



15 May 2023

(23-3392)

Page: 1/7

Committee on Customs Valuation

Original: English

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

REPLIES FROM UKRAINE TO QUESTIONS FROM THE UNITED STATES
CONTAINED IN DOCUMENT G/VAL/Q/UKR/1

UKRAINE

The following communication, dated 12 May 2023, is being circulated at the request of the delegation of Ukraine.

Ukraine would like to thank the United States for the questions submitted in document G/VAL/Q/UKR/1 regarding Ukraine's notification on customs valuation legislation contained in document G/VAL/N/1/UKR/3 and provide responses as follows.

Question 1

Article 53(4): Please explain which provision of the Customs Valuation Agreement (CVA) this provision implements. We note that Interpretative Note to Article 1, Paragraph 2 of the CVA addresses situations where there are doubts about the acceptability of the related party price.

Response:

Article 53(4) addresses situations where the customs administration has grounds for considering that the relationship between the buyer and seller influenced the price (Article 1, paragraph 2 of the CVA).

Question 2

Article 56(2): Please provide a copy of Article 257 of the Customs Code of Ukraine regarding confidential information.

Response:

Please find a text of Article 257 of the Customs Code of Ukraine:

Article 257. Declaring procedure

1. Declaring is made in a set form (written, verbal, by taking an action) specifying accurate data about goods, the purpose of their movement across the border of Ukraine and data required for their customs control and customs clearance. The written declaration can be both electronic or hard copy or a scanned copy of a paper document electronically signed by the declarant or authorised person.

2. Electronic declaration is made using electronically signed electronic customs declaration and other electronic documents or details of these documents in cases established by law and scanned copies of paper documents electronically signed by the declarant or authorised person.

3. Customs declaration or other documents provided in this Code made on paper and as an electronic document have the same legal force.

{Part 4 of Article 257 has been deleted under Law No. 141-IX of 2 October 2019}

5. Electronic customs declaration format is based on international Electronic Data Interchange standards.

6. This Code and international treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine identify declaration conditions and procedure, customs control and clearance data. Customs declaration provisions and customs declaration forms shall be approved by the Cabinet of Ministers of Ukraine and the completion procedure of such declarations and other documents used in customs clearance of goods, commercial vehicles by the central executive authority in charge of shaping and implementing the state fiscal policy.

Customs declarations forms for declaring goods moved across the border of Ukraine by enterprises under import, export or transit, as well as for declaring goods moved across the border of Ukraine by citizens and declared under the customs declaration provided for enterprises, shall be determined by the Convention on the Simplification of Formalities in Trade in Goods and the Convention on a Common Transit Procedure.

Declaration conditions and procedure, customs control and clearance data of goods placed under the transit customs regime under the Convention on a Common Transit Procedure shall be determined in accordance with the provisions of the said Convention.

7. Customs declaration data are only limited by data required to pay customs duties, form customs statistics and ensure compliance with this Code and other existing laws.

8. Customs clearance of goods, commercial vehicles is based on customs declaration which is completed by declarant on basis of customs procedures set out by this Code for customs regimes and declared import purpose with the following data including encoded data:

1) declared customs regime, declaration type and import features;

2) information about declarant, authorised person, consignor, consignee, carrier and parties of import-export agreement (contract) or any other international document used instead of agreement (contract) and in case import-export agreement (contract) is based on a mediation agreement, information about other than import-export agreement (contract) party, mediation agreement party;

3) information about country of departure and country of destination;

4) information about commercial vehicles and containers used in international carriages and/or in Ukraine under customs control;

5) information about goods;

a) name;

b) typical description that enables identification and classification of goods;

c) brand and manufacturer of goods (when specified in support and commercial documents);

d) commodity Code under UKT ZED;

e) country of origin (as available);

- f) packing description (quantity, type);
 - g) weight in kilograms (gross, net) and other units;
 - h) invoice cost of goods;
 - i) customs cost of goods and determining method;
 - j) declarant's bank details;
 - k) statistical cost of goods;
- 6) information on the accrual of customs and other payments, as well as on the provision of security for the payment of customs duties:
- a) customs duties;
 - b) customs duty benefits;
 - c) overall customs duties;
 - d) official exchange rate of Ukrainian currency to invoice currency determined under Article 31 of this Code;
 - e) a method and peculiarities of customs duty accrual and payment;
 - f) a method of securing the payment of customs duties (in case of providing security for the payment of customs duties);
- 7) information about import-export agreement (contract) or other international document used instead of agreement (contract) and its basic provisions;
- 8) information confirming compliance with legal import prohibitions and restrictions;
- 9) information about documents provided in part 3 of Article 335 of this Code;
- 10) declaration reference number (optional).

Simplified customs declaration shall include information about special simplified clearance defined in part 1 of Article 13 of this Code used for the submission of this simplified declaration and information defined in the following clauses of this part:

clauses 1–3;

clause 4 (on transport type at the border and within the country only);

clause 5 (per subclauses "a", "b" only (only typical goods description that enables identification of goods), "d" (on item level under UKT ZED), "f", "g" (only weight in kilograms (import – net and gross weight, export – gross weight) and "h");

clause 6 (only per subclause "f");

clauses 7–10.

9. The customs authorities cannot require customs declaration data other than data specified in this Article.

10. List of goods subject to optional written declaring is established by this Code and other laws of Ukraine.

Question 3a

Please provide a copy of your law which implements the following:

a. CVA Article 9 regarding conversion of currency.

Response:

Pursuant to part 4 of Article 295 "Assessment of customs payments" of the Customs Code of Ukraine, if the purpose of assessing customs payments, including the customs valuation of goods, requires foreign currency conversion, then the exchange rates determined under Article 3¹ of this Code shall be applied.

At the same time, Article 3¹ "Specific aspects of application of currency rates" states the following:

1. For the purpose of customs formalities for goods and commercial means of transport, the official exchange rate of the Ukrainian currency to the foreign currency established by the National Bank of Ukraine, valid as of 00.00 of the day of submission of the customs declaration, or the day of customs formalities, if they are carried out without the submission of a customs declarations, shall apply.

Question 3b

Please provide a copy of your law which implements the following:

b. CVA Article 11 regarding the right of appeal.

Response:

Pursuant to part 2 of Article 19 "General Provisions on Decisions of the Customs Authorities" of the Customs Code of Ukraine, decisions of the customs authorities may be appealed in accordance with Chapter 4 "Appealing against the decisions, actions or omissions of the customs authorities" of this Code (consisting of Articles 24-30).

Also, pursuant to subclause "b" of clause 5 of part 2 of Article 55 "Adjustment of the Customs Value of Goods" of the Customs Code of Ukraine the decision made by the customs authority to adjust the declared customs value of goods must contain the information on the right of the declarant or authorised person to appeal the decision to adjust the declared customs value to a authority of the highest level in accordance with Chapter 4 of this Code or to the court.

Please find a text of Article 24 of the Customs Code of Ukraine related to the right of appeal.

Article 24. Right to appeal

1. Any person shall have the right to appeal against the decisions, acts or omissions of the customs authorities to a higher level customs authority or to the court, if such person believes that such decisions, actions or omissions infringe his/her rights, freedoms or interests, create obstacles to their realisation or unlawfully impose any obligations on him/her.

2. For the purposes of this Chapter:

- 1) subject of appeal - decisions, actions or omissions of the customs authorities that are appealed;
- 2) actions of the customs authorities - actions taken by the officials and other employees of the customs authorities relating to the performance of duties assigned to them by the Code and other legislative acts of Ukraine;

3) omissions - failure of officials and other employees of the customs authorities to perform the duties assigned to them by the Code and other legislative acts of Ukraine or failure to adopt rulings on the issues falling under their competence within the legally established term.

4) the customs authority of the highest level - the central executive authority implementing the state customs policy;

5) the customs authority, which is the subject of the appeal - the customs authority that made the decision under appeal, performed the actions under appeal or committed omission.

3. The rules of this Chapter shall apply to all the instances of appeal by enterprises or individuals against decisions, actions or omissions of the customs authorities, except for the cases when the law establishes another procedure for appealing against such decisions, actions or omissions.

4. The rules of this Chapter shall not apply when appealing against decisions on violation of customs regulations, tax ruling of the customs authorities.

5. The appeals against decisions on violation of customs rules shall be made in accordance with the procedure established by Chapter 72 of this Code. The appeals against tax rulings of the customs authorities shall be implemented as set out in the Tax Code of Ukraine.

6. When individuals appeal against decisions, actions or omissions of the customs authorities, the provisions of the Law of Ukraine "On Individuals' Appeals" shall apply in the part that does not contradict this Chapter.

7. The appeal procedure provided for in this Chapter shall be deemed to be a pre-trial dispute resolution procedure.

Question 3c

Please provide a copy of your law which implements the following:

c. CVA Article 12 regarding publication of laws.

Response:

Please find a text of Article 2 of the Customs Code of Ukraine related to specific aspects of entry into force of the laws of Ukraine and other customs-related regulatory acts.

Article 2. Specific aspects of entry into force of the laws of Ukraine and other customs-related regulatory acts

1. The customs laws of Ukraine, customs-related regulatory acts issued by the Cabinet of Ministers of Ukraine and the central executive authority shall enter into force in 45 days upon their official publication, unless otherwise provided for in the law or regulatory act, but not earlier than the date of their official publication.

2. The official publication of the customs law of Ukraine, customs-related regulatory act issued by the Cabinet of Ministers of Ukraine, the central executive authority shall constitute publishing their full wording in one of the printed periodicals designated as official ones by the legislation of Ukraine. The day of the official publication of the customs law of Ukraine, customs-related regulatory act issued by the Cabinet of Ministers of Ukraine, the central executive authority shall be the day of the issue of such official printed periodical, wherein the full wording of the said Law or regulatory act was published prior to other official printed editions. If the customs law of Ukraine, or the customs-related regulatory act issued by the Cabinet of Ministers of Ukraine, the central executive authority is published in parts, the day of its official publication shall be the day of the issue of such official printed periodical, wherein the last part of the said Law or regulatory act was published prior to other official printed editions.

3. The customs law of Ukraine or any other customs-related regulatory act entering into force as of the day of its official publication shall be deemed valid starting with 00:00 on the day following that of the official publication of the said Law or regulatory act.

4. If the customs law of Ukraine or any other customs-related regulatory act is set to enter into force after a certain period of time, counted in days, upon its official publication, such period shall begin at 00:00 on the day following that of the official publication of the said Law or regulatory act and shall end at 24:00 on the last day of such period.

5. If the customs law of Ukraine or any other customs-related regulatory act is set to enter into force on a specific date, this Law or act shall be valid starting with 00:00 of such date.

Question 4

Please indicate which provisions in your law implement the following Interpretative Notes of the CVA:

- a. Interpretative Note to Article 1, Paragraph 1(b) section 2 regarding activities related to the marketing of the imported goods.**
- b. Interpretative Note to Article 1.2 regarding activities undertaken by the buyer on buyer's own account.**
- c. Interpretative Note to Article 1, Paragraph 2 regarding related parties.**
- d. Interpretative Note to Article 5.1, Interpretative Note to Article 5.5, Interpretative Note to Article 5.8, and Interpretative Note to Article 5.10 regarding deductive value.**
- e. Interpretative Note to Article 6.3, Interpretative Note to Article 6.5, Interpretative Note to Article 6.6, Interpretative Note to Article 6.7, and Interpretative Note to Article 6.8 regarding computed value.**
- f. Interpretative Note to Article 8, Paragraph 1(b)(ii) sections 1-3, Paragraph 1(b)(iv) section 2, Paragraph 1(b)(iv) section 7, and Paragraph 1(c) section 2 regarding additions to transaction value.**

Response:

According to Article 9 of the Constitution of Ukraine, international treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine.

Under Article 19 of the Law of Ukraine "On International Treaties of Ukraine" current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.

Besides, pursuant to the mentioned Article 19 if an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

According to provisions of Article 3 of the Customs Code of Ukraine, if an international treaty of Ukraine ratified by the Verkhovna Rada of Ukraine establishes any rules other than those provided for in the Code and other laws of Ukraine, the rules of such international treaty of Ukraine shall apply.

On 10 April 2008, the Verkhovna Rada of Ukraine ratified the Protocol on Accession of Ukraine to the WTO. Upon entry into force of this Protocol 16 May 2008, Ukraine acceded to the WTO Agreement.

The Customs Valuation Agreement is an annex to the WTO Agreement and an integral part of the WTO Agreement.

Thus, the Interpretive Notes to the Customs Valuation Agreement, including the notes to Articles 1, 5, 6 and 8, are a part of Ukraine's national legislation.
