

DRAFT LAW OF UKRAINE
On Amendments to Certain Legislative Acts of Ukraine

The Supreme Rada of Ukraine hereby r e s o l v e s:

I. To amend the following legislative acts of Ukraine:

1. In the Customs Code of Ukraine (Vidomosti Verkhovnoji Rady Ukrainy [*Bulletin of the Supreme Rada of Ukraine*], 2002, No. 38 — 39, page 288; 2005, No. 17, page 267):

1) To supplement Article 1 with 10¹ as follows:

“10¹) commercial terms shall mean an entirety of conditions, under which a commercial transaction is carried out (delivery conditions for goods under INCOTERMS, transfer of risks, payment for goods, impact of various factors, such as the number of units of a good in one shipment of products, reputation in the market, partnership, seasonality etc.)”;

2) To restate Article 31 as follows:

“Article 31. Information on Regulatory Acts and Court Decisions on Customs Affairs

At the request of interested persons, customs authorities shall provide information on regulatory acts on customs affairs (the name of the act, main provisions thereof, information about the promulgation thereof) on a free-of-charge basis.

Court decisions on customs affairs of a general nature, which court decisions have entered into legal force, shall be subject to official promulgation pursuant to the procedures laid down by Ukrainian law.

Brief outlines of principal provisions of Ukrainian customs legislation shall be placed for public review at premises of customs authorities.

3) To restate Chapters 46 and 47 as follows:

“CHAPTER 46
GENERAL PROVISIONS

Article 259. Customs Value of Goods

The customs value of goods crossing the customs border of Ukraine shall be the price of such goods that has been in fact paid or is to be paid for such goods as calculated in accordance with the provisions hereof.

Article 260. Customs Valuation of Goods crossing the Customs Border of Ukraine

The customs value of goods crossing the customs border of Ukraine shall be determined by a declarant in accordance with the provisions of this Code.

Customs valuation procedures shall apply to goods that cross the customs border of Ukraine and are subject to taxes and fees (mandatory payments).

Information prepared in the manner compatible with accounting principles accepted in a given country and relevant for a certain customs valuation method shall be used for customs valuation purposes.

The customs valuation methods for determining the customs value of the goods crossing the customs border of Ukraine as well as conditions of application thereof shall be set forth in this Code.

Article 261. Use of Data on the Customs Value of Goods

Data on the customs value of goods crossing the customs border of Ukraine shall be used for assessment of taxes and fees (mandatory payments).

Customs authorities must ensure that laws, other regulatory acts, normative documents and court decisions of general applicability dealing with issues and matters relating to customs valuation of goods be published.

Article 262. Declaration of the Customs Value of Goods

The customs value of goods and customs valuation methods for determining such value shall be announced (declared) by a declarant to the customs authority at the time the goods cross Ukraine’s customs border by filing a customs value declaration.

Procedures for and conditions of declaring the customs value of goods crossing Ukraine’s customs border shall be set forth by the Cabinet of Ministers of Ukraine, and procedures for filling out customs value declarations shall be set by a specially authorized central agency of executive power on customs affairs.

Article 263. Compliance with Information Confidentiality Obligations

All information relating to the customs value of goods crossing the customs border of Ukraine may be used by the customs authorities exclusively for customs purposes, and the customs authorities may not disclose or transfer, without an express permit from a person or body that has provided the information, such information to third parties, including other governmental authorities, except for furnishing such information to judicial authorities and law enforcement agencies in connection with a court trial or pre-trial investigation in accordance with the procedures set by law.

Officers of customs authorities shall be liable pursuant to law for disclosure of the information specified in Part 1 of this Article herein.

Article 264. Rights and Responsibilities of the Declarant declaring the Customs Value of Goods

The customs value of goods as declared by the declarant and customs evaluation data as submitted by the declarant must be based on objective and documentarily confirmed data that may be calculated.

If it is necessary to confirm the declared customs value of goods, the declarant shall be obligated to furnish the data necessary therefor to the customs authority, and to ensure that it is possible to verify such data pursuant to procedures laid down by the Cabinet of Ministers of Ukraine.

If it is necessary to state in greater precision the declared customs value of goods, the declarant shall have a right to apply to the customs authority with a request to release the goods being declared against a guarantee from an authorized bank or to pay taxes and fees (mandatory payments) in accordance with the customs value of such goods as determined by the customs authority.

At a written request, the declarant shall have a right to obtain a written explanation, within 1 week, as to how the customs authority has determined the customs value of the goods being valuated.

The validity term of guarantee obligations specified in this Article herein may not exceed 90 calendar days from the date on which the goods were released.

After the guarantees specified in Part 3 of this Article herein have been issued, the customs authority shall be obligated to release the goods. In the event that, after the declarant has paid taxes and fees (mandatory payments) in accordance with the customs value of goods as determined by the customs authority, a decision is passed to use the customs value declared by the declarant, the customs authority shall be obligated to refund the overpaid taxes and fees (mandatory payments) to the declarant.

Additional expenses incurred by the declarant in connection with stating in greater precision the customs value declared by the declarant or with furnishing additional information to the customs authority shall be born the declarant.

The declarant shall have a right to appeal the decision of the customs authority regarding the determination of the customs value of the goods being valuated to a higher-level customs authority and/or a court. Filing such a claim may not be a ground for imposing a fine upon the declarant. The notice from the higher-level customs authority dealing with results of reviewing the claim must motivate a decision passed with respect to the claim and contain information on the declarant's right to appeal such decision in court.

Procedures, under which decisions of customs authorities on determinations of customs value of goods are appealed to higher-level customs authorities, shall be laid down by the Cabinet of Ministers of Ukraine.

Article 265. Rights and Responsibilities of the Customs Authority in the course of Controlling the Correctness of Determinations of Customs Value of Goods

Customs authorities shall control whether the customs value of goods has been determined correctly in accordance with the provisions of this Code. Such control may be exerted in difference forms, including those as are specified Articles 60 and 69 of the Code, upon completion of customs control operations, clearance and entry through Ukraine's customs border of goods and motor vehicles.

The customs authorities shall have a right to verify whether any statement, document or declaration submitted for customs valuation purposes are true or accurate.

CHAPTER 47

Methods of Customs Valuation of Goods imported into Ukraine and Procedures of Application thereof

Article 266. Methods of Customs Valuation of Goods imported into Ukraine

The customs value of goods, which are imported into Ukraine, shall be determined through application of methods 1 — 6:

- 1) by the price of a contract for goods that are imported (transaction value);
- 2) by the price of a contract for identical goods;
- 3) by the price of a contract for similar (analogous) goods;
- 4) on the basis of deducted value;
- 5) on the basis of added value (computed value);
- 6) a reserve method.

The main method shall be the method of customs valuation of goods by the price of the contract for goods that are imported (transaction value).

If the customs value cannot be determined under method 1 pursuant to Article 267 of this Code, there shall be carried out a procedure of consultations between the customs authority and the declarant in order to reasonably select grounds for customs valuation pursuant to the requirements set out in Articles 268 and 269 of this Code. In the course of such consultations, the customs authority and the declarant may exchange available information, provided that requirements for the confidentiality of such information are complied with.

If it impossible to determine the customs value of goods, which are imported into Ukraine, pursuant to the requirements set out in Articles 268 and 269 of this Code, either the price, at which identical or similar (analogous) goods have been sold in Ukraine to a non-affiliated buyer pursuant to the requirements of Article 271, or the value of goods computed pursuant to the requirements of Article 272 may be taken as a basis.

In this respect, each next method shall be applied if the customs value of goods cannot be determined through application of the previous method.

Methods based on deducted value and added value (computed value) may be applied in any order at the discretion of the declarant.

In the event that it is impossible to apply any of the said methods, the customs value shall be determined through the reserve method pursuant to the requirements set out in Article 273 of this Code.

Article 267. Method of Customs Valuation by the Price of the Contract for Goods that are Imported (Transaction Value)

The customs value by the price of the contract for goods that are imported is the transaction value, i.e., the price that has been in fact paid or is to be paid for the goods if they are sold for exportation into Ukraine as adjusted, if need be, pursuant to Part 2 in this Article herein. The price that has been in fact paid or is to be paid shall mean the total amount of all payments that have been made or must be made by the buyer of the goods being valued for the benefit of the seller. Such payments may be made directly or indirectly by wire transfer, letter of credit or by other methods of payment (promissory note, transfer of securities etc.). The term "price that has been in fact paid or is to be paid" shall relate only to the price of goods being valued. Dividends or other payments from the buyer for the benefit of the seller not related to the goods being valued shall not be part of the customs value. Additions to the price that has been in fact paid or is to be paid pursuant to this Article shall be made only on the basis of objective data that are documentarily confirmed and can be calculated.

In determining the customs value of goods, further expenses shall be added to the price that has been in fact paid or is to be paid, if such expenses have not been included into the price that has been in fact paid or is to be paid, in particular:

1) expenses born by the buyer:

a) commission and brokerage fees, except for commission fees for the purchase that are a payment by the buyer to its agent for services provided in connection with representing the buyer's interests abroad for purchasing the goods being valued;

b) the cost of containers, which are regarded as a single whole with the concerned goods for customs purposes;

c) the cost of packaging or the cost of packaging materials or work related to packaging;

2) duly allocated costs of the goods and services mentioned below if they are supplied directly or indirectly by the buyer free of charge or at discounted prices for use in connection with manufacturing or selling the goods being valued for exportation into Ukraine, if such costs are not included into the price that has been in fact paid or is to be paid:

a) raw materials, materials, parts, semi-manufactured products, components etc., which have been included into the goods being valued;

b) tools, dies, moulds and other similar commodities used in the course of manufacturing the goods being valued;

c) materials expended in the course of manufacturing the goods being valued (lubricants, fuel, etc.);

d) engineering, surveying, research and development works, designing, artwork, layouts and drawings that have been done outside of Ukraine's customs territory and are directly necessary for manufacturing the goods being valued;

3) royalties and licensing payments which relate to the goods being valued and which the buyer must pay directly or indirectly on condition that such goods being valued will be sold, if such payments are not included into the price that has been in fact paid or is to be paid. The said payments may include payments relating to patents and marks for goods and services and copyright. Expenses incurred in connection with a right to duplicate (reproduce) the goods being valued in Ukraine must not be added into the price that has been in fact paid or is to be paid for the goods being valued;

4) a respective portion of proceeds from any subsequent re-sale, transfer or use of goods being valued within Ukraine's customs territory, which portion directly or indirectly benefits the buyer;

5) expenses incurred as a result of transportation of the goods being valued to an airport, a sea port or other point of entry into the customs territory of Ukraine;

6) expenses incurred as a result of loading, unloading and processing of the goods being valued, which expenses relate to their transportation to the airport, sea port or other point of entry into the customs territory of Ukraine;

7) expenses associated with insurance of such goods.

In determining the customs value, no other expenses, except for those contemplated herein, shall be permitted to be included into the price that has been in fact paid or is to be paid. The expenses or costs mentioned below shall not be included into the customs value, provided that such expenses or costs have been singled out from the price that has been in fact paid or is to be paid for the goods being valued, which expenses or costs are documentarily confirmed and can be calculated:

a) payment for construction, erection, assembly, technical maintenance or technical assistance carried out upon importation of imported goods, such as industrial installation, machines or equipment;

b) transportation expenses incurred upon importation;

c) taxes and fees (mandatory payments) levied in Ukraine.

The methods of customs valuation by the price of the contract for goods, which are imported (transaction value), shall be used in the event that there are:

1) no restrictions applying to the buyer's (importer's) rights to use the goods being valued, except for those that:

a) are set by law or are introduced by governmental authorities in Ukraine;

b) restrict the geographical area where goods may be re-sold (re-alienated for the second time);

c) do not significantly affect the price of the goods;

2) in respect of sale of goods being valued or their price, no conditions or reservations that make it impossible to determine the value of such goods;

3) no portion of proceeds from any further re-sale, disposal or use of the goods by the buyer will accrue, directly or indirectly, to the benefit of the seller, unless a corresponding adjustment can be made pursuant to Part 2 in this Article herein;

4) the buyer and the seller are not affiliated parties or, even if they are affiliated parties, such affiliation has not affected the price of the goods. If there is sufficient ground to believe that such affiliation has affected the price of the goods being valuated, the customs authority must provide notice thereof to the declarant and give the declarant an opportunity to provide a response and prove the absence of impact as a result of such affiliation between the seller and the buyer upon the price that has been in fact paid or is to be paid for the goods being valuated. At a request of the declarant, such notice must be provided in written form.

For purposes of this Code, parties shall be regarded as affiliated only in the event that:

- 1) they are officers or managers of both companies;
- 2) they are partners in joint activities or other activities not prohibited by law;
- 3) they are an employer and a hired employee;
- 4) any person owns, controls or holds, directly or indirectly, 5% or more of the outstanding shares giving the right to vote or shares in both of them;
- 5) one of them controls the other directly or indirectly;
- 6) both of them are directly or indirectly controlled by a third party;
- 7) together they control directly or indirectly a third party;
- 8) they are members of one family.

Persons, one of whom is a sole agent, a sole distributor or a sole concessionaire of the other person, whatever such person is called, shall be regarded as affiliated for purposes of this Code, if they meet at least one of the criteria set out in Part 5 of this Article herein.

In the sale of goods between the affiliated parties, the transaction value shall be taken as a basis for determining the customs value of goods being valuated by the first method if the declarant proves that such value is maximally approximated to the value of one of the transactions listed below, which transaction was carried out simultaneously with that involving the goods being valuated or almost at that time:

- 1) the value of the transaction involving the sale of identical or similar (analogous) goods for exportation into Ukraine to non-affiliated buyers;
- 2) the customs value of the sale of identical or similar (analogous) goods determined pursuant Article 271 of this Code;
- 3) the customs value of the sale of identical or similar (analogous) goods determined pursuant to Article 272 of this Code.

If the requirements set forth in Part 7 of this Article herein are applied, the information, which is held by the customs authority and provided by the declarant, on differences between commercial terms of the sale, quantitative figures, elements and expenses mentioned in Part 2 of this Article herein, and on expenses that are usually incurred by the seller in case of the sale when the seller and the buyer are not affiliated between themselves and are not incurred by the seller in case of the sale when the seller and the buyer are affiliated, must be duly taken into account.

The value of the transactions specified in Clauses 1 – 3 in Part 7 of this Article herein shall be determined upon the declarant's initiative and only for comparison purposes. The value of such transactions may not be used instead of the value of transactions involving the goods being valuated.

Data used by the declarant must be objective, calculable and confirmed documentarily.

Article 268. Method of Customs Valuation by the Price of the Contract for Identical Goods

In the event that the customs value of imported goods cannot be determined pursuant to Article 267 of this Code, the transaction value involving identical goods that are sold for exportation into Ukraine from the same country and the time of exportation of which goods coincides with the time of exportation of the goods being valuated or is maximally approximate to such time, shall be taken as the customs value.

Should such method of customs valuation be used, the transaction value of identical goods shall be used as a basis, subject to the conditions specified in this Article herein. In this respect, identical goods shall mean goods which are identical by all properties with the goods being valuated, including such as:

- 1) physical properties;
- 2) quality and reputation in the market;
- 3) the country of origin;
- 4) the manufacturer.

Minor exterior distinctions may not be regarded a ground for refusing to consider the goods as identical inasmuch as the said goods comply as a whole with the requirements set out in Part 2 of this Article herein.

The price of the contract for identical goods shall be taken as a basis for determining the customs value of the goods, if such goods have been imported approximately in the same quantity and on the same commercial terms as the goods being valuated.

If there is no such sale, the transaction value of identical goods, which were sold in Ukraine in other quantities and/or on other commercial terms, shall be used. In such case, their price shall be adjusted taking account of the said differences, irrespectively of whether it results in a value increase or decrease. The information that is used for such adjustment must be documentarily confirmed.

If the costs and expenses mentioned in Clauses 5 – 7 in Part 2 of Article 267 of this Code are included into the transaction value, an adjustment shall be made in order to take account of a significant difference in such costs and expenses between the goods being valued and the concerned identical goods, which is conditioned by a difference in distances and modes of transportation.

If for purposes of using this method there is more than one transaction value of identical goods, the lowest of such transaction values shall be used for determining the customs value of the goods being valued.

Article 269. Method of Customs Valuation by the Price of the Contract for Similar (Analogous) Goods

In the event that the customs value of imported goods cannot be determined pursuant to Articles 267 and 268 of this Code, the transaction value of similar (analogous) goods, which are sold for exportation into Ukraine and the time of exportation of which goods coincides with the time of exportation of the goods being valued or is maximally approximated to such time, shall be taken as the customs value.

Similar (analogous) goods shall mean such goods, which – though are not identical by all properties – have similar characteristics and consist of similar components, due to which they perform similar functions in comparison with the goods being valued and are deemed commercially interchangeable.

The following properties shall be used to determine whether goods are similar (analogous):

- 1) quality, availability of a trademark and reputation in the market;
- 2) the country of origin;
- 3) the manufacturer.

The price of the contract for similar (analogous) goods shall be taken as a basis for determining the customs value of the goods, if such goods have been imported approximately in the same quantity and on the same commercial terms as the goods being valued.

If there is no such sale identified, the transaction value of similar (analogous) goods, which were sold in Ukraine in other quantities and/or on other commercial terms, shall be used. In such case, the price shall be adjusted taking account of the said differences, irrespective of whether it results in a value increase or decrease. The information that is used for such adjustment must be documentarily confirmed.

If the costs and expenses mentioned in Clauses 5 – 7 in Part 2 of Article 267 of this Code are included into the transaction value, an adjustment shall be made in order to take account of a significant difference in such costs and expenses between the goods being valued and the concerned similar (analogous) goods, which is conditioned by a difference in distances and modes of transportation.

If for purposes of using this method there is more than one transaction value of similar (analogous) goods, the lowest of such transaction values shall be used for determining the customs value of the goods being valued.

Article 270. Reservations with respect to Application of Methods of Customs Valuation based on the Price of Contract for Identical Goods and on the Price of the Contract for Similar (Analogous) Goods

Goods shall not be regarded as identical or similar (analogous) to goods being valued if they have been manufactured in the country other than the country of origin of the goods being valued.

Goods manufactured by a manufacturer other than the manufacturer of the goods being valued shall be considered only in the event that there are neither identical, nor similar (analogous) goods manufactured by the manufacturer of the goods being valued.

Goods shall not be regarded as identical or similar (analogous) if their design, research and development work, artwork, layouts, drawings and other similar works have been performed in Ukraine.

Article 271. Method of Customs Valuation of Goods on the Basis of Deducted Value

If the customs value of imported goods may not be determined pursuant to Articles 267 — 270 of this Code, their customs value shall be determined pursuant to this Article on the basis of deducted value, except when the manner of application of this Article and Article 272 may be reverse at a request of the declarant.

In the event that valued, identical or similar (analogous) goods are sold (alienated) in the customs territory of Ukraine in an unchanged condition, for purposes of determining the customs value of the goods under this method there shall be taken as a basis the price of a unit of the good, at which the largest shipment of the valued, identical or similar (analogous) imported goods is sold in Ukraine to a buyer that is not affiliated with the seller at the same time or at the time maximally approximated to the date, on which the goods being valued were imported, provided that the following components, if they can be singled out, are deducted:

1) expenses incurred as a result of payment of commission fees that have been in fact paid or are to be paid, or usual trade mark-ups included in order to receive a profit and cover general expenses in connection with selling goods of the same class and type in the customs territory of Ukraine. Goods of the same class and type are such goods that fall under the group or range of goods that are manufactured by a specific industry or sector and include identical or similar (analogous) goods. The term “goods of the same class or type” includes goods imported from the same country as the goods being valued and goods imported from other countries.

The sum of profits and general expenses that include direct and indirect expenses concerned with selling the said goods must be taken as a whole. For purposes of calculating the above sum, the numerical figures of expenses shall be determined on the basis of information submitted by the declarant, unless such figures from the declarant are incompatible with the data received at the time of selling the brought-in (imported) goods of the same class or type in Ukraine. If the declarant’s data are incompatible with such data, the sum for calculating the profit and general expenses may be based on other applicable information rather than on that submitted by the declarant.

In determining amounts of commission fees or usual profits and general expenses, goods must be regarded as “goods of the same class or type” in each specific case with references to applicable circumstances;

2) usual expenses incurred in Ukraine as a result of loading, unloading, transportation, insurance and other expenses associated with such operations;

3) amounts of import duties, taxes, fees and other mandatory expenses that are to be paid in Ukraine in connection with the bringing-in (importation) or sale (alienation) of goods.

In the event that neither the valuated goods nor the identical or similar (analogous) goods are sold in Ukraine at the same time or at the time maximally approximated to the date of importation of the goods being valuated into Ukraine, the customs value of such goods shall be determined on the basis of the price for a unit of goods, at which respectively the valuated goods or goods identical or similar (analogous) to the goods being valuated are sold in Ukraine in quantities sufficient for determining the price of one unit of such goods and in the same condition, in which they had been imported, on the date that is closest to the date following the importation of the goods being valuated, but prior to the lapse of 90 days following their importation.

If there are no sales of the valuated goods, identical or similar (analogous) goods in the same condition, in which they were at the time they were imported into Ukraine, at a request of the declarant the customs value of such goods shall be determined on the basis of the price for a unit of goods, at which the said goods were sold in Ukraine upon further processing (transformation) in the largest shipment to persons that are not affiliated with the persons, from whom they purchased such goods. In this respect, there shall be made corresponding adjustments for the value added through such processing (transformation), and deductions contemplated in Clauses 1 – 3 of Part 2 in this Article.

Deductions of the value added through further processing (transformation) must be based on data that are objective, documentarily confirmed and belong to the value of such work. Accepted industrial formula, recipes, construction methods and other industry practices shall be taken as a basis for calculations.

The provisions of Part 4 in this Article herein shall not apply in the event that:

1) as a result of further processing, the imported goods lose their identity, except when, irrespective of the loss of their identity by the imported goods, the amount of the value added through processing may be exactly determined;

2) the imported goods preserve their identity, but account for such an insignificant percentage of sales thereof in Ukraine that using this method will not be justified.

It shall be determined in each particular case, depending on specific circumstances, whether it will be possible to apply the provisions of Part 4 in this Article herein.

Article 272. Method of Customs Valuation of Goods on the Basis of Added Value (Computed Value)

The information on the value of goods being valuated that is provided by or on behalf of a manufacturer of such goods shall be taken as a basis, in order to determine the customs value of the goods on the basis of added value (computed value), which value must consist of the following amounts:

1) the cost of materials and the amount of expenses incurred by the manufacturer in the course of manufacturing the goods being valuated. Such information must be based on commercial accounts of the manufacturer, provided that such accounts are compatible with generally accepted accounting principles that are applied in the country, in which such goods are manufactured;

2) the volume of profits and general expenses, which is equal to the amount that is usually reflected in the event of sale of goods of the same class or type as the goods being valuated that are manufactured by manufacturers in the exporting country for exportation into Ukraine;

3) the amount of general expenses in connection with the sale thereof into Ukraine from the country, from which the goods of the same class or type are exported, i.e., the expenses associated with loading, unloading and processing of the goods being valuated, their transportation to an airport, a sea port or other point of entry into Ukraine’s customs territory, expenses associated with insurance of such goods and other expenses associated with exportation of such goods into Ukraine.

The officer of a customs authority may not demand or coerce any person, who is not a Ukrainian resident, to provide for examination or permit access to any invoice or other records for purposes of determining the computed value. The information provided by the manufacturer of goods for customs valuation purposes pursuant to this Article herein, may be verified in the country, in which the goods have been manufactured, by Ukrainian governmental authorities per the manufacturer’s consent, and provided that the government of the country of the manufacturer of the goods is notified thereof in advance and that there are not objections against such verification.

Applying the method of customs valuation of goods on the basis of added value (computed value) shall be restricted to instances when the buyer and the seller are affiliated persons and there are no facts of sale of identical and similar (analogous) goods in Ukraine.

Article 273. Reserve Method

In the event that the customs value of goods may not be used through successive application of the methods specified in Articles 267 – 272 of this Code, the customs value of goods being valuated shall be determined through application of methods that are not inconsistent with the laws of Ukraine and are compatible with principles and provisions of Article VII of the General Agreement on Tariffs and Trade (GATT) and the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, on the basis of data available in Ukraine.

Customs value determined pursuant to this Article herein must be based as much as possible on the customs value earlier determined pursuant to methods 1 – 6, however, there shall be permitted flexibility in applying these methods of customs valuation pursuant to this Article herein.

The customs value of imported goods shall not be determined pursuant to this Article on the basis of:

- 1) the price of goods of Ukrainian origin in the domestic market of Ukraine;
- 2) the system that contemplates accepting a higher value of the two alternative values for customs purposes;
- 3) the price of goods in the domestic market of an exporting country;
- 4) the cost of manufacturing, other than the computed value as determined for the selling of identical or similar (analogous) goods pursuant to Article 272 of this Code;
- 5) the price of goods that are supplied from an exporting country to third countries;
- 6) minimum customs value;
- 7) arbitrary or fictitious value.

If this Article is applied by a customs authority, at a request of the declarant the customs authority shall be obligated to inform the declarant in writing about the customs value determined pursuant to this Article, and about the method used therefor”;

4) To restate Article 274 as follows:

“Article 274. Customs Valuation of Goods brought out (exported) from Ukraine

The customs value of goods that are brought out (exported) from Ukraine on the basis of sale-purchase contracts or barter contracts shall be determined on the basis of the price that has been in fact paid or is to be paid for such goods on the date of exit thereof through Ukraine’s customs border.

In determining the customs value of goods that are brought out (exported), the following actual expenses shall be included into the price indicated in a contract, if such expenses have not been included into such a price earlier:

- 1) expenses incurred as a result of transportation of goods to an airport, a sea port or another point of exportation of goods from the customs territory of Ukraine: transportation costs, costs of loading, unloading, re-loading of goods;
- 2) insurance costs;
- 3) expenses made by the seller:
 - commission and brokerage fees;
 - the cost of containers or other reusable packages, if they are regarded as a single whole with the goods being valued pursuant to the Ukrainian classification of goods in foreign economic activities;
 - the cost of packaging, including the cost of packaging materials and packaging work;
- 4) royalties, licensing and other payments for the use of intellectual property rights, which must be paid by the buyer directly or indirectly as a condition of sale (export) of the goods being valued;
- 5) a portion of proceeds from any subsequent re-sale of the goods, which portion is received by the seller directly or indirectly;
- 6) taxes that are levied within the customs territory of Ukraine, if under tax law they are to be compensated to the seller in connection with exportation of the goods from Ukraine’s customs territory.

The customs value of goods, which are brought out (exported) from Ukraine on the basis of contracts other than sale-purchase contracts or barter contracts, shall be determined on the basis of the price confirmed by commercial, transportation, banking, accounting and other documents containing information on the value of the goods being valued, taking into account the expenses of transportation and insurance of goods to the point of exit thereof of Ukraine’s customs territory.

For purposes of determining a base of indirect taxation, as well as if it is impossible to determine customs value and there are no data confirming the declared customs value of goods being brought out (exported), the value of such goods shall be calculated pursuant to the methods and procedures set forth in Articles 266 – 273 of this Code.

In the event that price restrictions are set at the time of bringing-out (exportation) of certain goods out of Ukraine (indicative prices, maximum price levels, prices set as a result of anti-dumping investigations etc.), the customs value of such goods shall be determined subject to the provisions setting forth procedures for applying the said restrictions”;

5) To restate Clause 6 in Article 278 as follows:

“6) products of sea fishing obtained and (or) produced in the world ocean by vessels of this country;

6) To restate Article 279 as follows:

“Article 279. Criterion of Sufficient Processing of Goods

In the event that two or more countries are involved in the manufacturing of goods, the origin of the goods shall be determined by the sufficient processing criterion, specifically: the country, in which the goods have been fully manufactured or the final stages of processing thereof have been completed, which stages are sufficient for the goods to obtain the main characteristic features.

The sufficient processing criterion is consistent with:

- 1) the rule that requires a change in the classification code of the goods based on the Harmonized Commodity Description and Coding System at the level of any the first four digits as a result of processing of such goods; or
- 2) the rule on the *ad valorem* percentage, which rule consists in a change of value of the goods as a result of processing thereof, if in such case the value added accounts for not less than 50 percent of the value of the goods received as a result of processing or if the percentage of used materials from another country or of unknown origin accounts for less than 50 percent of the value of the goods received as a result of processing.

If the rule on the *ad valorem* percentage is applied, the value of goods received as a result of processing in this country shall be determined on the basis of the ex works price of the manufacturer of the goods. The value of components in such goods, which components originate from other countries, shall be determined on the basis of their customs value, and the value of components of unknown origin shall be determined by the price of their first sale in this country”;

7) To delete Clauses 5 and 6 in Article 280;

8) To supplement Clause 1 in Article 283, after the words “statement of the exporter”, with the words “(supplier or manufacturer)”;

9) To delete the words “or preferential treatment” in Part 4 of Article 284;

10) To restate Article 285 as follows:

“Article 285. Certain Specifics of Determination of the Country of Origin of Goods

The origin of energy, machines, equipment and instruments, which are used in the course of manufacturing or processing of goods, in determining the country of origin of the goods.

Accessories, parts and instruments, which are used in machines, devices, units or motor vehicles, shall be deemed as such that originate from the same country as the machines, devices, units or motor vehicles do, provided that such accessories, parts and instruments are imported and sold together the said machines, devices, units or motor vehicles and that their sets and quantity correspond to those of usually used attributes, parts and accessories.

The country of origin of packaging, wherein goods are imported into the customs territory of Ukraine, shall be regarded the country of origin of the goods themselves, unless it is contemplated by the national laws of the importing country that such packaging be separately declared for customs purposes. In such instances, the country of origin of packaging shall be determined separately from the country of origin of goods.

Fully manufactured or sufficiently processed goods under MFN treatment shall be determined pursuant to the provisions of this Code.

Fully manufactured or sufficiently processed goods of preferential origin shall be determined pursuant to the laws of Ukraine and international treaties and agreements entered into pursuant to the procedures specified by law”.

2. To delete Articles 16 and 18 of the Law of Ukraine “On the Single Customs Tariff” (Vidmosti Verkhovnoji Rady Ukrainy [*Bulletin of the Supreme Rada of Ukraine*], 1992, No. 19, page 259; 2003, No. 6, page 50).

II. This Law shall enter into force in 45 days following the official promulgation hereof.

