

Chapter IV
METHODS OF DETERMINATION AND APPLICATION OF CUSTOMS VALUES
OF GOODS AND PROCEDURE OF THEIR APPLICATION

Article 10. Methods of determination of the customs value of goods

(1) The customs value of goods imported on customs territory is determined by the following methods:

a) on the basis of the transaction price which subject are the given goods, or on the basis of the price which is actually paid or is due to pay;

[Subparagraph a) is amended by Law N 1319-XIV of 27.10.2000]

b) on the basis of the transaction price which subject are the identical goods;

c) on the basis of the transaction price which subject are the homogeneous goods;

d) on the basis of the unit value of goods;

e) on the basis of estimated value of the goods;

f) by a reserve method.

(2) The basic method of methods specified in part (1) is a method of determination of the customs value of the goods on the basis of the transaction price which subject are the given goods. If the basic method cannot be used, other methods shall be applied. Thus each subsequent method shall be applied, if customs value of the goods cannot be determined by the previous method. Methods provided by subparagraphs d) and e) can be used in any sequence - at will of the customs applicant.

Article 11. A method of determination of the customs value of the goods on the basis of the transaction price which subject are the given goods, or on the basis of the price which is actually paid or is due to pay

[Title of article 11 is amended by Law N 1319-XIV of 27.10.2000]

(1) In course of determination of the customs value of goods on the basis of the transaction price which subject are the given goods, or on the basis of the price which is actually paid or is due to pay, transaction price shall comprise the following components (if they were not included previously in value of the goods):

[Indent is amended by Law N 1319-XIV of 27.10.2000]

a) delivery expenses of goods to the airport or other place of import of the goods on customs territory:

- expenses connected with insurance;

- shipment cost;

- cost of loading, an unloading and transshipment;

b) expenses incurred by the buyer:

- commission charges and brokerage commission, except for commission charges for purchase of goods;

- cost of containers and/or other returnable tare if according to the Commodity nomenclature they are considered as a piece with the goods;

- cost of packing, including cost of packaging materials and works of packing;

c) proportionately distributed value of following goods and services, which are directly or indirectly delivered by the buyer for free of charge or for a reduced price for use in connection with manufacture and sale for export of the estimated goods, to the extent to which this value was not included in the price which is actually paid or due to pay:

- of materials, components, parts and other similar elements which are a component of goods;

- of tools, mold tools, forms and other similar objects used in production of goods;

- of materials used up in production of goods;

- of engineering-design works, works on development, art and design works, artistic and construction works, drawings and drafts executed outside of the country and which are necessary for production of goods;

[Subparagraph c) in edition of Law N 1319-XIV of 27.10.2000]

d) royalty and payments of license fees related with the estimated goods, which the buyer shall pay directly or indirectly as meeting of a condition of sale of the estimated goods, to the extent to which this royalty and payments were not included in the price which is actually paid or is due to pay, except for a royalty and payments of license fees for the right of reproduction and distribution of cinematographic production;

[Subparagraph d) in edition of Law N 1319-XIV of 27.10.2000]

e) value of any part of proceeds of any subsequent resales, disposition or use of goods which is directly or indirectly due to the seller.

[Subparagraph e) in edition of Law N 1319-XIV of 27.10.2000]

(2) Any addition to the price which is actually paid or is due to payment is made according to provisions of the present article only on the basis of objective and quantifiable data.

[Paragraph 2 Article 11 is implemented by Law N 1319-XIV of 27.10.2000]

(3) In course of determination of the customs value of goods an addition to the price which is actually paid or is due to payment, is prohibited, except for those which are provided by the present article.

[Paragraph 3 Article 11 is implemented by Law N 1319-XIV of 27.10.2000]

(4) this method cannot be applied, if:

a) there are restrictions of the rights of the buyer on the estimated goods, except for restrictions:

- provided by the legislation;
- related to the geographical region in which the goods can be resold;
- which do not influence on the price of goods substantially;

b) sale of goods and transaction price depend on observance of conditions influence of which cannot be taken into account;

c) information used by the customs applicant at the declaration of customs value of goods, is not reliable and is not documentary confirmed;

d) participants of the transaction are connected persons, except for cases when their coherence does not influence the transaction price, and the transaction price is acceptable for the customs purposes according to the provisions of Paragraph (5).

[Paragraph d) in edition of Law N 1319-XIV of 27.10.2000]

(5) a) In course of determination of whether the transaction price is acceptable for the customs purposes of Paragraph (4), the fact, that the buyer and the seller are connected among them in the meaning of Paragraph (6), is not the sufficient basis for recognition of the transaction price as unacceptable. In this case circumstances of sale shall be investigated and the transaction price is accepted provided that the specified relation did not affect the price. If the customs authority, having the information received from the customs applicant or from other sources, has the bases to consider that relation affected the price, it shall inform the customs applicant about its arguments (if the customs applicant requests it in writing) and shall give him/her the possibility to prove the transaction price.

b) At the sale which is carried out by persons being connected persons, the transaction price shall be accepted and goods shall be estimated according to the provisions of Paragraph (4) if the customs applicant proves that such price is close to one of the following prices which were occurred at the same or almost at the same time:

- of transaction price at sales to unconnected buyers of the identical or homogeneous goods from the same country of exportation;
- of customs value of identical or homogeneous goods determined according to the provisions of article 15;
- of customs value of identical or homogeneous goods determined according to the provisions of article 16.

c) On application of the above-stated criteria the difference in commercial levels, in quantitative levels, in the components listed in the present article, and in the expenses incurred by

the seller at sales in which the seller and the buyer are not connected among them in comparison with the expenses incurred by the seller at sales in which the seller and the buyer are connected among them shall be considered.

d) The criteria specified in Subparagraph b) are applied at the initiative of the customs applicant but only for the purpose of comparison.

[Paragraph 5 Article 11 is implemented by Law N 1319-XIV of 27.10.2000]

(6) For the purposes of the present law persons shall be considered to be connected among them, if:

- one of them is a member of board of directors or a member of the supervisory board of the enterprise of other person, and vice-versa;
- they are legally recognized business associates;
- one of them is the employer, another is the worker;
- any person who directly or indirectly owns, supervises or is the holder of not less than 5 percent of voting shares, outstood by both persons;
- one of them directly or indirectly supervises another person;
- both persons are directly or indirectly supervised by the third party;
- together directly or indirectly supervise the third party;
- both persons are members of the same family.

[Paragraph 6 Article 11 is implemented by Law N 1319-XIV of 27.10.2000]

(7) Persons having business connections, in a case when one of them is exclusively the agent, the distributor or the concessionaire of another person (irrespective of the used name), will be considered to be connected among them for the purpose of the present law if they fall under scope of provisions of Paragraph (6).

[Paragraph 7 Article 11 is implemented by Law N 1319-XIV of 27.10.2000]

(8) Expenses incurred by the buyer in connection with services on pre-shipment inspection of the imported goods, will not be included in customs value of these goods.

[Paragraph 8 Article 11 is implemented by Law N 967-XV of 11.04.2002]

Article 12. A method of determination of customs value of goods on the basis of the transaction price which subject are the identical goods

(1) At use of the given method the basis is the transaction price which subject are the identical goods. Thus goods which are identical in all signs with the estimated goods will be identical. These signs comprise the following:

- a) physical characteristics;
- b) quality and reputation in the market;
- c) country of origin;
- d) the manufacturer.

(2) Insignificant external distinctions can not be the reason for inclusion of goods in a category of non-identical if in other respects these goods meet the requirements, provided by Paragraph (1).

Article 13. A method of determination of customs value of goods on the basis of the transaction price which subject are the homogeneous goods

(1) At use of the given method the basis is the transaction price which subject are the homogeneous goods. Thus goods which not being identical have similar components that allows them to carry out the same functions and to be interchangeable from the point of commercial aspect are considered to be homogeneous.

- (2) At determination of homogeneity of goods their following signs are considered:
- a) quality, presence of trade mark, reputation in the market;
 - b) country of origin;
 - c) manufacturer.

Article 14. Additional provisions related to the determination of customs value of goods on the basis of the transaction price which subject are the identical or homogeneous goods

(1) Goods will not be considered to be identical or homogeneous with the estimated goods, if:

- a) goods were not manufactured in the same country, as the estimated goods;
- b) their designing, works on development, art works over them, their design, drawings, drafts were executed on the territory of Republic Moldova.

(2) Goods manufactured not by the manufacturer of the estimated goods, but other person, are considered as identical or homogeneous with the estimated goods, only if there are no identical or homogeneous goods manufactured by the manufacturer of the estimated goods.

(3) Method of determination of customs value of goods on the basis of the transaction price which subject are the identical or homogeneous goods, is applied, if identical or homogeneous goods:

- a) are sold for import on the territory of Republic Moldova;
- b) are imported simultaneously or not earlier than 90 days before the import of goods which will be estimated;
- c) are imported approximately in the same quantity and/or on the same commercial terms. If identical or homogeneous goods are imported in other quantity and/or on other commercial terms, the customs applicant shall make necessary updating of the customs value of goods declared by him/her taking into account these differences, and confirm documentary the submitted data.

(4) If expenses provided by Subparagraph (1) Paragraph (1) Article 11, are included in transaction price, the latter shall be corrected taking into account an appreciable difference which can occurs between these expenses for the estimated goods and for identical or homogeneous goods and conditioned by differences in distances and vehicles.

[Paragraph 4 Article 14 in edition of Law N 1319-XIV of 27.10.2000]

(5) If at definition of the customs value of goods the basis can be one of the prices of several transactions which subject are identical or homogeneous goods the lowest price of the transaction shall be applied.

Article 15. A method of determination of the customs value of goods on the basis of the unit value

(1) If (estimated) goods imported on customs territory are on sale in that condition in which they were imported, their customs value according to the provisions of the present article is based on the price of a unit of production at which these goods either identical or homogeneous goods are on sale in the greatest cumulative quantity to persons who are not connected with the seller, simultaneously or almost simultaneously with import of the estimated goods, on conditions of realization of the following deductions:

- a) commission fees, usually paid or coordinated to payment, or the extra charges applied in the usual procedures to the profit and a reimbursement of general expenses at sales of goods of the same class or kind;
- b) usual transport and insurance expenses, and also expenses connected with them incurred in territory of Republic Moldova;
- c) expenses provided in Subparagraph a) Paragraph (1) Article 11;

d) the customs duties and the taxes which are due to pay in connection with import or sale of the goods.

(2) If neither (estimated) goods imported on customs territory nor identical or homogeneous goods are on sale simultaneously or almost simultaneously with import of the estimated goods customs value is based, except as otherwise provided by Paragraph (1), on the price of a unit of production at which these goods are on sale in that condition in which they were imported, on the earliest date after import of the estimated goods, but not later than 90th day after import.

(3) If neither (estimated) goods imported on customs territory nor identical or homogeneous goods are on sale in that condition in which they were imported customs value is based on request of the customs applicant on the price of a unit of production at which after the further processing these goods are on sale in the greatest cumulative quantity to the persons who are not connected with the seller, but it shall be allowed for the added cost conditioned by processing and for deductions provided by Paragraph (1).

[Article 15 in edition of Law N 1319-XIV of 27.10.2000]

Article 16. A method of determination of the customs value of goods on the basis of estimated value of the goods

(1) The customs value of goods according to the provisions of the present article is based estimated value of the goods, which includes:

a) expenses or cost of materials and manufacturing operations or other works for manufacturing of goods;

b) volume of profit and the total expenditure, which is equal to the volume which is usually reflected at sales of goods of the same class or kind, as the estimated goods, produced by manufacturers for import in the country of importation;

c) expenses or any other costs provided by Subparagraph a) Paragraph (1) Article 11.

(2) Customs authority has no right to request or oblige the person who is not the resident, to submit accounting documents for checking purposes or to grant access to them for determination of estimated value. At the same time the information submitted by the manufacturer of goods with a view of determination of their customs value according to the provisions of the present article, can be checked up in other country by customs authority upon the consent of the manufacturer and provided that this authority shall send the notice in writing to the government of the given country and that it does not object to investigation.

[Article 16 in edition of Law N 1319-XIV of 27.10.2000]

Article 17. A reserve method

(1) If the customs value of goods cannot be determined by the customs applicant at consecutive application of methods specified in articles 11, 12, 13, 15, 16, or the customs authority reasonably considers, that these methods cannot be used, the customs value of goods is determined by a reserve method, reasonable means compatible with provisions of the present law and general principles of the international agreements, signed by the Republic Moldova/in which the Republic Moldova is a party.

[Paragraph 1 Article 17 is amended by Law N 1319-XIV of 27.10.2000]

(2) The customs applicant, upon his/her request in writing, shall be informed on the customs value of goods determined according to the provisions of the present article, and on the used method.

[Paragraph 2 Article 17 in edition of Law N 1319-XIV of 27.10.2000]

(3) At the determination of customs value of goods by a reserve method for a basis cannot be taken:

- a) selling value of goods in the internal market of Republic Moldova;
- b) value of goods the internal market of country of exporter;
- c) arbitrary or dummy value of goods;
- d) the system providing application for the customs purposes of higher value of goods from two possible;
- e) industrial value of goods which is differ from the estimated value of identical or homogeneous goods, determined according to the Subparagraph a) Article 16;
- f) value of goods sold for export not in the country-importer, but in other country;
- g) minimum customs value of goods.

Article 17¹. A method of determination of customs value of the exported goods
The customs value of the exported goods is determined on the basis of their contract value taking into account condition D.A.F. ("Delivered at frontier" - delivery to the border).
[article 17¹ is implemented by Law N 1387-XIV of 24.11.2000]