



## CUSTOMS VALUE CALCULATION PROBLEMS AMID FOREIGN TRADE ACCOUNTING, TAXATION HARMONIZATION AND USING INNOVATIVE TECHNOLOGIES

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### ABSTRACT

The article is dedicated to the research of customs value calculation problems amid foreign trade accounting and taxation harmonization current state. Comparative analysis of customs value and historical costs was made. Main differences, characterizing each of the categories for its characteristics, were revealed. Measures to help improve the process of customs value calculation were offered. Ways to improve current legislation to further foreign trade accounting and taxation harmonization were defined. We suggested to use innovative technologies for solving problem.

**Keywords:** foreign trade, customs value, customs control, customs duties, historical costs, value added tax

### INTRODUCTION

The category of customs value has signs of legal and regulatory character and is used in accordance with the purposes, determined in the Customs Code of Ukraine [10]. Based on its economical and accounting components, it is always in the practical workers' area of interests, and it became lately a material for the scientific researches.

The law defines the customs value of goods transferring across the customs border as the value for customs purposes, that is based on the price, that was paid or will be paid in the future for the goods.

Customs value structure has the following list of costs, which were paid by the importer or will be paid in the future:

- The value of goods according to the list, mentioned in the invoice;
- Commission or agent's reward except for reward for sales promotion abroad;
- The cost of packing materials and packing services;
- The cost of goods and services in case they are delivered on free of charges basis in a direct or indirect manner, or the cost of goods was discounted and that value was not indicated in the invoice as the cost of goods (or their spare parts);
- Royalty or any other license payments, which should be paid by the importer as the express condition for further goods sales;
- A certain part of earnings of any further sales or use of goods;
- Costs of transportation and insurance of goods till the point of entry to Ukraine.

The customs value is connected to the historical cost – the cost of recognizing goods as the assets of the company if it will gain economic benefits in the future. The definition and the elements of historical cost are defined in the Regulations (standards) of accounting No 9 "Inventory".

Historical cost includes the following components:

- Costs, paid according to the contract to the seller minus indirect taxes;
- Amount of import duties;
- Amount of indirect taxes in the case when they are not reimbursing to the company;
- Transportation costs, including transportation risks insurance costs, costs of loading operations;
- Other expenses connected to goods purchase and making goods suitable for further use (direct material costs, other costs to adapt and improve quality characteristics of goods).

To my opinion, it makes sense to compare characteristics of customs value and historical value of goods (table 1).

**Table 1 Comparative analysis of customs value and historical costs of goods characteristics**

No	Characteristics	Customs value	Historical costs
1	Source	Customs code of Ukraine	Regulations (standards) of accounting No 9 "Inventory"
2	Main purpose	Customs duties calculation and other foreign trade government regulation measures	Implementation of the common methodological basis of current assets balance cost
3	Types of business activities, which defines the elements	import customs regime; export customs regime;	goods purchase for cash; goods production;





No	Characteristics of costs	Customs value	Historical costs
		temporary import customs regime; other customs regime	share capital payment; other
4	Existence of value calculation control	Customs authorities perform customs value control during customs procedures	Internal (audit division) and external control (tax authorities or other state control authorities)
5	Value calculation methods existence	Value calculation methods depending on customs regime	A simple method (arithmetical)
6	Types of values existence	None	purchasing price; cost of production; fair value

Information from table 1 characterizes both categories with their main signs and gives a certain economic idea, first of all, on their place in the business activity of the company. In common with the Tax Code of Ukraine, the Customs Code of Ukraine does not contain the definition of historical cost. But Ukrainian national accounting standard No 9 "Inventory" defines historical cost and its main characteristics [13]. Despite that, the Customs code of Ukraine uses expenses accumulation method (integral parts of goods value) for the purpose of customs payments calculation, although it seems partly chaotic.

It should be noted that the customs value components depend on a customs regime of the foreign trade operation [10]. But we should not consider above mentioned customs regimes as the same as sources of goods arrival, which define historical cost structure in accordance with National accounting standards. There are many serious discrepancies between those definitions.

As for the fourth characteristic we should note, that it's almost similar for both categories – customs value and historical cost. The Customs code has strictly detailed procedures of customs control and control of customs value declared by the importer. The customs value must be confirmed with the list of certain documents. It means that customs officer at first checks is declared value of goods the same to the information in the documents. This procedure characterizes the process of operation control of customs value.

We should also note the post customs control (post-audit) in accordance with customs regulations, that takes place when customs control procedures and customs clearance are finished. This kind of control was found extremely efficient because it ensures sufficient budget incomes by finding flaws in the declared customs value.

Unlike the customs value, historical costs calculation control is performed by company itself and its internal control (audit) divisions. The control is performed, first of all, at the step of initial accounting procedures, and software used by the company determines the method of automatic calculation of historical costs in accordance with National accounting standards. The above mentioned method should be clear and sharp, and it should not depend on the human factor.

External control of historical costs calculation is the competence of tax authorities and other state control authorities. It performs periodically according to current legislation [12].

Customs value calculation methods (as the next characteristic) depend on the customs regime of import. The most common method is the method of the contractual price. National accounting standards do not have any method of historical cost calculation. Nevertheless, we could call the systematic accumulation of its integral parts the simple method of historical costs calculation (table 1).

Historical costs in accordance to National accounting standard No 9 could be of different types, namely purchasing price, cost of production, fair value. The above mentioned standard defines elements of each type depending on the goods arrival source. Meanwhile, during customs procedures in different customs regimes, the Customs Code requires to use the term "customs value".

After a comparative analysis of the customs value and historical costs of goods on their main characteristics, we want to note a number of contradictions that occur in the current business. This is because both values are different and serve different purposes; however, they are closely related. In particular, the historical cost of goods received by the company from foreign sources is the contract value of the goods, which is specified in the specification (invoice), along with the amount of customs duties paid during customs clearance and other necessary and sufficient costs specified in the National accounting standard No 9, which make the products suitable for its intended use [13]. In other words, the components of the historical cost form the customs value of the goods, which subsequently accumulates and will differ from the historical cost.

The norm of the Tax Code, which prescribed determination of value added tax during the sale of goods imported by the company based on the value not less than their customs value, became quite controversial at the time [12]. This statement nullified all efforts to harmonize tax and accounting value of goods. Due to changes in tax legislation since 2015, the customs value category has ceased to appear when determining the VAT tax base for the sale of imported goods. However, it should be noted that the above mentioned rule, realizing the main mission of customs value, contributed to the filling of the state budget due to both subjective and objective factors.

Due to the fact that this fiscal norm has become a priority, the value of the historical cost of goods and compliance with the requirements and recommendations of accounting standards for a certain time was eliminated, because the object of





value added tax was the customs value of imported goods. This is due to the fact that the amount of the customs value in the vast majority of cases, as practice shows, significantly exceeds the historical cost of imported goods, which leads to the VAT taxation object increase. The point is that during the control procedure of determining the declared customs value, the customs authority has the right to make a decision on its correction. In case of disagreement with this decision, the importing company has the right to release goods for free circulation after payment of customs duties on the basis of the declared customs value and with the mandatory provision of financial guarantees, which creates additional financial problems and bureaucratic obstacles to successful business process and further completion of the foreign trade operation. In addition, the existing methodological framework for the customs value determining contains a substantial list of internal and general rules and guidelines, which serves as a basis for abusive practice and evasion of customs duties during the import of goods into the customs territory of Ukraine and during the export of goods; accordingly, it has a negative effect on the final selling price of the imported goods, which includes VAT.

At the same time, the lack of effective mechanisms to control the correctness of taxation of goods moving across the customs border of Ukraine inevitably leads not only to a reduction in import VAT, excise and other customs payments to the budget, but also to suppress the development of legal production and trade, and the development of the domestic economy at large.

The process of determining the reliable customs value of imported goods deserves the most attention for the customs control purposes.

According to the provisions of Article 49 of the Customs Code of Ukraine, the customs value of goods moving across the customs border of Ukraine is the value of goods used for customs purposes, which is based on the price actually paid or payable for these goods.

Article 50 of the Customs Code of Ukraine stipulates that information on the customs value of goods is used, in particular, for the calculation of customs duties.

The system of the customs value of goods calculation is based on the general principles of customs valuation adopted in international practice. The international legal standard to which Ukrainian customs legislation is based is the agreements on the application of Article VII of the General Agreement on Tariffs and Trade 1994 (GAAT).

According to Part 2 of Article VII of the GAAT, the valuation of imported goods for customs purposes must be based on the actual value of the imported goods on which the duty is calculated, or similar goods and must not be based on the value of goods of national origin or arbitrary or fictitious value.

In accordance with Part 1 of Article 51 of the Customs Code of Ukraine, the customs value of goods moving across the customs border of Ukraine is determined by the declarant in accordance with the provisions of this Code.

The Customs Code clearly establishes the condition under which the body implementing customs control and customs clearance has the right to request additional documents and refusal of customs clearance at the declared customs value of goods by the first method (contract price) - if the customs does not agree with the declared customs value of the goods moving across the state border, the latter has the right to refuse to agree on the value declared by the declarant. Due to its mass nature, this issue is currently the subject of most lawsuits that arise between foreign trade subjects and the customs authorities. Analyzing the case law on these issues, we must note that in the vast majority of cases, the courts rule in favor of importers, the main reason for which is the lack of admissible evidence of the impossibility of using the first method of customs value calculation.

For example, the Supreme Court of Ukraine in its decision dated 21.12.2018 in the case No 815/228/17 concluded that the presence in the information databases of the customs authority of information that in previous periods similar goods were cleared through customs, indicating a higher customs value of any way does not prove the incorrectness of its calculation by the plaintiff, because the customs value depends on a number of circumstances and is determined in each case.

In accordance with Part 2 of Article 58 of the Customs Code of Ukraine, the method of calculation the customs value of goods at the price of the contract (agreement) on imported goods is not used if the information used by the declarant or his authorized person is not documented or quantified and / or missing one of the components of the customs value, which is mandatory in its calculation. In this case, part 3 of Article 53 of the Customs Code of Ukraine stipulates that if the documents referred to in part 2 of this article contain discrepancies, have signs of forgery or do not contain all the information confirming the numerical values of the customs value of goods or information on the price actually paid or payable for these goods, the declarant or the person authorized by him at the written request of the customs is obliged to provide (if any) additional documents within 10 calendar days.

Based on the analysis of the above mentioned rules, the courts conclude that the law clearly describes the condition under which customs has the right to exercise such powers as requesting additional documents and refusal of customs clearance at the declared customs value of goods. Such an imperative condition is the existence of reasonable doubts about the correctness of the customs value of goods specified by the declarant.

According to the courts, doubts are justified if the documents contain discrepancies, have signs of forgery or do not contain all the information confirming the numerical values of the components of the customs value of goods or information on the price actually paid or payable for these goods. Therefore, according to the courts, the provisions of these articles oblige the customs to indicate the specific circumstances that raised doubts, the reasons for the impossibility of verification on the basis of documents provided by the declarant, as well as justify the need to verify disputed





information and indicate documents that may remove doubts reliability. Having established the absence of sufficient information confirming the declared customs value of goods, the customs authority must indicate which components of the customs value of goods are unconfirmed, why it is impossible to establish these components from the submitted documents and which documents are needed to confirm a component.

An appearance of risk profiles in the automated risk analysis and management system and the existence of information from the customs authority that identical or similar goods have been cleared through customs by other persons at a higher customs value, unless there are other legal grounds for requesting additional documents, cannot be grounds for refusal to accept the customs value of goods declared by the declarant at the contract price.

It is true that information from the databases of the State Customs Service of Ukraine is only ancillary information in making of appropriate decisions by the customs and for objective reasons cannot contain all information concerning foreign trade activity, goods and conditions of sale, so such data cannot be more important than the primary documents provided by the declarant about the goods. The discrepancy between the level of the declared customs value of the goods and the level of customs value of identical or similar goods, customs clearance of which has already been carried out, is not conclusive evidence to confirm the conclusion of inaccuracy of data on the declared customs value of goods.

In this case, according to the courts, the customs authorities need to study the documents on the supply of goods in order to establish evidence that confirms the doubts about the correctness of the customs value of goods calculation. The customs authority is obliged to prove the validity of this doubt, as the law connects the possibility of requesting additional documents from the declarant with this circumstance and gives the right to take actions aimed at adjusting the customs value of the goods. Thus, the main reason that leads to decisions not in favor of customs is the lack of specific grounds for requesting additional documents.

In accordance with the foregoing, we can conclude that any further harmonization of customs and initial value of imported goods is not possible until the legislative settlement of problematic issues of customs value adjustment by the State Customs Service of Ukraine. It is clear that in conditions when the customs authority arbitrarily adjusts the customs value of the goods to a greater extent not on the basis of the importer's documents, but on the basis of its own empirical data concerning the import of similar goods by other companies, such adjusted customs value will always differ from the historical cost, calculated in accordance with the accounting rules.

This problem can be resolved only by amending the Customs Code of Ukraine, which would limit the grounds according to which the customs authority may adjust the customs value of goods in the presence of documented differences in the customs value of goods calculation by the declarant.

Based on the analysis, it is possible to identify the main problems that prevent further harmonization of accounting and taxation of foreign economic activity in Ukraine. In our opinion, the restraining factors are the imperfection of the current customs legislation, as well as the established practice of customs authorities. Such non-regulation leads to distortions in the determination of the customs value of goods due to its adjustment by the customs authorities, which causes significant deviations of the customs value and historical cost of imported goods.

Thus, the presence of problems in the convergence of the concepts of customs value and historical cost is caused by a set of reasons of financial and economic nature. At the same time, the priority areas in solving the above mentioned problems are improving customs legislation, simplifying customs control procedures, forming effective models of customs risk management and introducing strict liability for violations of customs legislation by both importers and employees of the State Customs Service of Ukraine. In this works innovative technologies methods, many web sources were used for solving problem.

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