



2 November 2015

(15-5783)

Page: 1/6

Committee on Customs Valuation

Original: English

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

RUSSIAN FEDERATION

Addendum

The following communication, dated 22 October 2014, is being circulated at the request of the delegation of the Russian Federation. This document reproduces the legislation referred to in document G/VAL/N/1/RUS/1 of 17 October 2012:

- Letter of the Federal Customs Service about Customs Clearance of Information Transmitted by the Internet; and
- Letter of the State Customs Committee of the Russian Federation about Determining Customs Value of the Goods Imported In Accordance With Foreign Trade Agreements of Various Kinds.

**MINISTRY OF ECONOMIC DEVELOPMENT AND TRADE OF THE
RUSSIAN FEDERATION**

FEDERAL CUSTOMS SERVICE

LETTER of 17 March 2006 No. 15-14/8524

ABOUT CUSTOMS CLEARANCE OF INFORMATION TRANSMITTED BY THE INTERNET

The Legal Department of the Federal Customs Service within its competence considered the appeal of the Central Administration of Customs of 09.03.2006 N 54-15/3962 concerning customs clearance of software, mobile content and other information transmitted by the Internet, by a fibre-optic connection or use satellite communication systems, and provides the following information.

Customs authorities in accordance with the objectives and functions entrusted to them by the legislation of the Russian Federation on customs, carry out the customs clearance of the goods and the vehicles carried across the customs border of the Russian Federation.

In accordance with provisions of p.1 of Art. 11 of the Customs Code of the Russian Federation, p.26 Art. 2 of the Federal Law of 08.12.2003 N 164-FZ "On the basis of the state regulation of foreign trade" the good is defined as any movable property and vehicles carried across the customs border.

According to p. 3 of Art.6 of the Federal Law of 04.07.1996 N 85-FZ "On Participation in the International Exchange of Information" (hereinafter - Federal Law) information products are treated as goods, if it does not conflict with international treaties of the Russian Federation and the legislation of the Russian Federation. Art. 2 of the Federal Law stipulates that information products include only the documented information. Documented information (document) shall be fixed in a tangible carrier and have requisites allowing its identification. Thus, one of the main characteristics of information products to be treated as goods is its fixation in a tangible carrier.

Therefore, this Federal Law does not attribute the transfer of information products by electronic communications to the international exchange of information, and defines movement of information (documents) in a tangible carrier as the import (export) to (from) the territory of the Russian Federation.

HS Nomenclature of Foreign Trade of the Russian Federation and the Customs Tariff of the Russian Federation does not contain, respectively, nor classification codes, nor customs duties in respect of the software or any other information products.

Thus, the current legislation of the Russian Federation on customs does not provide customs clearance of information products transported through the customs border of the Russian Federation by means of electronic communications.

Thus, it is not information itself (computer software, mobile content), transmitted by Internet, wire or satellite that is the object of customs clearance, but a good transported through the customs border of the Russian Federation and containing such information, i.e. a tangible carrier (CD, diskette, cassette, etc.).

Unofficial translation

STATE CUSTOMS COMMITTEE OF THE RUSSIAN FEDERATION

LETTER of 18 June 2004 No. 01-06/22236

**ABOUT DETERMINING CUSTOMS VALUE OF THE GOODS IMPORTED IN ACCORDANCE
WITH FOREIGN TRADE AGREEMENTS OF VARIOUS KINDS**

**The list of altering documents
(with the amendments made by the letter of Federal Customs Service of Russia
of 28.12.2012 N 22-101/65119)**

In connection with the coming enquiries on determining customs value of goods imported under sales contracts with a deferral or installment payment, credit against goods agreements, international financial leasing and rental agreements, the State Customs Committee clarifies as follows.

According to paragraph 1 of Article 19 of the Law of the Russian Federation "About the Customs Tariff" (hereinafter called - the Law) during the customs valuation the inclusion of the interest for deferral or installment payment in the transaction price, which was actually paid or is payable for the imported goods, is not provided.

In this regard, and taking into account the provisions of paragraph 2 of Article 323 of the Customs Code of the Russian Federation that the declared customs value of the declarant, and information relating to its valuation should be based on accurate and documented information, interest for deferral or installment payment is not included in the customs value of the goods upon the appropriate confirmation of the information on the cost of the transaction and the interest rate for the deferral or installment payment to the customs authority. According to international practice to ensure proper documentation of the declared customs value, in this case it is recommended to simultaneously take into account the following conditions:

- The existence of separate specification of the transaction price payable for the imported goods and the interest rate for the deferral or installment payment in the foreign trade contract;
- Definition of the conditions in the foreign trade agreement in accordance with the common rules of a sales contract (quantity, range, quality, completeness, container and (or) the packaging and other relevant information about goods to be sold with deferred or installment payment; conditions of supply; transaction price to be paid; currency rates; currency of payment, etc.) as well as the conditions of payment for goods connected with the provision of deferral or installment payment (interest rate charged to the borrower; payment terms and interest rates of the transaction; documents on which the payment will be made, etc.);
- Documentary confirmation of the transaction price payable for the imported goods, which can be accepted as the basis for determining the customs value in accordance with the procedure established by the law;
- The interest rate for the deferral or installment payment does not exceed the average level of interest accrued on similar debt in connection with deferred or installment payment for goods imported simultaneously with the valuated goods, or not earlier than 90 days prior to import the valuated goods. In the absence of data on such commitments, and (or) if there is reason to believe that such data is not reliable for the purposes of customs value control maximum interest rate can be considered equal to 15 percent, as established by Article 269 of the Tax Code of the Russian Federation in the case of debt obligations in foreign currency when considering allocating interest on debt to expenditures.

The above mentioned conditions regarding interest for the deferral or installment payment for the goods can be used during all methods of determining customs value established by section IV of the Law. When importing goods under International Financial Leasing Agreements, which provide that the object of leasing becomes the property of the lessee at the end of the term of the leasing agreement, under the above mentioned conditions the interest rate for the deferral or installment payment is also not included in the customs value of goods.

When importing goods under the rental and international financial leasing agreements without transfer of ownership to the lessee the payment of the customs value can be made as follows: <*>.

<*> The example is based on materials listed in the official documents of the World Customs Organization.

Terms of the transaction:

1. Company I of the country X, that specializes in catering has signed a medium-term contract with the national air carrier for the delivery of prepared food in special individual packets destined for the passengers of the airline.
2. Taking in account the duration of the contract, with an analysis of the market and based on the preliminary calculation of the cost, the company I decided to lease the necessary packaging equipment and signed the leasing agreement with the company A from country Y. Under the terms of the company I the leasing company A buys the equipment from national producer B in the country Y at their own expense (delivery conditions under the leasing agreement are EXW). The price paid by the company A to the manufacturer B, is the price of goods on the domestic market of the country Y.
3. For customs clearance the company I provides the customs authority with the leasing agreement.
4. The terms of the leasing agreement are as follows:
 - a) The lessee (the company I) bears all shipping expenses related to the delivery of the equipment;
 - b) The lessee shall insure the equipment for the duration of the lease (from the date of delivery on the EXW terms up to returning it to the lessor);
 - c) All fees, duties and taxes payable in connection with leasing and import shall be paid by the lessee;
 - d) The leasing period lasts for 36 months but may be prolonged until the expiration of the useful life of the equipment <*>.

<*> The useful life is determined in accordance with the specifications or recommendations of manufacturers.

- e) Monthly leasing (rent) payments amount to 5300 USD, and in case of renewal, payments will be reduced by 15% per month;
 - f) The leasing agreement specifies the necessary information for customs purposes (quantity, assortment, quality, completeness, packaging, terms of delivery, payable leasing (rental) payments, currency of the price, currency of payment, and the terms of payment for goods related to the provision of deferral or installment payment, meaning the interest rate charged to the borrower, the terms of payment of leasing (rental) payments and interest, the documents against which the payment will be made, and so on).
5. In addition to the leasing agreement the following documents are provided to the customs authority:
 - Documents proving that the less or is a branch (subsidiary company) of the Bank;
 - A copy of the invoice, which specifies the price of the equipment, paid by the lesser to the manufacturer B.

Determining the customs value

6. Due to the fact that this is the first case of importation of such equipment to the country X, thereafter the methods of valuation using the transaction value of identical and similar goods, specified in articles 20 and 21 of the Law, for the customs valuation of the this

particular commodity are inapplicable. Moreover the use of customs valuation methods like subtraction and addition, specified in articles 22 and 23 of the Law, is ruled out as there is no necessary data for their correct application. Thus, in this case, the customs value can be determined using the backup method specified in article 24 of the Law.

7. Within the framework of the backup method the customs value in this case can be determined on the basis of the leasing (rental) payments recalculated for the entire useful life of the equipment. According to the technical documentation, the duration of this period is 60 months.
8. Monthly leasing (rental) payments equal to 5300 USD for 36 months and 4505 USD for the remaining 24 months (as according to the terms of the leasing agreement in case of agreement prolongation, payments are reduced by 15% per month). The loan fee included in the above mentioned payments equals to 9% per annum and may be deducted, as the requirements for documentary confirmation of the stated information are met.
9. In order to calculate the customs value on the basis of the leasing (rental) payments (excluding the interest on loan) it is necessary to use the formulas below, where the following notations are adopted:

$R =$ monthly leasing (rental) payments for the base period of the contract
1
(36 months);

$R =$ monthly leasing (rental) payments for the remaining useful life of the
2
equipment (24 months);

$i =$ monthly interest rate, calculated as follows:

$$i = \frac{\text{Annual interest rate} / 100\%}{12 \text{ months}}.$$

Taking into account that the annual interest rate in this case equals to 9%
9%/100%

$$\text{then, } i = \frac{9\%/100\%}{12} = 0,0075;$$

$Q =$ coefficient $(1 + i)$;

$N =$ the number of times the leasing (rental) payments are made.

Subtraction of the interest on loan from the amount of leasing (rental) payments for the whole base period of the contract is made using the following formula:

$$\frac{R \times (Q^N - 1)}{Q - 1}.$$

Based on the available data, let's calculate the amount of leasing payments using the above mentioned formula:

$$\begin{aligned} & \frac{5300 \times (1,0075^{36} - 1)}{1,0075 - 1} = \frac{5300 \times (1,3086 - 1)}{0,3086} = \\ & \frac{1635,58}{0,0098} = 166\,896. \end{aligned}$$

Subtraction of the interest on loan from the amount of leasing (rental) payments for the remaining useful life of the equipment is made using the following the formula:

$$\frac{R \times \frac{N}{2} \times (Q - 1)}{Q \times \frac{N}{2} \times (Q - 1)}$$

Based on the available data, we can carry out a calculation using the above mentioned formula:

$$\frac{4505 \times \frac{24}{2} \times (1,0075 - 1)}{1,0075 \times \frac{24}{2} \times (1,0075 - 1)} = \frac{4505 \times (1,1964 - 1)}{1,1964 \times (1,0075 - 1)} = \frac{884,782}{0,00897} = 98\,638.$$

10. In this example, the total amount of the leasing (rental) payments excluding the interest on loan for the entire useful life of the equipment of 60 months, calculated as shown above, equals to 265534 USD (166896 + 98638). On the basis of this amount the customs value of the particular subject of leasing can be determined with the inclusion of costs provided by paragraph 1 in article 19 of the Law. In this particular case the costs of shipping the goods to the place of entry.

Deputy Chairman of the Committee
Colonel-General of the Customs Service
A.E. Jerikhov