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Committee on Customs Valuation

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**NOTIFICATION UNDER ARTICLE 22 OF THE AGREEMENT ON
IMPLEMENTATION OF ARTICLE VII OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE 1994**

KAZAKHSTAN

The following communication, dated 27 August 2019, is being circulated at the request of the delegation of Kazakhstan.

Unofficial Translation of the Decision of the Collegium of the Eurasian Economic Commission No. 138
"On the Application of the Reserve Method (Method 6) in Determining the Customs Value of Goods"¹.

UNOFFICIAL TRANSLATION

**Decision of the Collegium of the Eurasian Economic Commission No. 138
"On the Application of the Reserve Method (method 6) in Determining the Customs
Value of Goods"**

REGULATIONS

**On the Application of the Reserve Method (method 6) in Determining the Customs Value
of Goods**

1. These Rules are used in applying the reserve method (method 6) set by Article 45 of the Customs Code of the Eurasian Economic Union (hereafter - the Code).
2. These Rules have been developed on the basis of the provisions of Chapter 5 of the Code, the Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, including explanatory notes thereto, as well as the documents of the Customs Valuation Technical Committee of the World Customs Organization in order to ensure uniform application of the reserve method (method 6).
3. The reserve method (method 6) is applied if the customs value of goods imported into the customs territory of the Eurasian Economic Union (hereafter- the Union) cannot be determined in accordance with Articles 39, 41 - 44 of the Code due to the nonconformity of the circumstances of importation of goods being valued with the conditions for application of each of the methods set by Articles 39, 41 - 44 of the Code, and (or) due to lack of necessary information for application of those methods. For example, the importation of works of art and cultural property for their demonstration at exhibitions, the importation of products having no analogues, for testing, etc.

¹ The original version of this document can be found at https://docs.eaeunion.org/docs/ru-ru/01422670/clcd_08082019_138.

The customs value of goods by application of the reserve method (method 6) is determined on the basis of information available on the customs territory of the Union by using reasonable methods compatible with the principles and provisions of Chapter 5 of the Code, and when determining it, reasonable flexibility is allowed when applying the methods for determining the customs value of goods, set by Articles 39, 41 - 44 of the Code.

4. According to paragraph 3 of Article 45 of the Code, if it is possible to flexibly apply several methods for determining the customs value of goods, it is necessary to follow their consequent application.

In this case, the decision on the flexible application of one method or another should be taken in each case on the basis of the available information that most fully meets the requirements of the relevant article of Chapter 5 of the Code, provided that this does not contradict to the provisions of paragraph 5 of Article 45 of the Code.

5. When determining the customs value of imported goods in accordance with Article 45 of the Code, in particular, the following is allowed:

- a) to determine the customs value of the goods valued, the value of the transaction of identical or similar goods produced in a country other than the country in which the goods being valued were produced can be taken as a basis;
- b) when determining the customs value of the goods being valued on the basis of the transaction value of identical or similar goods, a reasonable deviation from the requirements established by Articles 41 and 42 of the Code, respectively, is allowed, that goods identical or similar to the goods being valued must be sold for exportation to the customs territory of the Union and imported into the customs territory of the Union in the same or in the corresponding period of time as the goods being valued, but not earlier than 90 days before importation into the customs territory of the Union of valued goods;
- c) in order to determine the customs value of the goods being valued, the customs value of the goods identical or similar to the goods being valued determined in accordance with Articles 43 and 44 of the Code may be taken as a basis,
- d) in determining the customs value of the goods being valued in accordance with Article 43 of the Code, deviation from the period established by paragraph 3 of Article 43 of the Code is allowed;
- e) when determining the customs value of the goods being valued, the customs value of goods of the same class or type (not identical or similar) determined in accordance with Articles 43 and 44 of the Code, as well as the customs value of goods of the same class or type (not identical or similar) determined in accordance with Articles 41 and 42 of the Code, may be taken as a basis.

6. The provisions of paragraph 5 of these Rules are not the only examples of the flexible application of methods for determining the customs value of goods established by Articles 39, 41 - 44 of the Code. In determining the customs value of imported goods by the reserve method (method 6), other reasonable methods may be used, provided that they do not contradict to the provisions of paragraph 5 of Article 45 of the Code.

So, in particular, examples of the application of the reserve method (method 6), based on the principles and provisions of Chapter 5 of the Code, are:

- determination of the customs value of damaged goods by the reserve method (method 6), as established by the Regulation on the Particularities of the Application of Methods for Determining the Customs Value of Unusable, Damaged or Damaged due to an Accident or Force Majeure, Goods, Imported into the Common Customs Territory of the Customs Union, approved by the Decision Board of the Eurasian Economic Commission of 25 June 2013 No. 145;
- determination of the customs value of illegally imported goods by the reserve method (method 6), as established by the Regulation on the Particularities of the Application of Methods for Determining the Customs Value of Goods Moved Across the Customs Border of the Customs Union with Non-Declaration, approved by the Board of the Eurasian Economic Commission of 27 August 2013 No. 180.

7. When determining the customs value of goods by the reserve method (method 6), taking into account the provisions of subparagraph "a" of paragraph 5 of these Rules, identical or similar goods previously imported into the customs territory of the Union are considered, provided that factors affecting the cost of goods are comparable (for example, social economic development of the countries of production, conditions of the transactions being compared, volume of consignments, delivery conditions, modes of transportation).

8. When determining the customs value of goods by the reserve method (method 6), taking into account the provisions of subparagraphs "b" and "d" of paragraph 5 of these Rules, a reasonable deviation from the time limits established by Articles 41 to 43 of the Code means using the time frame within an unchangeable or close to unchangeable market conditions. So, for example, in relation to seasonal goods (outerwear, fresh fruits of a new crop, etc.), it is necessary to take into account the time of the year, the season, the period of mass ripening of fruits, the time of harvesting, etc.

9. When determining the customs value of goods by the reserve method (method 6), taking into account the provisions of subparagraph "c" of paragraph 5 of these Rules, the customs value (accepted by the customs authority) of goods identical or similar to the goods being valued may be used, which meet the established criteria for identity (appearance, physical characteristics, quality, market reputation, manufacturer) or uniformity (physical characteristics, components made from the same materials, quality, market reputation, trademark, producer, corresponding functions and commercial interchangeability) of goods.

10. When determining the customs value of goods by the reserve method (method 6), taking into account the provisions of subparagraph "e" of paragraph 5 of these Rules, goods of the same class or type (not identical or similar) previously imported into the customs territory of the Union shall be considered if have the quality and reputation in the market, similar to the goods being valued due to the combination of consumer properties that determine the corresponding price range.

In this case, it is necessary to take into account the maximum possible similarity of goods; it is possible to use information about goods of the same class or type (which are not identical or similar) only if there is no information about identical or similar goods.

When determining the customs value using the reserve method (method 6), taking into account the provisions of subparagraph "e" of paragraph 5 of these Rules, the provisions of paragraphs 7 and 8 of these Rules in relation to the comparability of factors and market conditions shall also apply.

11. When determining the customs value of goods by the reserve method (method 6), the requirements of Chapter 5 of the Code on documentary confirmation of the customs value of goods and information related to its determination must be met.

12. If in determining the customs value of goods by the reserve method (method 6), information on identical or similar goods, goods of the same class or type (not identical or similar), is used, the sources of such information should contain information that allows correlation of such the goods with the goods being valued (in particular, information such as a description of the goods, their technical characteristics, commercial names and other characteristics depending on the type of goods).

13. Subject to the requirements set by paragraph 4 of Article 45 of the Code, to determine the customs value of the goods being valued on the basis of the customs value of previously imported goods accepted by the customs authority, the information stated in the customs declaration, including the customs value declaration (if filled out), regarding previously imported goods, is used.

14. When determining the customs value of goods by the reserve method (method 6), price data from neutral sources of information (catalogs of independent firms; publications containing a detailed description of a specific product and a clear definition of the price structure; published, including on the Internet, or distributed, official price lists for goods or trade offers of firms for the supply of specific goods and prices), as well as stock quotes (stock price indices) and data from the assessment reports carried out by organizations (individuals) engaged in the evaluation activity, may be used.

15. When using the price data specified in paragraph 14 of these Rules, the following must be considered:

- a) price data related to goods that are identical or similar with the goods being valued is mostly used;
- b) in the absence of price data for identical or similar goods, data on goods of the same class or type (which are not identical or similar) can be used only if such the goods have quality and market reputation that are similar to the goods being valued due to a set of consumer properties that determine the appropriate price range, as indicated in paragraph 10 of these Rules;
- c) price data from neutral sources of information is used only if such data reflects current offers for the sale of goods for export to the customs territory of the Union within the limits of unchangeable or close to unchangeable market conditions;
- d) when using neutral sources of information, various economic factors are taken into account, including countries of production, volume of consignments, delivery conditions, modes of transportation and other factors affecting the value of the goods;
- e) the use of price data does not contradict the provisions of paragraph 5 of Article 45 of the Code.

16. When applying the reserve method (method 6), it is not allowed to use average price data for generalized groups of goods (for example, women's shoes, men's suits, perfumes, grape wine, etc.).

17. Chapter 5 of the Code does not establish any special requirements for sources of information used in determining the customs value of goods, but paragraph 1 of Article 45 of the Code establishes the condition that the customs value of goods is determined on the basis of information available on the customs territory of the Union. Thus, the mere fact of using information from sources of states that are not members of the Union does not preclude the use of these sources to determine the customs value of goods, but provided that such information is available on the customs territory of the Union and it is possible to verify its accuracy.

Examples for the reserve method (method 6)

Example 1. The product "Harley-Davidson motorcycle" is temporarily imported into the customs territory of the Union to demonstrate the new model at the exhibition.

The declarant did not conclude a contract for the carriage (transportation) of imported goods with the carrier.

The method for the value of the transaction of imported goods (method 1) is not applicable, since the imported goods are not subject to a sales contract, and there is no information on the expenses associated with the transportation of goods which should be included in the customs value of goods in accordance with Article 40 of the Code.

The method for transaction value of identical goods (method 2), the method for transaction value of similar goods (method 3), the deduction method (method 4) and the computed method (method 5) are not applicable because the necessary information is not available for applying these methods.

The declarant has a proforma invoice issued by the supplier in connection with the shipment of this product. The declarant also has information on standard (average) tariffs for the transportation of goods along a similar route provided by the carrier (logistics company).

The customs value is determined by the declarant by the reserve method (method 6) by flexible application of the method according to the value of the transaction of imported goods (method 1), using the information on the price of the goods specified in the proforma invoice as a basis and adding the amount of transport costs determined based on available information on standard (average) tariffs for the transportation of goods.

Example 2. Equipment for the production of dough products (croissants), placed under the customs procedure of a free customs zone in a member state of the Union, put into operation and used by a resident of a free economic zone to implement an agreement on activities in the territory of a free

economic zone, which after 5 years will be exported beyond its borders and placed under the customs procedure for release for domestic consumption.

The equipment is not sold by a third-party organization, but is taken out by a resident organization of the free economic zone into the rest of the customs territory of the Union in its own warehouse.

There is no sales contract, and therefore the method for the value of the transaction of imported goods (method 1) is not applicable.

The method for transaction value of identical goods (method 2), the method for transaction value of similar goods (method 3) and the method of deduction (method 4) are not applicable, since there is no necessary information about equipment with a similar degree of wear.

The information necessary to determine the customs value of the equipment by the computed method (method 5) is also missing.

The equipment has been operated in the territory of the free economic zone for 5 years.

The declarant has a report on the assessment carried out in accordance with the legislation of the Member State of the Union on valuation activities in order to determine the value of this equipment, which allows determining the customs value of the equipment by flexible application of the method according to the value of the transaction of imported goods (method 1).

The customs value is determined by the declarant by the reserve method (method 6) using, as a basis, the information on the value of the goods specified in the valuation report conducted by the person carrying out the valuation activity.

Example 3. Organization "A" forms the authorized (share) capital (fund). Organization "B", as a founder of organization "A", transfers a new MAN truck as a contribution to the authorized (joint-stock) capital (fund).

The method for the value of the transaction of imported goods (method 1) is not applicable, since there is no sales contract.

The method for the transaction value of identical goods (method 2), the method for the transaction value of similar goods (method 3), the deduction method (method 4) and the computed method (method 5) are not applicable when determining the customs value of goods, because the necessary information is unavailable for application data methods.

When considering the possibility of a flexible application of the method of the transaction value of similar goods (method 3), when determining the customs value using the reserve method (method 6), information on the cost of a previously imported car was taken into account. When analyzing such information, it was found that 6 months before the import of the vehicle being valued into the customs territory of the Union, a new Scania truck was imported. When comparing the estimated and previously imported cars, it was found that both cars were made in the same country, have the same engine power, wheel formula, cab type, equipment, and have the same market reputation.

The conclusion about approximately the same reputation in the market was made based on the analysis of the information contained on the Internet, in particular, based on the following:

- the volume of sales of trucks of these brands in the domestic market is approximately the same;
- the trucks are sold in the domestic market at approximately the same prices (they are in the same price range);
- these car brands are considered as direct competitors.

Based on this information, the customs value of the MAN truck was determined using the reserve method (method 6) by flexible application of the method of the transaction value of similar goods (method 3).

In this case, the flexibility of applying the method at the transaction value of similar goods (method 3) means the deviation from the requirement established by Article 42 of the Code that similar goods must be sold for import into the customs territory of the Union and imported into the customs territory of the Union in the same or the corresponding time period as the goods being valued, but not earlier than 90 calendar days before the valued goods are imported into the customs territory of the Union.

Due to the lack of information on the import into the customs territory of the Union of a vehicle manufactured by the same manufacturer as the MAN truck, the customs value of a previously imported Scania vehicle, which has approximately the same reputation in the market, is accepted as the basis for determining the customs value of the goods being valued.

Example 4. A women's dress by Louis Vuitton is imported in order to organize shows (demonstrations) as a part of Fashion Week.

The product was created by a design studio and produced in a single copy, has exclusive properties and, therefore, has no close analogues.

The method for the value of the transaction of imported goods (method 1) is not applicable, since the contract under which the dress is imported into the customs territory of the Union does not provide for the transfer of goods with the payment of a certain amount of money (price of the good) for it.

The method for transaction value of identical goods (method 2) and the method for transaction value of similar goods (method 3) are not applicable, since due to the specific properties of the goods there is no information about goods that meet the established criteria for identity or uniformity.

The deduction method (method 4) is not applicable, since the goods are imported into the customs territory of the Union for the first time and their sale in the customs territory of the Union is not done.

The computed method (method 5) is not applicable due to the lack of necessary information.

In the contract, according to which the dress is imported into the customs territory of the Union, there is no information about the value of the imported goods. In addition, there is no information on the cost of identical or similar goods.

The customs value is determined by the declarant by the reserve method (method 6) based on information about the value of the transaction of goods of the same class or type, taking into account the provisions of Articles 41 and 42 of the Code.

When choosing the basis for determining the customs value of goods, information was taken into account about the country of its production, brand, including the manufacturer of goods of a high price category (luxury brand), as well as about a single copy of the goods in question.
