting the economic effect from using it.

So, license fees shall be added to the customs value where terms and conditions of a contract or any other agreement such as a license agreement also establishing type of licenses, productional sphere, territorial borders of their use, and *et cetera*, provide for that.

Example 1.

A Kyrgyz firm buys a movie abroad. The firm has paid \$1000 to show it. According to the contract the Kyrgyz firm may circulate the movie, but for that it should pay the seller another \$1000. What is the customs value of the movie imported to the Kyrgyz Republic?

Licenses for the reproduction of the good in the Kyrgyz Republic shall not be included in the customs value, therefore, the customs value will be only the cost of the movie itself, i.e. \$1000.

Example 2.

Importer, a Kyrgyz firm, bought a new sports car abroad manufactured on the basis of an author's patent. According to the contract the car may not be bought without a license for this invention.. When selling this car the inventor receives a relevant license fee. That is why the buyer should pay the inventor of this car (the owner of the license for this good) i.e. a third person 10% of the cost of the car. This amount (10% of the cost of the car) did not enter the actual price which had been paid by the buyer to the seller. However, this payment (1) is a mandatory condition of sale of the car, (2) refers directly to the car, and (3) represents, in essence, payment in favor of the seller to the third person.

That is why in this example the amount of the license fee should be included in the customs value of the car under valuation.

E. The Amount of a Part of Direct or Indirect Proceeds of the Seller of any Subsequent Resale, Disposal or Use of the Goods under Valuation on the Territory of the Kyrgyz Republic.

Where the agreement provides that part of the proceeds that the buyer will receive is returned to the seller, the amount consistent with this part of proceeds shall be included in the customs value of the goods.

If at the time of customs clearance the amount of the proceeds is unknown, a preliminary (anticipated) amount - its value must be accepted by the customs body. In order to determine an anticipated amount of proceeds, it shall be allowed to conduct an independent expert's appraisal. Until the amount of proceeds is determined and accordingly its part which is to be returned to the seller, the good may be given to the buyer for use under a conditional (temporary) appraisal, ensuring payment of due customs payments and taxes, or customs valuation of the goods shall be made by methods 2-6.

As general requirements in respect of the procedure of making the aforementioned additions to the price actually paid or payable (i.e. to transaction value), it is necessary to remember that:

- 1 If there is no documentary confirmation of the cost of components to be added to the transaction value, the customs value of the goods cannot be determined by method 1.
- 2 Activities undertaken by the buyer at his own expense in addition to those for which adjustment is provided by Article 170 of the Customs Code of the Kyrgyz Republic shall not be considered an indirect payment to the seller even though they might be regarded as of benefit to the seller. In determining customs value, the costs of such activities shall not be added to the price actually paid or payable.
- 3 Customs value should not include the amounts of dividends or similar payments being made by the buyer to the seller and representing payments which are not directly related to the goods being valued (imported).

Permitted Deductions from the Price Actually Paid or Payable

In accordance with the Customs Code of the Kyrgyz Republic in some cases there may be exclusions from the price actually paid or payable of costs included in this price, in particular: a part of costs incurred after the importation of the goods to the Kyrgyz Republic.

Such costs shall include:

- 1 costs of installation, assembly and adjustment [setting-up] of equipment or rendering technical assistance after the importation of goods to the Kyrgyz Republic;
- 2 costs of delivery of goods after importation to the point of destination;
- 3 customs duties, taxes and levies being paid during importation or sale of goods.

For example, if the transaction value included costs of delivery of goods to the point of destination, a part of costs of delivery of the goods from the point of importation to the point of destination, upon the declarant's application and with a documentary confirmation of their amount, might be deducted from the transaction value.

Delivery shall mean the same transactions which are specified in the paragraph that considers additions of the same entry.

Requirements in respect of documentary confirmation of each kind of costs to be deducted shall be established by normative documents of the State Customs Committee of the Kyrgyz Republic.

Requirements in Respect of the Application of the Method Based on Transaction Value of Imported Goods (Conditions for Applying Method 1)

A precondition for determining customs value of goods by applying method 1 shall be the fact that only the price of a foreign trade sale-purchase transaction of imported goods shall be considered the basis for determining customs value.

This means that a condition for the application of method 1 shall be the fact of sales of goods, *i.e.* a sale-purchase transaction on the basis of Agreement in accordance with which transfer of goods through customs border of the Kyrgyz Republic is carried out.

So, if transactions which do not provide for the transfer of the proprietary right to goods by the seller to the buyer for a certain fee are made, such transactions shall not be a sale.

The following can be examples when imported goods are not the subject of a sale and therefore, cannot be valued by method 1:

- gifts, samples and advertising items supplied free of charge;
- goods imported on consignment;
- goods imported by subsidiaries, branches, structural divisions which are not independent business (entrepreneurial) entities;
- goods imported for the purposes of hire or lease, or on a loan.

The Customs Code of the Kyrgyz Republic establishes the following specific cases when method 1 cannot be applied for determining customs value:

- There are restrictions as to the buyer's right to dispose or use the goods under valuation, except:
 - restrictions established by the Kyrgyz Republic legislation;
 - restrictions of a geographical area in which goods may be resold;

- restrictions which do not substantially affect the value of the goods.
- The sale and transaction value are dependent upon conditions, the influence of which can not be calculated.
- Information used by the declarant when declaring customs value is not confirmed by documents or is not quantifiable and reliable.
- Participants to transaction are related, unless their relationship has affected the transaction value that should be confirmed by the declarant.

Persons shall be deemed to be related if they meet at least one of the following criteria:

- one of the participants to the transaction (a natural person) or an officer of one of the participants to the transaction is at the same time an officer of another participant to the transaction;
- participants to the transaction are co-owners of the enterprise;
- participants to the transaction are bound by labor relations;
- one of the participants to the transaction owns, controls or holds at least 5% of the outstanding voting stock or shares of both of them;
- both of the participants to the transaction are directly or indirectly controlled by a third person;
- together the participants to the transaction directly or indirectly control a third person;
- one of the participants to the transaction is under direct or indirect control of the other participant to the transaction;
- participants to the transaction or their officers are relatives.

A. There are Restrictions as to the Buyer's Right to Dispose and Use the Goods under Valuation

This provision concerns the buyer's right to the imported goods as a new owner, including rights to the use and destruction of the goods. In practice there are transactions whose terms and conditions limit the buyer in his actions in respect of the goods. As the seller has established for him specific "limits" he may not dispose the goods as he thinks best, *i.e.* he has limited rights to the use of these goods. This, as a rule, impacts the value of the goods, that is why when such restrictions are found the transaction value *i.e.* method 1 cannot be used as the basis for customs valuation.

For example, a car is sold at a nominal price but on condition that the buyer should use it only for charitable purposes. Such condition is a restriction, and the price specified in the agreement cannot be used as the basis for determining customs value by method 1.

So, the question here is about restrictions only as to the use and disposition of the good bought by the buyer.

For example, the requirement of carrying out a transaction through a special agent shall not be considered such a restriction, because this requirement relates to terms and conditions of a sale of goods and not to their use. License restrictions (*i.e.* obtaining the right to production and/or sale of products) shall not be taken into account either.

The Customs Code of the Kyrgyz Republic has established the following exclusions from this provision, *i.e.* such restrictions have been determined for which method can be applied for the determination of customs value:

- Restrictions established by legislation of the Kyrgyz Republic:

The following shall be such restrictions:

- requirements to get a license for any resale or use of goods;
- marking and packing requirements;
- goods testing or inspection requirements, *et cetera*.

For example, legislation can establish a certain circle of people who may import to the territory of the country specific kinds of goods - nuclear waste, narcotics, *et cetera*.

- Restrictions of a geographical area in which goods can be resold:

Here are meant territorial restrictions in respect of sale of goods that are introduced by a seller, such as regional wholesale distributions requiring resale only in this area..

This is a usual commercial practice which often provides for the use of intermediaries. The organization of a territorial mediation, even if an intermediary is given exclusive rights, shall not be considered a restriction in respect of applying method 1.

For example, a seller on the territory of the Kyrgyz Republic, which is conditionally divided by him to several areas, has his representatives in each of the areas. A buyer in the Kyrgyz Republic can purchase this good only on his area.

With such restrictions method 1 can be applied for determining a customs value.

- restrictions which do not substantially affect the value of the goods.

If a contract provides for some restrictions in respect of the use of a good by the buyer but their influence on the price is very insignificant and the buyer can substantiate that, method 1 may be applied.

In all cases where the fact of restrictions that are provided by terms and conditions of the agreement is found, the basic criterion in determining whether it is possible to apply method 1 shall be estimation of the nature of these restrictions and their influence on the transaction value.

If there is a restriction in respect of the importer's rights to the good under valuation, but it has not affected the transaction value, or the degree of this influence is quantifiable (*i.e.* the degree of its influence on the transaction value can be measured in terms of value) and can be confirmed by documents, then such restriction may be considered as a condition of the transaction, and method 1 can be applied.

First of all it is necessary to make out what is the nature of this restriction?

Does it actually mean disposal of the good or its use?

So, for example, there are certain restrictions connected with the nature of the good itself (fruit and vegetables which are subject to seasonal factors), or the nature of branches of industry (keeping confidentiality in progressive branches of electronics for the purpose of barring of industrial espionage), and other. In these cases the question is not about restrictions in respect of the application of method 1.

Determination of the degree of “significance” of that influence which is exerted by a restriction on the transaction value shall be considered on a case-by-case basis.

B. The Sale and Transaction Value are Subject to Conditions the Influence of Which Cannot be Calculated.

This case means that method 1 may not be applied if the sale of a good and (or) its price depend on conditions whose influence on the price cannot be quantified (*i.e.* in terms of value).

The most typical (common) examples of such kind of conditions are the following cases.

- 1 The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities.

For example, a seller in an exporting country sells television sets at 200 currency units per unit, provided that the buyer will also buy 50 audio tape-recorders at 40 currency units per unit.

- 2 The price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods.

For example, a seller in an exporting country sells to a buyer to a country of importation electronic goods at 1000 currency units, provided the buyer shall sell to the seller a relay used in the manufacture of these electronic goods at 15 currency units/unit. So, the price of the relay affects the price of the electronic goods.

- 3 The price for imported goods depends on providing certain services by the buyer to the seller.

For example, a seller in an exporting country sells to a buyer in the country of importation equipment at 10000 currency units, provided the buyer shall render to the seller certain informational services.

In all the cases in question factors that are external to the transaction affect the price of the imported good, *i.e.* there is external influence on the transaction and its price.

An essential point is the fact of whether this influence can be measured or calculated. If such measurement is impossible, this will mean the absence of the transaction value and impossibility to apply method 1.

In those cases where it is possible to estimate such influence on transaction value in terms of value, a relevant adjustment to the price should be made, and by taking into account the adjustment the received price actually paid or payable can be accepted as the basis for applying method 1.

All information concerning the adjustment of the good's price shall be confirmed without fail by documents, *i.e.* by quantifiable and reliable data that provide the possibility for customs bodies to check them.

In examining conditions of transactions and determining their influence on the possibility to apply method 1, it is necessary to distinguish those conditions which are generally accepted and apply to all participants of foreign economic activity (or can be accessible to them), and those which are selective and individual and not generally accepted.

Generally accepted conditions of sale and delivery of goods, *i.e.* conditions the fact of which does not affect the possibility of applying method 1, shall include:

- a terms of delivery, "Incoterms-90";
- b terms and conditions for making transactions and implementing such deliveries as: "purchasing, provided an expert is involved (with an expert's conclusion)", *et cetera*;
- c purchasing on the condition that the goods are delivered by a certain date;
- d such conditions as quantity discounts, "loyalty" [discounts] to a given seller, *et cetera*;
- e supply by the buyer to the seller of technical engineering or plans undertaken in the Kyrgyz Republic;
- f implementation by the buyer on his own account (even though by agreement with the seller) of some activities relating to the sale by the buyer of the imported goods, *e.g.*, advertising paid by the buyer;
- g testing or inspection requirements;
- h requirements in respect of providing confidentiality of information and secrecy of certain information on the imported goods.

C. Information Used by the Declarant in Declaring Customs Value is not Confirmed by Documents or is Not Quantifiable and Reliable.

In compliance with this requirement transaction value can be accepted by customs bodies and customs value can be determined by method 1 only if all its components are confirmed by documents.

Without documentary confirmation method 1 cannot be applied. The Customs Code of the Kyrgyz Republic establishes special requirements in respect of documentary confirmation.

Reliability requirement in this case means that customs bodies should have an opportunity to check the documents submitted by the declarant, therefore, this information should be available in the Kyrgyz Republic.

The Customs Code of the Kyrgyz Republic also establishes that the declarant shall, by customs body's order, supply to the latter necessary information.

The Customs Code of Kyrgyz Republic does not establish a specific list of information which may be required by the customs body.

In each specific case this list will depend on circumstances and conditions of a transaction, e.g., intermediaries, intellectual property elements in a good, conditions of making payments according to a contract.

D. Parties to Transaction are Related, Unless Their Relationship Has Affected Transaction Value

The relationship between parties to a transaction (a seller and a buyer) shall be considered from the point of view of the requirements established by the Customs Code of the Kyrgyz Republic.

It is necessary to remember that the fact of relationship between the seller and the buyer is not itself a ground to reject the declared transaction value and refuse to apply method 1, even though the declared transaction value is lower than the usual level of prices for similar goods.

Documents proving that this level of prices is typical for other transaction concluded between independent persons should be submitted to confirm that the price of a given transaction does not depend on the relationship of the contracting parties.

Information on relationship of a seller and a buyer and influence of this relationship on transaction value shall be given by declarant.

If the fact of a relationship is denied in the declaration, this information is verified only where reasonable doubts appear concerning its truth and there are grounds to suppose that this relationship has affected the price actually paid or payable.

On the other hand, the fact of relationship by itself is not sufficient to reject the transaction value (method 1) and conclude that the price has been influenced. There should be reasonable doubts that the price settled with a related buyer does not correspond to that price which would be settled for an unrelated buyer.

Reasonable doubts that the price fixed for a related buyer is very low, and therefore, has been influenced by relationship, may appear in the following cases:

- level of prices fixed in the agreement (often called inter-company or transfer prices) obviously evidences the fact that goods are sold to a related buyer;
- as a result of verification of circumstances that accompany a transaction it is found out that calculation of the price does not correspond to norms of accounting accepted in this branch of industry;
- difference between this price and the price fixed for resale of goods is too large;
- prices for identical or similar goods sold to an unrelated buyer are known, which considerably differ from this price.

If such doubts appear and the customs body itself could not eliminate them (e.g., it has neither reliable price information or information concerning customs value of identical or similar goods or information concerning a previous examination of these contracting parties which proved the absence of influence on the price), the declarant should supply further information.

This information should prove to the customs body that the price has been settled in a manner consistent with established practice in accordance with rules of calculation (costs plus profit) that are valid in this branch of industry and corresponds to the level of prices of a free and competitive market, or that the size of the price actually paid or payable declared by him

closely approximates to customs values of identical or similar goods previously determined at or about the same time, when they are sold to an unrelated buyer for the purpose of exporting to the territory of the Kyrgyz Republic.

Transaction Value of Identical Goods Method

If the transaction value of the imported goods cannot be determined or conditions of applying such method of customs valuation are not met, the customs value cannot be determined under method 1.

For example:

- a imported goods are not the subject of a sale;
- b the sale is subject to restrictions regarding the use or disposition of the imported goods;
- c the sale was accompanied by certain conditions due to which the actual cost of goods cannot be determined, or the information necessary to calculate relevant adjustments to the price and implement its adjustments is not available;
- d the sale is between related parties, and the parties' relationship influenced the transaction value, and *et cetera*.

In these cases, an alternative basis for valuation, that is the transaction value method of identical goods, shall be applied to determine customs value.

This method means that the customs value of the goods under valuation (the imported goods) shall be determined by applying transaction value of identical goods as the initial base, the customs value of which was determined by method 1 and accepted by the customs bodies.

The method based on transaction value of identical goods shall be applied if the following conditions are met:

- goods are sold for exportation to the Kyrgyz Republic;
- the goods are exported to the Kyrgyz Republic at the same time or within 30 days before or after the goods under valuation;
- the goods are exported to the Kyrgyz Republic in the same quantity and (or) at the same commercial level (wholesale, retail sale). Where identical goods were imported in different quantities and (or) at a different commercial level, the declarant shall make an appropriate adjustment of the price taking into account such differences and shall document to the customs body the validity of such adjustments.

Identical goods shall mean goods similar in all respects to the goods under valuation, including the following characteristics:

- physical characteristics;
- quality and reputation in the market;
- country of origin;
- producer.

Insignificant differences in appearance may not be grounds to refuse to treat the goods as identical. The following are considered as such insignificant differences:

- size;
- labels;
- color (if it is not a considerable price-forming factor).

In order to meet the criterion of identity the goods under comparison must be produced without fail in the same country as the goods subject to valuation.

Goods produced by different entities in the same country may be considered identical goods only if the buyer and the customs bodies do not have information on identical goods produced by the entity which produced the goods under valuation.

When applying the second method of customs valuation:

- a) goods shall not be considered identical to the goods under valuation if they were not produced in the same country as the goods under valuation;
- b) goods produced by an entity other than the producer of the goods under valuation shall be taken into account only if there are no identical goods produced by the producer of the goods under valuation.
- c) goods shall not be considered identical if their engineering, research, artwork and design work, plans and sketches, and other similar works are undertaken in the Kyrgyz Republic.

Example 1.

Different buyers import from the same country steel sheets that are the same in chemical composition, size and finish [decoration], but are imported for different purposes. Can the sheets be considered identical goods?

Although the first buyer uses the sheets in manufacturing the hull of a car, and the second buyer uses them in the production of stoves, these sheets shall be considered identical.

Example 2.

Wallpaper that is manufactured by the same firm is imported by a decorator and a wholesaler. Are the goods identical?

The wallpaper, even if it is imported by the decorator and wholesaler at a different price, is identical in all respects for the purposes of method 2 of customs valuation. Although the price differences may indicate to some extent differences of quality or reputation of the goods in the market, in comparing the goods to identical ones the price itself shall not be such a determining factor. Also, the price according to the requirements of method 2 should be adjusted taking into account commercial terms and conditions.

Example 3.

There are two shipments of jackets that are produced in the same country and previously imported to the Kyrgyz Republic. The jackets of both shipments were made of 100% wool of the same quality but different sizes and color, though they were made by one pattern. But, one shipment has a famous modeller's mark, and the other does not. Can the jackets from different shipments be considered identical goods?

In this case the fact of the trademark determining the good's reputation in the market shall be the material factor in solving the issue on possibility to consider the jackets of the two shipments identical goods. The name of the known modeller shall determine a different level of prices and different market in contrast to the second shipment of jackets. That is why these jackets cannot be considered identical goods.

Example 4.

There are two different shipments of computers which should be considered from the point of view of their identity. They are the same in all respects, i.e. manufactured of the same components, have the same characteristics, model, et cetera., manufactured by the same firm. However, one shipment of the computers is delivered assembled, and the other – disassembled. In this case, the necessity of assembling the computers means that the

computers of the two shipments at the moment of their importation are not the same by their physical characteristics, and that is why they cannot be considered identical.

In applying these provisions, Customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- a sale at the same commercial level but in different quantities;
- a sale at a different commercial level but in substantially the same quantities; or
- a sale at a different commercial level and in different quantities.

Taking into account differences found, an appropriate adjustment of the base (initial) transaction value of identical goods shall be made to compensate for differences in commercial level factors, quantity of the good for sale (using intermediaries or without using them), and other differences in the composition and level of additions to the price actually paid or payable. In addition, the customs value which is determined on the basis of transaction value of identical goods shall be adjusted.

Adjustments shall be made by the declarant on the basis of reliable information confirmed by documents.

If, in applying this method, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Transaction Value Method of Similar Goods (3rd method).

Where customs value of imported goods cannot be determined according to the transaction value method of imported goods or the transaction value method of identical goods, the method based on transaction value of similar goods shall be applied to determine the customs value.

In applying the method of transaction value of similar goods, transaction value of goods similar with imported goods whose customs value was determined by the transaction value method and accepted by the customs body, shall be taken as the basis to determine customs value of the imported goods.

The value of other transaction goods shall be used as the basis for the determination of the value of the imported goods (the goods under valuation). In addition, the mandatory requirement shall be the condition that the customs value of the goods being compared be determined by method 1.

In accordance with the Customs Code of the Kyrgyz Republic, the goods to be compared shall be imported at or about the same time, in approximately the same quantities, and at the same commercial level as the imported goods (goods under valuation).

If those characteristics differ, the transaction value of similar goods shall be subject to appropriate adjustments to compensate for such differences and bring the conditions under comparison to a comparable form.

The method of transaction value of similar goods shall be applied where the following conditions are met:

- goods are sold for exportation to the Kyrgyz Republic;

- b) the goods are exported to the Kyrgyz Republic at the same time or within 30 days before or after the goods under valuation;
- c) the goods are exported to the Kyrgyz Republic in the same quantity and (or) at the same commercial level (wholesale, retail sale). Where identical goods were imported in different quantities and (or) at a different commercial level, the declarant shall make an appropriate adjustment of the price taking into account such differences and shall document to the customs body the validity of such adjustments.

Similar goods shall mean goods which, although not similar in all respects, have similar characteristics and consist of similar components that allows them to fulfill the same functions as the goods under valuation and be commercially interchangeable. In determining the similarity of the goods the following features shall be taken into account:

- quality, the fact of a trademark and reputation in the market;
- country of origin;
- producer.

In applying this method of customs valuation it is necessary to bear in mind that:

- a goods shall not be considered similar with the goods under valuation if they are not produced in the same country as the goods under valuation;
- b goods produced by an entity other than the producer of the goods under valuation shall be taken into account only if there are no similar goods produced by the manufacturer of the goods under valuation;
- c goods shall not be considered if their engineering, research, artwork and design, plans and sketches, and other similar works are undertaken in the Kyrgyz Republic.

On the basis of these requirements, when determining whether the goods can be considered similar, the following factors should be considered:

- a Physical characteristics, *i.e.*
 - size and shape;
 - level of technical and other characteristics;
 - method of manufacture.
- b) Materials used for manufacturing goods, *e.g.*:
 - glass or plastic articles;
 - precious or ferrous metals;
 - fabric or paper, *et cetera*.
- c) Functions and sphere of application, *i.e.* what are the functions to be performed by these goods? Can the goods being compared perform the same functions?
- d) Commercial interchangeability, *i.e.* will the buyer accept the good being compared as a substitute (both from the point of view of its functional purpose and commercial characteristics)? And, the quality of the good, its reputation in the market and the fact of a trademark should be taken into account.

Example 1.

Paint for paper is compared to paint for fabric. In comparing the goods to similar ones, they should be interchangeable, as well as by their functional purpose and sphere of application. Paint that is good for printing on paper cannot be used for printing on [painting] fabric. For that reason, these goods are not similar even if the fabric paint is good for printing on paper.

Example 2.

Rubber covers of the same size are imported from two different producers in the same country. Each producer has his own trademark. However, the covers manufactured by these firms are of the same standard and the same quality. They have the same reputation

and are used by enterprises which produce cars in the importing country. Can the covers be considered identical or similar goods?

Although each producer uses different trademarks, the rubber covers have the same standards, quality, the same reputation in the market. On the basis of these data the following conclusions can be made:

- a) as these rubber covers have different trademarks, they cannot be considered identical goods;*
- b) at the same time, although these covers are not the same in all respects, they still have similar characteristics that allows them to perform the same functions. Because the goods are made taking into account the same standards and the same base materials, and they are the same by quality and reputation in the market and have a certain trademark, they should be considered similar even though they have different trademarks.*

Example 3.

There are deliveries of usual sodium peroxide for bleaching and special sodium peroxide (of a specific quality). The special peroxide is manufactured of the same base materials but through a process that uses purification of a very high degree. The usual peroxide cannot be used instead of the special peroxide because it does not have necessary purity as required by specification and is not completely dissolved being in the form of powder. Are these goods similar?

The goods in question are not similar in all respects. Both kinds of sodium peroxide are manufactured of the same base materials but they will not be completely interchangeable, as the usual peroxide cannot be used for laboratory purposes and its price is lower than that of the special peroxide because the quality of the goods is different. That is why the mentioned kinds of peroxide may not be considered similar goods.

Example 4.

There are shipments of two different kinds of "Roquefort" cheese. Both kinds of cheese are from skimmed sheep's milk. One kind is produced by a method of a continuous scraping of mould which is formed on the outer side of cheese during the process of its aging so that the mould will penetrate into the cheese. When slicing cheese and using it in cooking and preparing sauce and salads, et cetera, this causes it to crumble. Cheese of the other kind was not scraped during the process of its aging, so mould does not penetrate into the cheese. When slicing, such cheese does not crumble and can be used where slices of cheese are necessary. Will these cheese be considered similar products?

Though these two products contain the same materials they do not have the same physical characteristics (one of them crumbles, the other does not; one of them has deep interspersion [sprinkles] of mould, the other does not have); the methods of their production also differ (one of them was scraped and the other - was not). So, these two kinds of cheese will not be interchangeable from commercial point of view and, therefore, they shall not be considered similar products.

In applying this method first of all information on a sale of similar goods at the same commercial level and in approximately the same quantities as the goods being valued shall be used. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

Taking into account differences found, an appropriate adjustment of the initial transaction value of similar goods shall be made to compensate for differences in commercial level

factors, quantity of goods for sale (using intermediaries or without them), and other differences in the composition and level of additions to the price actually paid or payable. In addition, the customs value which is determined on the basis of transaction value of similar goods shall be adjusted.

Adjustment shall be made by the declarant on the basis of reliable information confirmed by documents.

If, in applying this method, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Example 1.

A gratis delivery of goods, let's say on account of an enterprise's authorized fund, is carried out. Because a sale-purchase transaction does not exist, method 1 may not be applied.

How can the customs value of the goods under valuation be calculated?

One should try to find transactions of similar goods (transactions of identical goods do not exist). For this, both information available to the declarant (customs or goods accompanying documents) and information available to the customs body can be used, but in depersonalized form (e.g., information from database of GTD [cargo customs declaration], DTS [customs value declaration]).

In addition, the customs value of similar goods shall be determined by method 1.

Let's suppose the customs bodies have information on two sale-purchase transactions of similar goods imported at approximately the same commercial levels and approximately the same quantities and no earlier than 90 days before the importation of the goods under valuation;

a) a sale-purchase transaction of similar goods as of 08.25.98, transaction value is \$4000;

b) a sale-purchase transaction of similar goods as of 07.17.98, transaction value is \$4500;

It is required to determine the customs value of the delivery by applying method 3.

In this example the transaction value of similar goods whose sale-purchase was carried out on 08.25.98 at a minimum transaction value, i.e. \$4000, shall be accepted as the base (initial) transaction value of similar goods in order to determine the customs value of the goods under valuation.

Example 2.

A gratis delivery of goods consisting of a shipment of 10 units is carried out, and the only transaction value of similar goods available to the customs body that meets conditions of method 3 refers to a sale of 500 units. In addition, it is confirmed by documents that the seller grants quantity discounts.

In this case the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not mean that an actual sale in the amount of 10 units should be found, it is enough to have price list data, however, price list rates should be trustworthy, and the price of the goods on the basis of sales and in other quantities should be fixed (confirmed). In the absence of such objective information, a customs value shall not be determined on the basis of method 3.

If the declarant or the customs body does not have information on customs value of neither identical nor similar goods, it is necessary to turn to other methods of valuation.

And, it is necessary to remember that in accordance with the declarant's wish the sequence of applying methods 4 and 5 can be changed.

Deductive Value Method (4th method)

For customs purposes the previous valuation methods of goods were based on transaction value, specifically transaction value of imported goods (method 1), transaction values of identical goods (method 2), or similar goods (method 3).

Where it appears impossible to use existing transaction values or the required transactions do not exist, it is necessary to turn to other alternative methods of valuation.

In addition, the methods of deductive value and computed value, upon the declarant's application, may be applied in any order (*i.e.* reversed). This is caused by the fact that these two methods may present very considerable difficulties in practical application.

This method of customs valuation shall be applied where the goods under valuation, identical or similar goods are sold in the Kyrgyz Republic without change in their initial condition.

In applying the deductive value method, the basis to determine the customs value of goods shall be the unit price of the goods at which the goods under valuation or identical or similar goods are sold in the greatest aggregate quantity in the territory (in the domestic market) of the Kyrgyz Republic, no later than 90 days from the date of importation of the goods being valued to a participant to the transaction who is not related to the seller.

The basis of this method provides for the choice of a price at which goods are sold in the Kyrgyz Republic. The use of sale prices of goods under valuation in the Kyrgyz Republic only within the framework of method 4 would considerably limit the scope of applying this method, that is why both international standards and legislation of the Kyrgyz Republic provide for the possibility to use sales of identical or similar goods under this method.

The sale price at the domestic market of goods under valuation, identical or similar goods, as the basis to determine the customs value, must meet the following conditions:

- a goods should be sold in the Kyrgyz Republic unchanged, *i.e.* in the same condition as imported;
- b imported, identical or similar goods should be sold at the same time with the importation of the goods under valuation or at the time close enough to the time of the importation of the goods under valuation; data on sales which took place no later than 90 days from the date of the importation of the goods under valuation shall be allowed for use;
- c if there are no cases of sale of the goods under valuation, identical or similar goods in the same condition as imported, the buyer may, if established requirements are met, use the unit price of a processed good, making appropriate adjustments for the value added by processing.

And, the buyer will need to confirm (substantiate) to the customs body the accuracy of the adjustment made, as the adjustment must be based on objective and quantifiable data. The accepted formulas and methods of valuation of goods processing works in relevant branches of production should be the basis of calculations;

- d the buyer should not directly or indirectly provide the seller, free of charge or at a reduced price, with goods or services used in the production and sale for the importation to the Kyrgyz Republic of the imported goods;
- e the first buyer of the imported goods at the domestic market of the Kyrgyz Republic should not be related to the seller (the importer of the goods under valuation, identical or similar goods).

In order to calculate customs value on the basis of a domestic price it is necessary to identify those elements which are usual for the domestic market, *i.e.* those costs which occurred after

the importation of these goods to the Kyrgyz Republic and should not be included in the customs value.

In compliance with the Customs Code of the Kyrgyz Republic the following components shall be deducted from the price of the goods:

- a commissions, additions usually made for profit and general expenses in connection with sales in the Kyrgyz Republic of imported goods of the same class or kind;
- b amounts of import customs duties, taxes, fees and other payments payable in the Kyrgyz Republic by reason of the importation or sale of the goods;
- c the usual costs of transport, insurance, loading and unloading incurred within the Kyrgyz Republic.

When choosing sales whose data can be used to determine the customs value by method 4 the provisions given below should be taken into account.

The same concepts of identity and similarity of goods defined by the Customs Code of the Kyrgyz Republic as applied to methods 2 and 3 shall be used for this method.

In contrast to the method based on Article 170 of the Customs Code of the Kyrgyz Republic, related parties shall mean relationship between an importer and a buyer in the domestic market, however, the same criteria of relationship which are provided under Article 170 of the Customs Code of the Kyrgyz Republic shall be used.

“A sale of goods on the territory of the Kyrgyz Republic” within the framework of this method shall consider only sales carried out in the Kyrgyz Republic, *i.e.* intended for consumption within the country and not for export.

The Customs Code of the Kyrgyz Republic establishes a time framework for applying method 4 - no later than 90 days from the date of importation. This means that if there are no sales on the date of importation we may consider a period of time before and after importation. Actual and reasonable limits of this period shall be set on a case-by-case basis, taking into account specific branches of production, market conditions, the fact of seasons, *et cetera*, but within no more than 90 days from the date of importation.

The concept of a sale of goods without change in condition shall mean the following: productional operations (including assembling) and a further processing of goods shall be considered as operations which change the condition of imported goods. At the same time goods shall be considered unchanged if operations to remove foreign packing and conserving substances are carried out, as well as simple repacking of goods for the domestic market. Such natural changes as loss of weight (through drying) of goods and their exhalation (for liquid) shall be also considered preservation of the unchanged condition of the goods. If there are no sales of the goods under valuation, identical or similar imported goods without change in condition it is possible to use as the basis for calculation a unit sale price of these goods at the market of the Kyrgyz Republic, after their further processing in the Kyrgyz Republic, taking into account adjustments for the value of this processing.

One of central issues of this valuation method shall be the choice of a price at which the greatest aggregate quantity of goods after importation to the country was sold to buyers at the first commercial level who are not related to the seller (importer).

In order to determine the greatest aggregate quantity all sales of the goods at [one] price shall be summed up. The greatest total quantity of units sold at one price will be the greatest

aggregate quantity of units. The following are examples on choosing the price of the goods on the basis of which the customs value shall be determined.

Example 1.

A price list presented as a document confirming the price at which imported goods were sold on the territory of the Kyrgyz Republic contains the following data:

<i>Sale Quantity</i>	<i>Unit Price</i>	<i>Number of Sales</i>	<i>Total Quantity Sold at Each Price</i>
1-10 units	100	10 sales of 5 units	65
		5 sales of 3 units	
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units	80
		1 sale of 50 units	

The greatest number of units sold at one price is 80; therefore, 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 sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at one price is 500; therefore, the unit price in the greatest aggregate quantity is 95 currency units.

Example 3.

In the situation under discussion various quantities of goods are sold at various prices.

Total number of units sold at one price is determined:

<u>Total quantity sold</u>	<u>Unit price (in currency units)</u>
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at one price is 65; therefore, the unit price for the greatest aggregate quantity is 90.

If the same shipments of goods (i.e. the same aggregate quantity of goods) appear to be sold at different unit prices, the lowest unit price shall be taken as the basis to determine the customs value.

Example 4.

In the situation under discussion equal quantities of goods are sold at different prices:

<u>Volume of Sales, in units</u>	<u>Unit Price (in currency units)</u>
20	10
50	15
15	20
10	15
40	10
45	20

Total number of goods sold at one price is determined:

<u>Total Quantity Sold</u>	<u>Unit Price (in currency units)</u>
	10
60 (20 +40)	15
60 (50 +10)	20
60 (15 +45)	

In this case shipments of the goods sold at different prices - 10, 15, 20 currency units - are 60 units. The price - 10 currency units - should be taken as the basis to determine the customs value. However, in addition, all the conditions provided by this method should be met, in particular:

- 1) goods should be sold to the first commercial level buyers;
- 2) goods should be sold to a person who is not related with the seller (importer) of imported goods;
- 3) for the purposes of determining the greatest aggregate quantity sales to a person who directly or indirectly, free of charge or at a reduced price supplies any goods enumerated in c), item 1, Article 170 of the Customs Code of the Kyrgyz Republic shall not be taken into account in connection with production or sale of the imported goods for export.

If there are no cases of sale of the goods under valuation, identical or similar goods without change in condition, a unit price of a processed good may be used upon the declarant's request. And the price of the processed good shall be determined by taking into account the aforementioned requirements.

In this case in addition to excluding costs which are provided by the deductive value method and deducted from the unit price, the cost of processing after importation should be deducted from the price of processed goods. These deductions shall be based on objective and quantifiable data relating to the cost of this processing.

However, method 4 cannot be applied to the processed goods if the goods after importation as a result of processing lost their previous properties.

Method 4 shall also not be applied if the imported goods after processing did not lose their properties but constitute a minor element of the final product.

For example, car radio sets are imported for installation in domestic cars. Although the radio set keeps its identity, the determination of its value on the basis of a sale price of the finished car under method 4 is not justified.

In determining whether there exists a sufficient quantity of goods at which the base (initial) price can be accepted to determine customs value, the following points shall be taken into account.

If all quantities of goods are sold at once, then this sale should be considered a quantity sufficient to establish the price. However, if only a part of the goods is sold then the decision on sufficiency of the quantity sold shall be made on a case-by-case basis taking into account the market practice of trade in such goods.

For example, for seasonal goods (swimsuits, ski ointment, *et cetera*) a lesser quantity will be considered sufficient for a sale during the period of the off-season than a sale during the season. For expensive goods (equipment, turbines) a sale in the amount of 1-2 units may be considered sufficient quantity, whereas for small parts which are usually sold in lots of 1000 units a sale in the amount of 100-200 units may appear insufficient. So, making a decision on the possibility to use available information for method 4 it is always necessary to consider the period of time during which goods are sold; conditions of the market in which sales are carried out, and also how these goods are usually sold and bought during the normal course of trade. When determining the price for the greatest aggregate quantities it is necessary to consider sales carried out in the relevant period of time.

Computed Value Method (5th method).

Where the customs value cannot be determined on the basis of the transaction value of imported, identical or similar goods, and on the basis of a sale unit price of the goods under valuation, identical or similar goods in the market of the Kyrgyz Republic, the next alternative base to determine the customs value will be the value of the goods determined on the basis of the computed value method (method 5).

Method 5 reflects production costs of the imported goods and their value is calculated on this basis.

This means that when applying the method of customs valuation on the basis of computed value the customs value of the goods under valuation shall be determined on the basis of production costs of these goods with the addition of amounts for profit and expenses typical for the sale to the Kyrgyz Republic of the goods under valuation.

In order to determine the customs value by this method, it will be necessary to obtain information concerning the cost of production of the goods under valuation, which may only be obtained outside the Kyrgyz Republic. As a rule, in most cases the producer of the goods will be outside the jurisdiction of the Kyrgyz Republic authorities. In this respect, the use of the computed value method in practice will generally be limited to those cases where the buyer and the seller are related, and the producer is prepared to supply to the authorities of the country of importation necessary data on production costs and to facilitate their subsequent verification which may be necessary.

The data on the costs is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer.

Such information is to be based on commercial accounts of the producer, provided such accounts are consistent with generally accepted accounting principles applied in the country where the goods are produced.

The Customs Code of the Kyrgyz Republic establishes the following composition of components to be included in the customs value of goods which is determined on the basis of the computed value method:

- the cost or value of materials and production costs incurred by the producer in the production of the goods under valuation. In compliance with Article 170 of the Customs Code of the Kyrgyz Republic in the calculation of such costs, the following elements should also be included in the customs value:

- packing costs, including the cost of package, containers, packing materials and packaging labor;
- the cost of goods and services supplied free of charge or at a reduced price by the buyer to the seller in connection with export of the goods under valuation to the Kyrgyz Republic;
- engineering, development and other similar kinds of works, if undertaken outside the territory of the Kyrgyz Republic;
- an amount of general expenses typical for sale for export to the Kyrgyz Republic of goods of the same kind by producers of exports, as well as costs of transportation and loading and unloading works, and insurance and other costs to the place of importation to the customs territory of the Kyrgyz Republic;
- an amount for profit that is usually made by the exporter as a result of delivery to the Kyrgyz Republic of such goods.

The materials consumed in the production of the imported goods shall include such components as:

- raw materials and materials;
- components and parts;
- semi-finished goods;
- costs of delivery of the aforementioned components from the receiving place to the place of production.

The cost of the materials shall not include the amounts received from the sale of scrap or waste and any domestic taxes of the country of production, provided such taxes are to be returned when exporting final products.

Production costs should include:

- all costs related to direct labor costs of the production of products;
- all costs of assembling operations (when the goods are assembled instead of processed);
- costs of machining (lathe operations and other) associated with the process of production of products;
- indirect costs, such as repair and technical service of equipment, exploitation of buildings and constructions, overtime payments, *et cetera*.

Costs for all the aforementioned components should be determined on the basis of information concerning the production of the goods to be valued that is provided by the producer or on his behalf. In using such information for customs valuation purposes it is necessary to ensure that costs are not counted twice, especially in respect of the costs provided by Article 170 of the Customs Code of the Kyrgyz Republic.

Costs of manufacturing products shall include all costs of the producer, both direct and indirect. For that reason, costs of maintaining support personnel should be taken into account as well.

When determining total costs of the producer of exports typical for the sale to the Kyrgyz Republic, the amounts of these components shall be taken into account, which are equal to those usually reflected in sales of goods of the same class or kind as the goods to be valued.

In this case total costs taken into account in determining the customs value by method 5 shall represent indirect costs of production and sale of the goods for export, which are not included in the cost of materials and costs incurred by the producer.

The amount for profit added to the price is also to be determined on the basis of information being supplied by the producer or by his order and determined according to the generally accepted principles of accounting.

Goods of the same class and kind shall mean goods within one group or one range of items manufactured by one branch or sector (sub-sector) of industry. Goods of one class or kind shall include identical and similar goods.

It should be also noted that the amount for profit and general expenses must be taken as a whole. In different cases (producers) there may be cases where there are high production costs and a low profit, and vice versa, that is, low production costs and a high profit. However, goods will be offered to trade turnover approximately at one and the same cost, *i.e.* in general view the profit and costs taken into account as one whole will be aimed at one level with different producers.

In cases where a producer's figures for profit and general expense are not consistent with indexes of trade, then the data consistent with trade indexes shall be taken for calculations.

That is why, although in most cases a producer's information is used within the framework of method 5, there may be cases where a decision concerning the customs value is made on the basis of the data obtained from other sources of information.

And, allowable levels of deviations of a producer's data from data of trade for different branches [industries] will be different, and the issue of acceptability of these or other data should be solved on a case-by-case basis separately.

In applying this method references to the generally accepted rules of accounting are made. That is established rules of referring relevant expenses (costs) to labor and materials, or their reflection in the composition of general burden (overhead costs). First of all rules on taking into account the following elements of costs are mentioned:

- lease;
- capital investments;
- amortization;
- utility expenses;
- fees to consultants;
- maintenance of a managing staff;
- maintenance of buildings and constructions;
- advertising and marketing;
- research.

In order to confirm that the data provided by the producer have been determined in compliance with the generally accepted accounting principles in the country of production of

these products, and in order to determine acceptability of information supplied for purposes of customs valuation, relevant documentary confirmation is necessary. A relevant official document from a competent accounting body of a producer country of the goods, which establishes that the given indexes are consistent with the general principles of accounting in this country, can be considered as possible confirmation by customs bodies.

Accounting [determination] of costs of transportation and insurance and loading-unloading works shall be carried out in compliance with the general requirements mentioned in the 1-st method.

In analyzing information used for the determination of the customs value by method 5 the following considerations should also be taken into account.

In accordance with international standards neither party may require a non-resident to provide access to his accounts or accounting documentation in order to determine customs value by method 5.

If information is presented by the producer it may be confirmed only in that country in which the producer agrees for such confirmation, provided the government of this country has been informed beforehand and has no objection to such verification.

This can or may impose a strict limitation on the use of the computed value method. If unconfirmed data are supplied to the customs body they shall be considered data without evidence which do not necessarily reflect the actual state of affairs. Even if access to the producer's documentation is permitted by the foreign manufacturer and approved by his country authorities, not all documents and data may be actually supplied to the customs bodies of the importer country.

In connection with this method 5 shall be an object of a careful verification.

Reserve Method (6th method).

The five methods of valuation of goods considered in the previous paragraphs for customs purposes give the description of the used bases of determining customs value. There are cases where none of the alternatives of valuation in compliance with established requirements can be used as the initial base for determining customs value.

In a more general form they are the following cases:

- goods are imported on a temporary basis;
- barter transactions where method 1 may not be applied;
- there is an agreement on lease or hire;
- goods are re-imported after repair or modification;
- deliveries of unique products and works of art;
- identical or similar goods are not imported;
- goods are not resold in an importing country;
- a producer is unknown, or refuses to give data on production costs, or the customs body cannot accept the data given by him.

In such cases the reserve method - method 6 is used.

The world practice is based first of all on the GATT/WTO Agreement on Customs Valuation, therefore necessity to use norms and rules which meet requirements of this organization, in particular 'taking into account the world practice' in respect of method 6 should be understood under this Agreement.

Article VII of the Agreement describing method 6 establishes that customs value under this method should be determined with the use of "reasonable ways consistent with the principles

and general terms and conditions of this Agreement and Article VII of GATT and on the basis of data available in the country of importation.

So, method 6 does not provide a special method of valuation of goods, but, however, requires that to a number of principles be taken into account in implementing the valuation within the framework of this method. Valuation by the reserve method should be consistent with methods established by legislation, but a certain flexibility of their application is allowed that should be consistent with general aims and conditions of the accepted system of valuation of goods for customs purposes. Under the reserve method the established sequence (hierarchy) of applying the customs valuation methods shall be followed.

General principles of the Agreement and Article VII GATT which should be followed in applying method 6 may be brought to the following:

- valuation should be based to the maximum extent possible on the transaction value of imported goods, the use of the cost [price] based on actual estimation (*i.e.* prices at which the imported goods are sold in the country in the course of usual trade under the conditions of competition);
- unification of valuation, providing uniformity in implementing valuation of goods for customs purposes;
- honesty and neutrality of valuation, *i.e.* aspiration for finding an actual and real value of imported goods; adjustments being made should provide a maximum real valuation;
- simplicity and impartiality of valuation criteria;
- compatibility with commercial practice, inadmissibility of creating situations, or application of the valuation methods which never occur in commercial practice;
- if value cannot be determined on the basis of method 1 - the use of the closest equivalents (alternative values);
- value of domestic goods or arbitrary (fictitious) prices shall not be used as the basis for valuation.

Flexibility of the approach to using the established methods of valuation is that the established methods of valuation, *i.e.* methods 1-5 within the framework of method 6 should be the same, but in applying them a reasonable flexibility which will be consistent with the objectives and terms and conditions of the Agreement is allowed.

Examples of a flexible approach which is allowed in applying methods established by the Customs Code of the Kyrgyz Republic under method 6 shall be the following:

1. By transaction value of imported goods (method 1):

Where a documentary confirmation of the elements of the customs value declared by the declarant does not exist, their valuation can be performed within the framework of method 6, on the basis of information available to the buyer (declarant) and (or) the customs body, provided this does not contradict current legislation.

For example, if some additions to be included to customs value are not documented, their rate within the framework of the 6th method can be determined by calculation, on the basis of an expert's assessment, by comparison with the generally accepted level of costs of similar components and *et cetera*.

2. By transaction value of identical or similar goods (methods 2 and 3).

As applied to these goods, flexibility is allowed in respect of the time of exportation of identical or similar goods. Customs value of identical or similar goods produced by another producer both in the country of exportation and in any other country, as well as customs value of identical or similar goods determined by methods 4 and 5, could also be considered as the basis for customs valuation.

3. The deductive value method (method 4).

Here, the requirements concerning the terms of selling goods at domestic market, as well as concerning in what condition they were imported, can be interpreted flexibly (i.e. a certain processing is allowed).

With choice of the goods sold at domestic market, with no identical or similar goods, the range of comparative goods can be increased: goods of one and the same class and kind may be considered as imported both from the same country as the goods under valuation and from other countries.

Sales of goods between a seller and a buyer who are related shall be allowed, with relevant adjustments to the sale price.

In performing a flexible interpretation of conditions of the application of the valuation methods, the established hierarchy (sequence) of applying the methods, i.e. 1-5 should be followed.

In applying method 6 customs value can be calculated on the basis of actual grounded pricing data provided their use does not contradict the requirements of the Customs Code of the Kyrgyz Republic.

So, when determining customs value by method 6 the following can be used:

- price-lists;
- catalogues containing the detailed description of the goods;
- exchange quotation;
- statistical data on generally accepted levels of commission, discounts, profit, transport tariffs, *et cetera*.
- results of a goods- cost-based expert examination, and other.

If goods are imported under rental or hire agreements customs value can be determined on the basis of rents recalculated for the whole operating period of this equipment.

For example, if equipment is imported under a lease agreement for 2 years and its standard service life is 10 years, in order to determine value of the equipment rent for 2 years should be recalculated for 10 years. In addition, it is necessary to take into account the following: if the amount of current rent includes expenses not to be included in the customs value (e.g., costs on repair and maintenance of the equipment in good working order), then in case where they are specified by a separate line and may be verified [checked], as needed, and confirmed by documents those expenses may not be included in the customs value.

According to general requirements in using data on other transactions or permitted pricing information under method 6 base and initial terms and conditions of specific transactions (e.g., quantity, the fact of price discounts, terms of delivery and contract payments) should be taken into account, as well their strict address, i.e. the price should refer to a specific good which is described in such a way that it can be simply identified, and other.

The Customs Code of the Kyrgyz Republic establishes approaches which cannot be used for the valuation of goods by method 6 for customs purposes.

For example, the following cannot be used as the basis for determining customs value of goods by the reserve method:

- a) a “net” price of goods at domestic market of an exporting country;
- b) the cost of production, other than determined by the computed value method of identical and similar goods;
- c) minimum customs value;
- d) price of the goods delivered from the country of its exportation to third countries;
- e) a price of goods at domestic market of the Kyrgyz Republic for the Kyrgyz-origin goods;
- f) price of goods fixed at will or not reliably confirmed.

In applying the reserve method the buyer (declarant) may ask the customs body to provide information on prices, in depersonalized form, that it has on relevant goods and may use it in calculation when determining the customs value.

SPECIAL PROVISIONS

Valuation of Carrier Media Bearing Software for Data Processing Equipment

The customs value of the carrier medium of software shall be only the value of the carrier medium of software itself (diskettes, CD and tapes), so the customs value shall not include the cost or value of the content on the carrier medium (data, instructions and etc. - software), provided that this is distinguished from the cost or value of the carrier medium.

For the purpose of the Decision:

1. the expression ‘carrier medium’ shall not be taken to include integrated circuits, semiconductors and other articles incorporating such circuits or devices;
2. the expression ‘software’ shall not be taken to include sound, cinematic or video recordings.

The technical legal explanation for the GATT/WTO Valuation Committee shall be based on the legal definition of “transaction value”. “Transaction value” is defined as “the price paid or payable for the goods when sold for export”. With respect to carrier media bearing software “goods” shall be diskettes, CD, tapes and etc.

Software on a carrier medium is not a physical good and therefore it shall not be subject to customs valuation.

The Decision of the GATT/WTO Valuation Committee shall apply to sales on which no licensing and other fees are charged.

Treatment of Interest Charges

When clearing imported goods the Decision of the GATT/WTO Customs Valuation Committee as of 04.26.84 shall be followed.

This decision shall apply to transactions that provide charges for interest by the buyer to the seller according to the agreement (contract) and relate to the purchase of imported goods.

The mentioned interest shall not be regarded as part of the Customs value provided that:

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement was made in writing;
- (c) where required by customs bodies, the declarant submits information, that is reliable and confirmed by documents, regarding that such goods are actually sold at the price declared as the price actually paid or payable, and the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when the finance was provided.

This Decision shall apply regardless of whether the finance is provided by the seller, a bank or another person. It shall also apply, if appropriate, where goods are valued under a method other than the method based on the transaction value of imported goods.