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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**

UKRAINE

The following submission, dated 17 October 2022, is being circulated at the request of the delegation of Ukraine.

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Pursuant to the paragraph 2 of Article 22 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, the Government of Ukraine is pleased to notify the amendments to the Custom Code of Ukraine in part where it concerns customs valuation.

The abstract of the changed Custom Code of Ukraine<sup>1</sup> (Section III, Chapters 8, 9, 10 with the latest amendments as of 15 August 2022, entered into force on 01 October 2022) is attached in English and should be considered as an unofficial translation of the original document.

For the sake of clarity, the track changes from Ukraine's previous provisions that were circulated on 10 August 2012 (G/VAL/N/1/UKR/2) are shown in the attached document.

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<sup>1</sup> In English only.

CUSTOMS CODE OF UKRAINE

Section III

CUSTOMS VALUE OF GOODS AND METHODS OF ITS DETERMINATION

CHAPTER 8

**GENERAL PROVISIONS ON CUSTOMS VALUE**

Article 49

**Customs Value of Goods**

1. Customs value of goods that are moved across the customs border of Ukraine shall be the value of the goods used for customs purposes, which is based on the price actually paid or payable for these goods.

Article 50

**Purposes of Using Information about the Customs Value of Goods**

1. Information about the customs value of goods shall be used for:
  - 1) Calculating customs payments;
  - 2) Implementing other measures of state regulation of foreign economic activity of Ukraine;
  - 3) Maintaining customs statistics;
  - 4) Calculating the tax liability determined based on the results of a documentary inspection.

Article 51

**Determining the Customs Value of Goods Moved across the Customs Border of Ukraine**

1. The customs value of goods that are moved across the customs border of Ukraine shall be determined by the customs applicant pursuant to the rules of the present Code.

2. The customs value of goods that are brought into the customs territory of Ukraine under the import regime shall be determined pursuant to Chapter 9 of the present Code.

3. A determination of the customs value of goods that are moved across the customs border of Ukraine under customs regimes other than the import regime shall be made pursuant to the provisions of Articles 65 and 66 of the present Code.

4. In determining the customs value of imported data carriers containing software for data processing equipment, only the value of the data carrier shall be taken into consideration provided the value of software and/or the value of the data carrier have been singled out from the price actually paid or payable for the goods being valued. Information about the value of software and/or the value of the data carrier must be based on documented data.

The following must be taken into consideration in this regard:

- 1) The term "data carrier" does not concern integrated circuits, semiconductors and other similar devices or products, into which such integrated circuits or devices are incorporated;
- 2) The term "software" does not concern sound, motion picture and video recordings.

5. Interest accrued under financial agreements (for example, a finance lease) that have been entered into by the buyer and concern the purchase of the imported goods shall not be considered a part of the customs value provided that:

- 1) Interest has been singled out from the price that was actually paid or is payable for the goods;

- 2) The financing arrangements have been entered into in writing;
- 3) The buyer may demonstrate that:
  - a) Such goods have been actually sold for the price declared to be the price actually paid or payable;
  - b) The interest rate does not exceed the level of interest rates usually applied in the country where and when such financing was provided.

These provisions shall apply irrespective of whether the financing has been provided by the seller, the bank or other natural or legal person. They shall also apply if the goods are valued by a method other than on the basis of the price of the agreement (contract).

6. In cases stipulated by the present Code, the customs value of goods may be determined before the goods cross the customs border of Ukraine.

#### Article 52

#### **Declaring the Customs Value of Goods**

1. The customs value of goods shall be declared by the customs applicant or their authorized person during the declaration of the goods in accordance with the procedure established by Section VIII of the present Code and this Chapter.

2. The customs applicant or their authorized person who declare the customs value of the goods shall:

- 1) Declare the customs value determined by them, including such determination based on the results of consultations with the customs authority;
- 2) Provide the customs body with reliable information on determining the customs value that must be based on objective, documented and computable data;
- 3) Bear all additional costs associated with adjusting the customs value or providing the customs body with additional information.

3. The customs applicant or their authorized person who declare the customs value of goods shall have the right:

- 1) To provide the customs body with additional information (if available), if some specification of information is required;
- 2) To release the goods that are being declared to free circulation:
  - In case of recognition by customs authorities of declared customs cost of commodities – on condition of payment of customs duties under the declared customs value;
  - In case of approval by the customs applicant or their authorized person concerning the decision of the customs authority about the adjustment of the customs value of goods – on condition of custom duties payment according to the customs value determined by the customs authority;
  - In case of disagreement of the customs applicant or their authorized person with the decision of the customs authority concerning the adjustment of the declared customs value of goods - on condition of payment of customs duties under the declared customs value of goods and provision of guarantees in accordance with Section X of this Code in an amount determined by the customs authority in accordance with paragraph seven of Article 55 of this Code;
- 3) To conduct an examination of the price of the agreement (contract) by involving experts at their own expense;
- 4) To challenge the decision of the customs body in accordance with the procedure prescribed by Chapter 4 of the present Code regarding the adjustment of the customs value of the goods being valued and the inaction of the customs body with respect to making the decision on recognizing the customs value of the goods being

- valued within the period established by Article 255 of the present Code to complete the customs clearance;
- 5) To take an independent decision on the necessity to adjust the customs value after the goods are released;
  - 6) To obtain information from the customs body regarding the grounds on which the customs body believes that a relation between the seller and the buyer had an impact on the price that was actually paid or is payable for the goods being valued;
  - 7) In cases and in accordance with the procedure prescribed by the present Code, to request the customs body to provide written information about the reasons for which the customs value declared by them may not be recognized;
  - 8) In cases and in accordance with the procedure prescribed by the present Code, to request the customs body to provide written information about the procedure for and the method of determining the customs value that were used in adjusting the declared customs value as well as the grounds for performing such adjustment.

4. In cases stipulated by the present Code, to declare the customs value of the goods moved across the customs border of Ukraine under the import regime, a customs value declaration shall be submitted in accordance with the established procedure to the customs body that performs the customs clearance of these goods together with the customs declaration and other documents needed for the customs clearance of the said goods

5. A customs value declaration shall be submitted in cases where:

- 1) The costs specified in part ten of Article 58 of the present Code are added to the price that was actually paid or is payable for the goods being valued, if they have not been included in the price;
- 2) The costs specified in part eleven of Article 58 of the present Code were singled out from the price that was actually paid or is payable for the goods being valued;
- 3) If the buyer and the seller are related to each other.

6. In other cases, the customs value declaration shall be filed voluntarily by the customs applicant or their authorized person.

7. The customs value declaration shall not be filed, *inter alia*, in cases stipulated by part six of the present Article where consignments of goods are declared which customs value does not exceed €5,000.

8. The customs value declaration shall include information about the method of determining the customs value of the goods, a numerical value of the customs value of the goods and its components, the terms of the foreign economic agreement that are relevant to determining the customs value of the goods and the submitted documents that confirm the above.

9. Information specified in part eight of the present Article shall be the information necessary for customs purposes.

10. The form of the customs value declaration and the rules of completing it shall be established by the central executive authority that ensures the formulation and implementation of government policy in the field of finance.

11. Declaring the customs value of goods that are moved across the customs border of Ukraine under customs regimes other than the import regime shall be carried out when declaring these goods by specifying information in the customs declaration about the numerical value of their customs value and providing the documents confirming it.

#### Article 53

#### **Documents Submitted by the Customs Applicant to Confirm the Declared Customs Value**

1. In the cases stipulated by the present Code, ~~at the time of filing the customs declaration,~~ the customs applicant shall submit documents to the customs body confirming the declared customs value of the goods and the selected method of its determination.

2. The documents confirming the customs value of goods shall be:

- 1) A customs value declaration submitted in the cases provided in parts five and six of Article 52 of the present Code and the documents confirming numerical values of the components of the customs value based on which the customs value was calculated;
- 2) The foreign economic agreement (contract) or a document substituting it and annexes thereto, if available;
- 3) The invoice or pro forma invoice (if the goods are not a subject of purchase and sale);
- 4) If the invoice was paid – bank payment documents relating to the goods being valued;
- 5) If available – other payment and/or accounting documents confirming the value of the goods and containing the details necessary for the identification of the brought in goods;
- 6) Transportation (shipping) documents if, under the terms of delivery, transportation costs are not included in the value of the goods as well as the documents containing information about the transportation costs of the goods being valued;
- ~~7) A copy of the import licence~~ **A license for the imports of the goods**, if the importation of the goods is subject to licensing;
- 8) If the goods were insured - insurance documents and documents containing information about the cost of insurance.

3. If the documents specified in part two of the present Article contain discrepancies, **which have an impact on the correctness of determining the customs value**, obvious signs of forgery or do not contain all data confirming the numerical values of the components of the customs value of goods or information on price that was actually paid or payable for the goods, the customs applicant or their authorized person shall, upon written request of the customs authority, submit the following additional documents (if available) within ten calendar days:

- 1) An agreement (contract) with third persons related to the agreement (contract) on supplying the goods which customs value is being determined;
- 2) Accounts of payments to third parties for the benefit of the seller, if such payments are carried out under the terms stipulated by the agreement (contract);
- 3) Accounts of payments of commissions and brokerage services relating to the performance of the terms of the agreement (contract);
- 4) An extract from accounting documents;
- 5) A licence agreement or author's contract of the buyer that relates to the goods being valued and is a condition for the sale of the goods being valued;
- 6) Catalogues, specifications, price lists of the goods manufacturer;
- 7) A copy of the customs declaration of the country of shipment;
- 8) Reports on quality and value characteristics of the goods prepared by specialized expert organizations and/or information of commodity exchanges about the value of the goods or raw materials.

4. If the customs body has grounds to believe that the existing relations between the seller and the buyer had an impact on the customs value declared by the customs applicant, the customs applicant or their authorized person shall submit the following documents (if available) at the **written** request of the customs body, with an exception of documents mentioned in the paragraphs two and three of this Article:

- 1) An extract from accounting and bank documents of the buyer relating to the alienation of the goods being valued, identical and/ or similar (analogous) goods in the territory of Ukraine;
- 2) Information about the value in the exporting country of the goods that are identical and/or similar (analogous) to the goods being valued;
- 3) A calculation of the price.

5. It shall be prohibited to require the customs applicant or their authorized person to submit any other documents other than those specified in the present Article.

6. The customs applicant or their authorized person may voluntarily submit additional documents that they possess to confirm the customs value of the goods declared by them.

#### Article 54

#### **Control over the Correctness of Determining the Customs Value of Goods**

1. Control over the correctness of determining the customs value of goods shall be carried out by the customs body during customs control and customs clearance by verifying the numerical value of the declared customs value.

2. Control over the correctness of determining the customs value of goods pursuant to the basic method of the price of the agreement (contract) for the goods that are brought into the customs territory of Ukraine under the import regime (transaction value), shall be carried out by the customs body by verifying the calculation performed by the customs applicant in the absence of reservations regarding the use of this method set out in part one of Article 58 of the present Code.

3. Based on the results of exercising control over the correctness of determining the customs value of goods, the customs body shall recognize the customs value declared by the customs applicant or their authorized person or take a written decision on its adjustment in accordance with the provisions of Article 55 of the present Code.

4. During its exercise of control over the correctness of determining the customs value of goods, the customs body shall:

- 1) Exercise control over the customs value of the goods declared by the customs applicant or their authorized person by verifying the numerical value of the declared customs value, the presence in documents filed by this persons of all data that confirm the numerical values of the customs value of goods components or information on price that was actually paid or should be paid for these goods;
- 2) Provide the customs applicant or their authorized person with written information about the reasons for which the customs value declared by them may not be recognized;
- 3) Provide the customs applicant or their authorized person with written information about the procedure for and method of determining the customs value used in the case of adjusting the customs value as well as about the grounds for making such adjustment;
- 4) Release the declared goods to free circulation:
  - In case when customs authorities declared customs value of goods – on condition of customs duties payment under the declared customs value;
  - In case of approval by the customs applicant or persons authorized by the decision of the customs authority concerning the adjustment of the customs value of goods – on condition of customs duties payment according to the customs value determined by the customs authority;
  - In case of disagreement of the customs applicant or persons authorized by the decision of the customs authority concerning the declared customs value adjustments of goods – on condition of customs duties payment under the declared customs value of goods and provision of guarantees in accordance with Section X of this Code in an amount determined by the customs authority in accordance with paragraph seven of Article 55 of this Code.

5. With a view to exercising control over the correctness of determining the customs value of goods, the customs body shall have the right:

- 1) To establish the reliability or accuracy of any statement, document or calculation submitted for the purposes of determining the customs value;
- 2) In cases prescribed by this Code, to make the written request of the customs applicant or authorized person to submit additional documents and information established by Article 53 of the Code, if it is required to decide on recognizing the declared customs value;
- 3) To adjust the declared customs value of the goods in cases prescribed by this Code;

- 4) To verify the correctness of determining the customs value of the goods **after their release** in accordance with the procedure stipulated by Articles 345 – 354 of the present Code ~~after the completion of their customs control and customs clearance procedures;~~
- 5) To request from the customs authorities of other countries the provision of information necessary to verify the accuracy of the declared customs value;
- 6) To apply other forms of customs control provided by the present Code.

6. The customs body may refuse to perform customs clearance of goods under the customs value declared by the customs applicant **or their authorized person** only where there are justified grounds to believe that incomplete and/or inaccurate information has been declared regarding the customs value of the goods including cases where the customs value has been determined incorrectly, if:

- 1) The customs applicant or their authorized person incorrectly performed the calculation of the customs value;
- 2) The basic documents have not been submitted by the customs applicant or their authorized person in accordance with the list and under the conditions specified in paragraphs two - four of Article 53 of this Code, or if this documents lack all the information confirming the numerical values of the customs value of goods components or information regarding prices, that were actually paid or payable for the goods;
- 3) The method of determining the customs value of the goods selected by the customs applicant or their authorized person does not meet the conditions specified in Chapter 9 of the present Code;
- 4) The customs body receives documented official information from customs authorities of other countries regarding unreliability of the declared customs value.

7. If during customs control the customs body cannot prove that incomplete and/or inaccurate information about the customs value of the goods has been declared including incorrectly determining the customs value of the goods, the customs value declared by the customs applicant or their authorized person shall be considered recognized automatically.

#### Article 55

#### **Adjusting the Customs Value of Goods**

1. The decision to adjust the declared customs value of goods that are brought into the customs territory of Ukraine under the import regime shall be made by the customs body in writing when exercising control over the correctness of determining the customs value of these goods both before and after their release, if the customs body in cases stipulated by part six of Article 54 of the present Code finds that incomplete and/or inaccurate information has been declared about the customs value of the goods including cases where the customs value of the goods has been determined incorrectly.

2. The written decision approved by the customs body regarding the adjustment of the declared customs value shall contain:

- 1) A justification of the reasons for which the customs value declared by the customs applicant may not be recognized;
- 2) Information possessed by the customs body (including numerical values of the components of the customs value, the customs value of identical or similar (analogous) goods, other conditions that could have an impact on the price of the goods) which led to doubt concerning the correctness of determining the customs value and to deciding on the adjustment of the customs value declared by the customs applicant;
- 3) An exhaustive list of requirements to submitting additional documents stipulated by part three of Article 53 of the present Code, subject to which submission the customs value may be recognized by the customs body;
- 4) A justification of the numerical value of the customs value of the goods adjusted by the customs body as well as the facts that had an impact on such adjustment;
- 5) Information about:

a) The right of the customs applicant or their authorized person to release the goods being declared to free circulation:

In case of approval by the customs applicant or their authorized person of the decision of the customs authority about the adjustment of the customs value of goods – on condition of customs duties payment in accordance with the customs value specified by the customs authority.

In case of disagreement the of the customs applicant or their authorized person with the decision of the customs authority about the adjustment of the declared customs value of goods – on condition of payment of customs duties under the declared customs value of goods and **ensuring the payment of customs duties** in accordance with Section X of this Code in an amount determined by the customs authority in accordance with part seven of this Article.

b) The right of the customs applicant or their authorized person to challenge the decision on adjusting the declared customs value before a higher-level customs authority in accordance with Chapter 4 of the present Code or in court.

3. The form of the decision on adjusting the customs value of goods shall be established by the central executive authority that ensures the formulation and implementation of government policy in the field of finance.

4. During the customs clearance and customs body's making a written decision on adjusting the customs value of goods, the customs applicant or their authorized person ~~(by agreement)~~ may adjust the declared customs value within the terms established **by part two** of Article 263 of the present Code.

5. The customs applicant may hold consultations with the customs body with a view to making a justified choice of the method of determining the customs value based on the information available to the customs body.

6. At the request of the customs applicant, the consultations shall be conducted in writing.

7. If the customs applicant or their authorized person should disagree with the decision of the customs body on adjusting the declared customs value of the goods, the customs body shall, at the request of the customs applicant or their authorized person, release the goods being declared to free circulation provided the customs payments have been made according to the customs value of these goods determined by the customs applicant or their authorized person and the payment has been ensured of the difference between the amount of customs payments calculated according to the customs value of the goods determined by the customs applicant or their authorized person and the amount of customs payments calculated according to the customs value of the goods determined by the customs body by means of ~~providing guarantees~~ **ensuring the payment of customs duties** in accordance with Section X of the present Code **on the term of 90 calendar days from the day of the release of the goods.** ~~The term of these guarantees may not exceed 90 calendar days from the day of the release of the goods.~~

8. During 80 days after the release of the goods, the customs applicant or their authorized person may submit additional documents to the customs body to confirm the customs value of the goods declared by them.

9. If the customs applicant or their authorized person provide additional documents, the customs body shall consider the submitted additional documents and, within five working days of their submission, make a written decision on recognizing the declared customs value and cancel the decision on adjusting the declared customs value or provide a justified refusal to recognize the declared customs value with regard to the additional documents. In this case, ~~provided financial guarantee~~ **the granted security of payment of customs duties** should be accordingly returned (released) or ~~sold in the manner and within the period specified by this Code~~ **used for payment of relevant customs duties.**

10. If the customs authority within the period specified in paragraph nine of this Article does not provide reasonable refusal to recognize the declared customs value with regard to additional documents, it is believed that the customs applicant or their authorized person have correctly defined



the customs value of the goods. In this case, the customs authority revokes a decision to adjust the declared customs value, and ~~provided financial guarantee~~ **the granted security of payment of customs duties** shall be returned (released) in accordance with the procedure and within the term stipulated by the present Code.

**11. If the customs authority within the period specified in paragraph nine of this Article provides reasonable refusal to recognize the declared customs value with regard to additional documents, or if the customs applicant or their authorized person within the period specified in paragraph eight of this Article fails to submit to the customs authority additional documents confirming the customs value of the goods declared by them, funds paid/transferred as a monetary deposit in the amount of the sum of customs payments shall be transferred to the state budget against payment of the relevant customs payments on the next working day after the time limit stipulated by paragraph 7 of this Article expires.**

#### Article 56

#### **Observing the Requirements to Confidentiality of Information Concerning the Customs Value of Goods**

1. Information concerning the customs value of goods that are moved across the customs border of Ukraine may not, without a special permission of the person or body submitting such information, be disclosed or transferred to third persons including other state authorities except for filing it in accordance with the procedure stipulated by the present Code and other laws of Ukraine.

**2. Dissemination by the customs authority of impersonal information on specific export-import operations declared by the customs applicant in the customs declaration in compliance with part eighth of Article 257 of this Code shall not be considered as disclosure of restricted information, confidential information and proprietary information and shall not require a special permission of the person or body submitting such information, with the exception of paragraphs 2, 4, subparagraphs b, c, e, f, h of paragraph 5, paragraphs 6, 7 and 9 of the part eight of this Article, including information that refers to the customs value of goods that are moved across the customs border of Ukraine in volumes that do not contradict international treaties of Ukraine, consent to the binding of which was granted by the Verkhovna Rada of Ukraine.**

### CHAPTER 9

#### **METHODS OF DETERMINING THE CUSTOMS VALUE OF GOODS THAT ARE BROUGHT INTO THE CUSTOMS TERRITORY OF UKRAINE UNDER THE IMPORT REGIME AND THE PROCEDURE FOR THEIR APPLYING**

#### Article 57

#### **Methods of Determining the Customs Value of Goods that are Brought into the Customs Territory of Ukraine under the Import Regime**

1. The customs value of goods that are brought to Ukraine under the import regime shall be determined by the following methods:

- 1) The basic method – on the basis of the price of the agreement (contract) for the imported goods (transaction value);
- 2) Secondary methods:
  - a) On the basis of the price of the agreement for identical goods;
  - b) On the basis of the price of the agreement for similar (analogous) goods;
  - c) Deductive method;
  - d) Computed method;
  - e) Fall-back method.

2. The basic method of determining the customs value of goods that are brought into the customs territory of Ukraine under the import regime shall be the first method, on the basis of the price of the agreement (transaction value).

3. Each next method shall be applied only if the customs value cannot be determined using the previous method in accordance with the rules of the present Code.

4. The application of the secondary methods shall be preceded by the procedure of consultations between the customs body and the customs applicant aimed at determining the basis of the value pursuant to the provisions of Articles 59 and 60 of the present Code. In the course of such consultations, the customs body and the customs applicant may share information possessed by each of them provided the confidentiality requirements are observed.

5. If it is impossible to determine the customs value of goods pursuant to the provisions of Articles 59 and 60 of the present Code, the basis for its determination may be either the price at which identical or similar (analogous) goods were sold in Ukraine to a buyer unrelated to the seller in accordance with Article 62 of the present Code or the value of the goods calculated pursuant to Article 63 of the present Code.

6. In this case, each next method shall be used if the customs value of the goods cannot be determined using the previous method.

7. The deductive and computed methods may be used in any order of succession at the request of the customs applicant or their authorized person.

8. If it is impossible to apply any of the said methods, the customs value shall be determined using the fall-back method pursuant to the requirements established by Article 64 of the present Code.

#### Article 58

#### **The Method of Determining the Customs Value on the Basis of the Price of the Agreement (Contract) for the Imported Goods (Transaction Value)**

1. The method of determining the customs value on the basis of the price of the agreement (contract) for the goods that are brought into the customs territory of Ukraine under the import regime shall be used, if:

- 1) There are no restrictions on the right of the buyer (importer) to use the valued goods except those which:
  - a) Are established by law or implemented by state authorities of Ukraine;
  - b) Limit the geographical area in which the goods can be resold (alienated again);
  - c) Do not have a significant impact on the value of the goods.
- 2) There are no conditions or reservations regarding the sale of the valued goods that make it impossible to determine the value of these goods;
- 3) No portion of proceeds from any further resale, disposal or use of the goods is received directly or indirectly by the seller, unless an appropriate adjustment is made with regard to the provisions of part ten of the present Article;
- 4) The buyer and the seller are unrelated persons or even though they are related persons such relation did not have an impact on the price of the goods.

2. The method of determining the customs value on the basis of the price of the agreement (contract) for the imported goods shall not be applied if the information used by the customs applicant or their authorized person is not documented or quantified and is not reliable and/or at least one of the components of the customs value is missing that is indispensable for its calculation.

3. If the customs value cannot be determined using the basic method, the secondary methods shall be applied specified in paragraph 2 of part one of Article 57 of the present Code.

4. The customs value of goods brought into the customs territory of Ukraine under the import regime shall be the price actually paid or payable for the goods when sold for export to Ukraine adjusted, if necessary, with due regard to the provisions of part ten of the present Article.

5. The price actually paid or payable shall be the total amount of all payments that were made or must be made by the buyer of the valued goods to the seller or in favour of the seller through third persons and/or to seller's related persons to fulfil seller's obligations.

6. Payments may be made directly or indirectly. An example of an indirect payment may be a full or partial settlement by the buyer of seller's debt.

7. Payments need not be made in the form of a money transfer (including but not limited to). Such payments may be made by letter of credit, collection or other settlement (a promissory note, a transfer of securities, etc.).

8. The term "price actually paid or payable" shall concern only the price of the valued goods. Dividends or other payments by the buyer in favour of the seller unrelated to the valued goods shall not be part of the customs value. Additions, if they have not been included in the price actually paid or payable, shall be made in accordance with the present Article only on the basis of objective data that are supported by documents and are computable.

9. Calculations in accordance with the present Article shall be made only on the basis of objective data that are supported by documents and are computable.

10. When determining the customs value, the following costs (components of the customs value) shall be added to the price actually paid or payable, unless they have already been included in the price actually paid or payable:

1) Costs incurred by the buyer:

- a) Commissions and brokerage except fees for procurement, which are buyer's payment to their agent for the provision of services related to the representation of their interests abroad when procuring the valued goods;
- b) The cost of packaging boxes (containers) in which the goods are packaged or other packaging that is considered an integrated whole with the relevant goods for customs purposes;
- c) The cost of packaging or the cost of packaging materials and work related to packaging;

2) Properly distributed costs of the below goods and services if they are supplied directly or indirectly by the buyer free-of-charge or at reduced prices for use in connection with the manufacture and sale for export to Ukraine of the valued goods, unless such costs have been included in the price actually paid or payable:

- a) Raw materials, materials, parts, semi-finished products, components, etc. that are included in the valued goods;
- b) Tools, stamps, templates and similar objects used in the process of production of the valued goods;
- c) Materials spent in the process of production of the valued goods (lubricants, fuel, etc.);
- d) Engineering and development work, designs, artistic decorations, sketches and drawings that have been done outside of Ukraine and are directly necessary for the production of valued goods;

3) Royalties and other license payments relating to the valued goods that the buyer must pay directly or indirectly as a condition of the sale of the valued goods, unless such payments have been included in the price actually paid or payable.

The said payments may include payments concerning rights to literary and artistic works, inventions, utility models, industrial designs, trademarks and other objects of intellectual property rights.

Costs related to the right to reproduce (copy) the valued goods in Ukraine shall not be added to the price actually paid or payable for the valued goods.

The procedure for including royalties and licence payments in the price shall be determined by the Cabinet of Ministers of Ukraine.

- 4) An appropriate portion of the proceeds from any further resale of the goods being valued, their use or disposal of them in the customs territory of Ukraine that is directly or indirectly credited to the seller;
- 5) Costs of transporting the valued goods to the airport, port or other point of entry to the customs territory of Ukraine;
- 6) Costs of loading, unloading and processing of the valued goods related to their transportation to the airport, port or other point of entry to the customs territory of Ukraine;
- 7) Costs of insuring these goods.

11. In determining the customs value, no other costs except those specified in the present Article shall be included in the price actually paid or payable. The customs value shall not include the below costs or funds, provided they are singled out from the price actually paid or payable for the valued goods, which are supported by documents and are computable:

- 1) Costs of building, construction, assembly, maintenance or technical assistance incurred after bringing in of the imported goods such as industrial plant, machinery or equipment;
- 2) Transportation costs after the bringing in;
- 3) Taxes levied in Ukraine.

12. The fact that the seller and the buyer are related persons may not in itself be the ground to consider the transaction value unacceptable. In such cases, the circumstances of the sale must be considered and the transaction value accepted, if the relation between the buyer and the seller did not have an impact on the price of the valued goods.

13. If there are sufficient grounds to believe that the relation mentioned in part twelve of the present Article had an impact on the price of the valued goods, the customs body must provide the customs applicant or their authorized person with its written justification of the fact that such impact occurred.

14. If no justifications have been provided by the customs body, it shall be considered that the relation mentioned in part twelve of the present Article did not have an impact on the price of the valued goods.

15. The customs applicant shall have the right to respond and to prove that there was no impact of the relation between the seller and the buyer on the price actually paid or payable for the valued goods.

16. For the purposes of the present Code, persons shall be considered related to each other in cases specified in Article 15 of the Agreement on Implementation of Article VII of the GATT 1994.

17. Persons, one of whom is the sole agent, sole distributor or sole concessioner of the other, whatever this is called, shall be considered related for the purposes of the present Code unless they fall under at least one of the criteria set out in Article 15 of the Agreement on Implementation of Article VII of the GATT 1994.

18. Upon sale of goods between related persons, the transaction value shall be used as a basis for determining the customs value of the valued goods according to the first method, if the customs applicant shows that such value is close to the value of one of the below transactions performed at the same time or almost at the same time as the transaction in the valued goods:

- 1) The transaction value upon sale to unrelated buyers of identical or similar (analogous) goods for export to Ukraine;

- 2) The customs value of identical or similar (analogous) goods determined in accordance with the provisions of Article 62 of the present Code;
- 3) The customs value of identical or similar (analogous) goods determined in accordance with the provisions of Article 63 of the present Code.

19. In case of performing the above comparisons, information shall be taken into consideration available to the customs body or submitted by the customs applicant or their authorized person regarding the difference in commercial sales levels, quantitative indicators, elements and the costs specified in part ten of the present Article as well as the costs incurred by the seller upon sale where the seller and the buyer are unrelated to each other and those not incurred by the seller upon sale, where the seller and the buyer are related to each other.

20. A comparison to the transaction values specified in paragraphs 1 – 3 of part 18 of the present Article shall be made on the initiative of the customs applicant or their authorized person. These transaction values may not be used instead of the value of the transactions in the valued goods.

21. Information used by the customs applicant or their authorized person must be objective, computable and documented.

~~22. Authorized economic operators shall have the right to automatically apply the method of determining the customs value on the basis of the price of the agreement (contract) for the imported goods (transaction value).~~

~~In such cases, to support the declared information about the customs value of goods in accordance with the procedure stipulated by the present Code, only the following documents shall be provided:~~

- ~~1) Customs value declaration (in cases established by Article 52 of the present Code);~~
- ~~2) The foreign economic agreement (contract) and annexes thereto;~~
- ~~3) The invoice or pro forma invoice;~~
- ~~4) Bank payment documents (if the invoice has been paid) as well as other payment and/or accounting documents supporting the value of the goods and containing details necessary to identify the brought in goods;~~
- ~~5) Documents confirming costs of the bringing in and insurance, unless such costs are included in the value of the goods in accordance with the terms of delivery.~~

23. In cases stipulated by part twenty-two of the present Article, control over the correctness of determining the customs value shall be carried out only after the completion of customs clearance procedures and the passage of the goods across the customs border of Ukraine.

#### Article 59

#### **The Method of Determining the Customs Value on the Basis of the Price of the Agreement for Identical Goods**

1. If the customs value of the valued goods cannot be determined pursuant to the provisions of Article 58 of the present Code, the basis for its determination shall be the value of the transaction in identical goods sold for export to Ukraine from the same country and which time of export coincides with the time of export of the valued goods or is as close to it as possible.

2. In applying this method of determining the customs value, the basis shall be the value of the transaction in identical goods accepted by the customs body with due regard to the conditions specified in the present Article. Identical goods shall mean the goods that are identical in all characteristics to the valued goods including the following characteristics:

- 1) Physical characteristics;
- 2) Quality and reputation on the market;
- 3) The country of manufacturing;
- 4) The manufacturer.

3. Insignificant external differences may not be the ground for refusing to consider the goods as identical if in general such goods meet the requirements of part two of the present Article.

4. The price of the agreement for identical goods shall be the basis for determining the customs value of the goods if these goods have been brought in approximately in the same quantity and on the same commercial levels as the valued goods.

5. If there is no such sale, the value shall be used of the transaction in identical goods that were sold to Ukraine in other quantities and/or on other commercial levels. In this case, their price shall be adjusted to account for the said differences irrespective of whether this leads to an increase or decrease in value. Information used when performing the adjustments must be documented.

6. If the funds and costs mentioned in paragraphs 5 – 7 of part ten of Article 58 of the present Code are included in the transaction value, an adjustment shall be made to account for the said difference in such funds and costs between the valued goods and the relevant identical goods which is due to differences in the distances and modes of transportation.

7. If for the purposes of using this method more than one transaction value of identical goods is available, the lower of these values shall be used to determine the customs value of the valued goods.

#### Article 60

#### **The Method of Determining the Customs Value on the Basis of the Price of the Agreement for Similar (Analogous) Goods**

1. In case the customs value of the valued goods may not be determined pursuant to the provisions of Articles 58 and 59 of the present Code, the customs value shall be the transaction value accepted by the customs body of similar (analogous) goods which are sold for export to Ukraine and which time of export coincides with the time of export of the valued goods or is as close to it as possible.

2. Similar (analogous) goods shall mean the goods that, while not being identical in all characteristics, have similar characteristics and include similar components owing to which fact they fulfil the same functions as compared to the goods being valued and are considered commercially interchangeable.

3. When determining whether the goods are similar (analogous), the quality of the goods, the availability of a trademark and the reputation of these goods in the market shall be taken into consideration.

4. The price of the agreement for similar (analogous) goods shall be the basis for determining the customs value of goods, if these goods have been brought in approximately in the same quantity and on the same commercial levels as the valued goods.

5. If no such sale has been identified, the transaction value of similar (analogous) goods shall be used that were sold to Ukraine in other quantity and/or on other commercial levels. In this case, their price shall be adjusted to account for the said differences irrespective of whether this leads to an increase or decrease in value. Information used when performing the adjustments must be documented.

6. If the funds and costs mentioned in paragraphs 5 – 7 of part ten of Article 58 of the present Code are included in the transaction value, an adjustment shall be made to account for the said difference in such funds and costs between the valued goods and the relevant similar (analogous) goods which is due to differences in the distances and modes of transportation.

7. If for the purposes of using this method more than one transaction value of similar (analogous) goods is available, the lower of these values shall be used to determine the customs value of the valued goods.

## Article 61

**Reservations Regarding the Conditions of Applying the Methods of Determining the Customs Value of Goods on the Basis of the Price of the Agreement for Identical Goods and on the Basis of the Price of the Agreement for Similar (Analogous) Goods**

1. Goods shall not be considered identical or similar (analogous) to the valued goods, if they were not manufactured in the same country as the goods being valued.
2. Goods produced not by the manufacturer of the valued goods but by another person shall be taken into consideration only if no identical or similar (analogous) goods produced by the manufacturer of the valued goods are available.
3. Goods shall not be considered identical or similar (analogous) to the valued goods, if their engineering and development work, designs, artistic decorations, sketches and drawings as well as other similar work was done in Ukraine.

## Article 62

**Deductive Method of Determining the Customs Value**

1. If the customs value of the valued goods cannot be determined in accordance with the provisions of Articles 58 – 61 of the present Code, their customs value shall be determined pursuant to the provisions of the present Article on the basis of deduction of value except for the cases where, at the request of the customs applicant or their authorized person, this Article and Article 63 of the present Code may be applied in reverse order.

2. If the valued or identical or similar (analogous) imported goods are sold (alienated) in the customs territory of Ukraine unchanged, to determine the customs value of goods by this method, the price shall be used of one unit of the goods at which the valued or identical or similar (analogous) imported goods are sold in the territory of Ukraine in the largest total quantities to a buyer who is not a related person of the seller at the same time or at the time close to the date of importation of the valued goods provided the following components, if they can be singled out, are deducted:

- 1) Costs of paying commissions that are usually paid or payable or normal trade mark-ups that are made to get profit and cover general expenses in connection with the sale in the customs territory of Ukraine of goods of the same class and type. Goods of the same class and type shall be the goods covered under a group or range of goods produced by a specific industry or sector of industry and including identical or similar (analogous) goods. The term "goods of the same class and type" shall include the goods imported from the same country as the valued goods as well as the goods imported from other countries.

The amount of profit and general costs that include direct and indirect costs associated with the sale of these goods should be taken as a whole. The numerical value of costs for the purposes of deducting this amount shall be determined on the basis of information submitted by the customs applicant or their authorized person, unless such information is incompatible with the data obtained during the sale in Ukraine of the brought in (imported) goods of the same class and type. If the information provided by the customs applicant or their authorized person is incompatible with such data, the amount for the calculation of profit and general costs may be based on other relevant information and not on that provided by the customs applicant or their authorized person.

In determining the commissions or ordinary profit and general costs, the inclusion of goods in the "goods of the same class and type" must be made in each specific case with a reference to appropriate circumstances.

- 2) Ordinary costs incurred in Ukraine in connection with loading, unloading, transporting and insuring the goods as well as other costs related to such operations;
- 3) Amounts of taxes payable in Ukraine in connection with the bringing in (importation) or sale (alienation) of goods.

3. If neither the valued goods nor identical or similar (analogous) goods are sold in Ukraine at the same time or at the time that is as close as possible to the date of importing the valued goods to Ukraine, the customs value of such goods shall be determined based on the price of one unit of the goods at which, respectively, the valued goods or identical or similar (analogous) goods to the valued goods are sold in Ukraine in quantities sufficient to establish the price per unit of such goods in the same condition as they were imported at the earliest date after importing the valued goods but before the expiry of a 90-day term.

4. If there are no cases of selling the valued, identical or similar (analogous) goods in the same condition as they were as of the day of bringing them in Ukraine, the customs value of such goods shall be determined at the request of the customs applicant or their authorized person on the basis of the price of one unit of the goods at which these goods are sold in Ukraine after further processing (reworking) in the largest lot to persons unrelated to the persons from whom they purchase such goods. In this case, appropriate adjustments shall be made to account for the value added as a result of such processing (reworking) and the deductions stipulated by paragraphs 1 – 3 of part two of the present Article.

5. Deductions of the value added as a result of further processing (reworking) shall be based on objective, documented and computable data concerning the value of such work. The basis of the calculations shall be the accepted industrial formula, recipes, building methods and other industry practices.

6. Provisions of part four of the present Article shall not apply if:

- 1) As a result of further processing, the brought in goods lose their identity except for the cases where despite the loss of identity of the brought in goods, the amount of the value added as a result of processing may be accurately determined;
- 2) The brought in goods retain their identity but constitute such an insignificant percentage of their sales in Ukraine that using this valuation method would not be justified.

7. The possibility of applying the provisions of part four of the present Article shall be determined in each specific case depending on the specific circumstances.

#### Article 63

#### **The Method of Determining the Customs Value of Goods on the Basis of the Sum of Values (Computed Value)**

1. In determining the customs value of goods based on the sum of values (computed value), the basis shall be the information about their value provided by the manufacturer of the goods being valued or provided on its behalf that shall be comprised of the sums of:

- 1) The value of materials and costs incurred by the manufacturer in the course of fabrication of the valued goods. Such information must be based on commercial invoices of the manufacturer provided that such invoices are compatible with the generally acceptable accounting principles applicable in the country where these goods are manufactured;
- 2) The amount of profit and general costs which is equal to the sum that is usually recorded upon sale of goods of the same class or type as the valued goods that are produced by manufacturers in the country of export for export to Ukraine;
- 3) General costs upon sale to Ukraine from the country exporting goods of the same class or type, i.e. costs of loading, unloading and processing of the valued goods, their transportation to the airport, port or other point of entry to the customs territory of Ukraine as well as the costs of insuring these goods.

2. An official of the customs body may not request or make any person who is not a resident to provide them with or allow them access to any invoice or other records for the purposes of computing the value. Information submitted by the manufacturer of the goods for the purposes of determining the customs value pursuant to the provisions of the present Article may be verified in the country of the manufacturer of the goods by authorized bodies of Ukraine subject to consent



of the manufacturer and provided an advance notice has been given to the government of the country of the manufacturer of the goods and if there are no objections to such a verification.

#### Article 64

##### **The Fall-Back Method**

1. If the customs value of goods cannot be determined by successively applying the methods specified in Articles 58 – 63 of the present Code, the customs value of the valued goods shall be determined using the methods that do not contradict laws of Ukraine and are compatible with relevant principles and provisions of the General Agreement on Tariffs and Trade (GATT).

2. The customs value determined pursuant to the provisions of the present Article shall be based on customs values earlier recognized (determined) by customs authorities.

3. The customs value of imported goods shall not be determined in accordance with the provisions of the present Article on the basis:

- 1) Of the price of goods of Ukrainian origin in the domestic market of Ukraine;
- 2) Of the system that envisions the use for customs purposes of the higher of the two alternative values;
- 3) Of the price of goods in the domestic market of the exporting country;
- 4) Of the value of production other than the computed value determined for identical or similar (analogous) goods pursuant to the provisions of Article 63 of the present Code;
- 5) Of the price of goods that are supplied from the exporting country to third countries;
- 6) Of the minimum customs value;
- 7) Of the arbitrary or fictitious value.

4. In case the present Article is applied by the customs body, it shall, at the request of the customs applicant or their authorized person, inform them in writing of the customs value determined pursuant to the provisions of the present Article and of the method used.

#### CHAPTER 10

##### **DETERMINING THE CUSTOMS VALUE OF GOODS THAT ARE MOVED ACROSS THE CUSTOMS BORDER OF UKRAINE UNDER CUSTOMS REGIMES OTHER THAN THE IMPORT REGIME**

#### Article 65

##### **The Procedure for Determining the Customs Value of Goods that are Brought into the Customs Territory of Ukraine under Customs Regimes other than the Import Regime**

1. The customs value of goods brought into the customs territory of Ukraine under customs regimes other than the import regime shall be the price of the goods specified in the invoice or pro forma invoice. The determination of the customs value of the goods that are brought into the customs territory of Ukraine and placed under customs regimes other than the import regime (except the transit regime) with levying customs payments shall be carried out in accordance with Chapter 9 of the present Code.

2. Upon change of a customs regime, the customs value determined at the first placement of the goods under a customs regime shall be replaced with the customs value determined under the next customs regime.

#### Article 66

##### **The Procedure for Determining the Customs Value of Goods Brought out of the Customs Territory of Ukraine**

1. The customs value of goods brought out of the customs territory of Ukraine shall be the price of the goods specified in the invoice or pro forma invoice.

2. The customs value of goods brought out of the customs territory of Ukraine shall be determined upon placing these goods for the first time under the customs regime with their further actual moving across the customs border of Ukraine. Upon change of the customs regime when the goods are outside the customs territory of Ukraine, the customs value of the goods shall be the customs value determined on the day of customs body's accepting the customs declaration upon their first placement under the customs regime.

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