

The Concept of Customs Value, Determination of its Essence and Amount According to the Note to Article 214 of the Criminal Code of Georgia

When the regulation of the goods transportation over the customs border is violated, it is extremely important to determine the customs value to mark off the administrative and criminal liability there is a specific limit, which the customs value of the goods has to exceed. In practice, often the customs value of the goods is often incorrectly evaluated. Usually, the tax authorities are inclined to raise the customs value of the goods. The customs value of goods is set beyond the criminal proceedings since the specific entrepreneur involved in the criminal proceedings who is accused of violating the customs rules, becomes the part of the criminal process, only after the customs value has been determined.

The article deals with the rules of determining the customs value under the current legislation and debates on what should be changed not to breach the defendant's rights granted under procedural legislation.

Key Words: *customs border; customs value, the transaction value, the transaction value of identical goods, the transaction value of similar goods, the unit price of goods, the computed value, the reserve method.*

1. Introduction

Determination of the customs value in the event of violation of the customs regulations is the main basis for definition of legal responsibility. The concept of the customs value is diversely perceived in the scientific material and practice and thus, it is necessary to discuss the issue in view of identification of the essence thereof.

In addition to the hereof, the customs control shall be implemented by means of certain methods, however practice of application of the hereof methods does not correspond to the principles of legal regulations. Definition of the customs value is of utmost importance for violation of the customs regulations as the customs value of goods shall exceed the specific limit set in order to dissociate administrative and criminal responsibility. Often, the customs value of goods is wrongly defined in practice. The Tax Agency tends to apply the methods increasing the customs value of goods, while the criminal legislation envisages all the suspicions to be solved in favor of the accused party. The customs value of goods is to be defined beyond the criminal proceedings and the particular entrepreneur participating in the criminal proceedings accused of violation of the customs regulations becomes the party of the process when the customs value of goods is already defined. Practice often provides when the investigative body has already defined the customs value of goods on the basis of the respective expert examination, though the Defense has held the alternative expertise at the stage of Court hearing revealing much less customs value. Taking the hereof into

* Doctoral Student, TSU Faculty of Law.

account, it is necessary to accurately define the customs value of goods by means of proposed new method of value definition, excluding reduction of the customs value already established upon implementation of the criminal proceedings.

Thus, the principles of selection of methods for establishment of the customs value are to be defined. We will consider each method severally. We will as well define the principles of the methodology in general. Identification of the principles will facilitate to effective legal regulation to prevent unlawful restriction of human rights and freedoms.

Hence, the objective of the work is to determine the essential elements, methods and principles of establishment of customs value.

The methods of comparison, deduction, analysis and synthesis are applied in the survey.

2. Concept and the Essence of the Customs Value of Goods

“The Customs value of goods is the price of goods upon crossing the Customs frontier of Georgia on which basis a Customs duty is computed”.¹

The Customs value of goods comprises the transaction price upon acquisition of goods, the cost of their transportation to the crossing point of the Customs frontier of Georgia, the loading-unloading, insurance, commission and brokerage charges², as well as direct and indirect license and other fees by the buyer for using intellectual property objects.

The person, conducting economic activity, upon import/export of goods to/from the economic frontier of Georgia, shall pay the State Budget tax. Definition of the amount of the tax payable by the entrepreneur requires establishment of the customs value. The following customs duties are computed from the customs value: import duties and VAT.

The customs value shall differ from the customs tariff. A Customs tariff is a systematized entity of Customs duty rates applicable to the imported to and/or exported from the Customs territory of Georgia goods.³

The main difference between the customs value and the customs tariff is the fact that the customs value is the price of goods, while the customs tariff is the duty payable to the state from the price of the hereof goods.

The concept of the customs value shall derive from the market value of goods upon crossing the customs frontier of the country, which is separated from the customs duties as the amount paid to the State Budget does not matter for violation of the customs regulations.

“Establishing a customs value of goods for the purposes of application of trade policy measures means the valuation of goods on the day of declaring thereof”⁴. Correspondingly, the prosecution, for the purpose of the Article 214 of the Criminal Code of Georgia (hereinafter referred to as the CCG), is interested in the value of goods, established upon implementation of an action. However, definition of the customs value of goods requires sundry methods. Sequence thereof has been established under the Tax Code of Georgia.

The customs value of goods upon declaring shall be determined by the declarant providing it in the customs declaration. The goods shall be declared by means of submission of the customs declaration in ver-

¹ See the Law of Georgia on “Customs Tariff and Customs Duty”, Article 10.

² See *Sandler G.L.*, Customs Valuation and Customs Enforcement, “Lawyer of the Americas”, Vol. 11, Issues 2 3 (Summer/Fall 1979), 333, <http://heinonline.org/HOL/Page?handle=hein.journals/unmia1r11&div=29&start_page=333&collection=journals&set_as_cursor=0&men_tab=srchresults>, [14.07.2016].

³ See the Law of Georgia on “Customs Tariff and Customs Duty”, Article 2.

⁴ See Tax Code of Georgia, Article 213.

bal form or otherwise as stipulated under the law. The customs declaration can be submitted in electronic or written form. Verbal declaration is permitted in the event of passenger solely. It requires the passenger to express his/her will on import/export of goods at least in verbal form. The hereof action shall be considered as submission of the customs declaration.

The law does not dissociate the customs control regulations for imported and exported goods. In both events, the similar tax regulations are applied. Taking the fact into account that decrease of the customs value mostly serves for evasion from payment, the different limit shall be set upon export inasmuch as mostly export is subject to taxation with zero percent rate.

There are six methods established for determination of the customs value of goods imported to Georgia.⁵ The hereof methods are based on the Agreement on Application of the Article 7 of the General Agreement on Tariffs and Trade adopted by the World Trade Organization in 1994.⁶ It is noteworthy that the Tax Code of Georgia, as well as the hereof Agreement adopted by the World Trade Organization, establishes the rules for determination of the customs value for imported goods solely.⁷ As to the goods exported from Georgia or put to other commodity transactions, they are subject to application of the hereof rules regardless that the legislation does not envisage mandatory nature thereof. In view of determination of the customs value of goods, the methods shall be applied according to the sequence as follows. “Each following method shall be used in case the preceding method cannot be justifiably applied”.⁸ Exception is envisaged as the sequence of the fourth and the fifth methods.

3. Customs Proceedings

3.1. Filling the Customs Declaration

The Customs declaration shall be filled out by the Revenue Service, entitled to delegate authority to another person. For instance, inspection of the vehicles in capacity of goods and examination of the details (identification, marking, norm) thereof, entering Georgia under the regime of free circulation (import) of goods, subject to be registered by the Vehicle Registration Service at the Ministry of Internal Affairs of Georgia, shall be implemented with participation of the specialists of the hereof agency. The person is authorized to fill out the customs declaration. The Tax Code prescribes the concept of the enterprise and the organization while the concept of a person is provided from the Civil Code. “The person – natural person or legal entity in line with the Civil Code of Georgia, the enterprise or the organization in line with the Tax Code of Georgia”.⁹ The person shall fill out the customs declaration if declaring on own behalf and holding capacity to connect to the respective server of the Revenue Service and admission to “ASYCUDA” and/or “ORACLE”.¹⁰

⁵ See the Law of Georgia on “Customs Tariff and Customs Duty”, Article 10.

⁶ See United States Customs United States Customs Service Appraisals: The Dutiability of Buying Agent Commissions - An Application of the Trade Agreements Act of 1979, “Georgia Journal of international and Comparative Law”, Vol. 19, Issue 3, 1989, 642, <http://heinonline.org/HOL/Page?handle=hein.journals/gjic19&div=57&start_page=639&collection=journals&set_as_cursor=0&men_tab=srchresults>, [14.07.2016].

⁷ See *Wulf L.D.*, Determinants of the Contribution of Customs Duties to Budgetary Revenue in Less Developed Countries, 449, <http://www.jstor.org/stable/40911626?seq=1#page_scan_tab_contents>, [14.07.2016].

⁸ Tax Code of Georgia, Article 213.

⁹ Ibid, Article 8.

¹⁰ See the Decree of the Head of the Revenue Service №12858.

The owner of goods is entitled to appoint the proxy to on his/her behalf to fill out the customs declaration, which requires the power of attorney certified by a notary.

The Revenue Service shall control the correctness of the establishing the customs value of goods and in case it disagrees with the declared value shall establish such value itself.¹¹ Correctness of the customs value defined by the Declarant shall be controlled by the Tax Agency upon inspection of submitted customs declaration by means of the special software “ASYCUDA”, which in case of significant discrepancies, notifies the Customs Agency regarding questionability of the customs value.

3.2. Documents to be Submitted upon Definition of Commodity Procedures

The transport document and the document certifying purchase of goods shall be submitted upon definition of the commodity procedures by the person. The hereof documents shall as well be attached with: the documents certifying representation in the event when the goods are being declared through a proxy.

The tax offense report or the administrative offense report, as well as the respective document certifying payment of an imposed fine shall be submitted to the Tax Agency upon occurrence of the tax or administrative offense to the declared vehicle. The hereof fact facilitates the Tax Agency to correctly define the customs value.

The following documents shall as well be on preliminary basis submitted (if any): the customs declaration, certificate, application; license/permit/certificate. At that, submission of the documents upon application of the export commodity procedures, is permitted with the seal of a declarant (if any) and signed and certified with copies.

In the event of export of black and/or non-ferrous metal scrap and/or black and/or non-ferrous wastes – the document certifying payment of service tariff.

The customs value shall be impossible to be defined without submission of the hereof documents inasmuch as the document certifying purchase of goods serves the basis for definition of customs value of goods and the document certifying purchase of goods shall be attached with the hereof documents. Goods shall be impossible to put within the import regime without the hereof documents.

Upon simplified fill out of the customs declaration, the entrepreneur enjoys the tax remissions, for instance on fruits and vegetables. The tax remissions as follows have been established under the Decree of the Head of the Revenue Service of 2011 N2284: the entrepreneur was entitled to remove his/her goods from the economic zone of registration of goods without payment of tax duties. The entrepreneurs should be notified regarding the liability thereof to pay the duty within the term of 05 days upon removal of goods from the economic zone of registration of goods. The absolute majority failed to pay the duty. The hereof event shall not be considered as an offense under the Article 214 of the Civil Code of Georgia as the hereof persons deceptively removed the goods without intention to pay the duty. The Article 214 of the Civil Code of Georgia fails to provide regulations regarding similar deception.

According to the disposition of the Article 214 of the Civil Code of Georgia, the objective part of an offense envisages deceptive usage of the document or identification mean. Deceptive usage implies submission of inaccurate false documents to the economic zone of registration, submission or illegally adopted, filled and certified document.¹² In this event, we do not deal with the usage of false or illegally ad-

¹¹ See *Togan S.*, Effects of a Turkey-European Union Customs Union and Prospects for the future, 9, <http://www.jstor.org/stable/27749536?seq=1#page_scan_tab_contents>, [14.07.2016].

¹² See *Lekveishvili M., Todua N., Gvenetadze N., Mamulashvili G.*, The Comments to the Private Part of the Criminal Code of Georgia, Vol. 2, Tbilisi, 2011, 496.

opted, filled or certified documents. In terms of the documents, no offense is envisaged. The entrepreneurs shall not pay the duty. The Article 218 of the Civil Code of Georgia envisages responsibility for deliberate evasion from payment. In this event, we deal with the objective part of the hereof offense, however the disposition of the Article 218 provides preference term of 45 days upon submission of the tax notice. The entrepreneurs were not provided with the tax notice but the notification instead granting the term of 05 days to pay the duty, due to which the disposition of the Article 218 is not as well obvious.

3.3. Accomplishment of Inspection of the Customs Declaration

The decision on release of goods shall be made through conference of an valuation number to the customs declaration. The barcode shall be automatically conferred to the customs declaration along with the valuation number. In the event when due to technical or other grounds, automatic conference of a barcode to the customs declaration appears to be impossible, accomplishment of registration shall be confirmed with the Stamp of the authorized employee of a Tax Agency – “Release Admitted”, with the Seal providing the personal number (in the event of customs clearance zone), with indication of a date and signatures.

Upon detection of the signs of an offense in the course of clearance of goods, the employee of a Tax Agency shall notify the superior regarding the hereof fact. Deriving from urgent necessity, the Tax Agency, in view of undertaking the procedural measures, is entitled to refer to the Investigation Service of the Ministry of Finance of Georgia. The case material shall without delay be submitted to the respective investigation agency according to subordination and the Tax Agency shall make the decision on suspension of the procedures of clearance of goods. In the event when clearance of goods is suspended, the Tax Agency is empowered to define the customs value on the basis of the respective expert examination.

4. Methods of Definition of the Customs Value of Goods

4.1. Method of the Transaction Value

The customs value of goods shall be defined with the transaction value, that is the price actually paid or payable for goods if:

Sale or the price of goods is not related with any condition or circumstance estimation of which (definition of value) is impossible in regards with the value of goods. In the event if definition of value of such a condition or circumstance is possible, the hereof value shall be recognized as indirect payment by a buyer and correspondingly, shall be considered as the part of actually paid or payable price;¹³ relevantly, if the Tax Agency appears capable to define the condition, it is entitled to impute the hereof condition to the transaction value.

Upon defining the customs value of imported goods, the transaction value shall be added to the costs as follows under the condition that the hereof costs have actually been incurred by the buyer but they have not been imputed to the transaction value:

- a. Commission and brokerage charges other than the commission charges incurred for purchase. Commission charges for purchase – these are the commission costs paid by the importer to his/her agent in exchange for the service rendered for purchase of the goods subject to valuation;

¹³ See *Wulf L.D.*, Determinants of the Contribution of Customs Duties to Budgetary Revenue in Less Developed Countries, 449, <http://www.jstor.org/stable/40911626?seq=1#page_scan_tab_contents>, [14.07.2016].

- b. The price of the containers considered for import purpose in aggregation with the imported goods. In the event, if such container is reusable, the value thereof with the demand of the declarant, shall be pro rata distributed to the valuated goods by means of the international accounting standards; the value of the container shall be distributed pro rata to each import. For instance: containers valued of 1000 GEL per 10 imports shall be distributed as follows: 100 GEL of the container shall be added to each imported goods;
- c. The cost of packing of goods, including the labor and the packing material.

The value of goods and services, subject to be included into the customs value, shall be defined at the price paid by the buyer for acquisition thereof. In the event, if the goods are produced by the buyer himself/herself, the price thereof shall be defined on the basis of the accounting documents of the buyer. It is the event, when the buyer exported goods abroad to be used by a foreign company for manufacture of the final product. Upon import of the final product to Georgia, the person and the Tax Agency shall be entitled to apply the accounting documents of the Georgian company in view of definition of the customs value. Although, in this event the final product is not the goods manufactured by a buyer but these documents will facilitate the Tax Agency to define the customs value. The hereof documents shall provide the quality and the material of the product and the purchase price thereof.

Upon defining the customs value of goods, the transaction value shall be added with the value of the part of profit directly or indirectly appurtenant to the seller upon every resale, disposition and usage of goods.¹⁴ For instance, the Georgian limited liability company bought 10 tons of flour at the price of 10 000 GEL provided to resell the goods to the third party at the price of 13 000 GEL within the current year and to pay 10% of the over-sold price – 1 300 GEL to the initial buyer. In this event, the initial transaction value constitutes 11 300 GEL (10 000+1 300).

4.2. Method of Transaction Value of Identical Goods

Identical goods are the goods, compared to the valuated goods, including the physical specifications, quality and reputation, are similar and originate from one and the same country. Minor superficial differences shall not impede to recognition of goods as identical if with other specifications they correspond with the hereof definition.¹⁵

The minor superficial differences shall imply the differences as follows:

- a. Difference in sizes (for instance, shoes of sizes 41 and 43 shall be considered as identical if all other parameters thereof are identical);
- b. Difference in labeling (for instance, the label material - paper or cardboard, used polygraph or label design);
- c. Difference in colors (for instance, the data is submitted concerning two operations of dresses imported to Georgia, manufactured in one country, fabricated with one and the same silk of 100% according to one and the same model, but are of various color and size. At that, in one case the dresses have the mark of a famous designer and in another case they do not. In view to decide whether the dresses are identical, it is important to take the fact into account that the trademarks impact on the reputation of goods on the market inasmuch as the mark of a famous designer defines

¹⁴ See *Wulf L.D.*, Determinants of the Contribution of Customs Duties to Budgetary Revenue in Less Developed Countries, 450, <http://www.jstor.org/stable/40911626?seq=1#page_scan_tab_contents>, [14.07.2016].

¹⁵ See *Wulf L.D.*, Determinants of the Contribution of Customs Duties to Budgetary Revenue in Less Developed Countries, 450, <<http://heionline.org/>>, [05.11.2015].

another market segment for goods and correspondingly, converts it into the goods with higher value. Hence, the hereof dresses shall not be considered as identical.

In the event of impossibility to define the customs value of imported goods according to the transaction value, the transaction value of the identical imported goods shall be considered as the customs value of goods, which have been sold in Georgia in export view and have been exported the same or almost the same time as the goods subject to valuation have been sold.¹⁶ “Same or almost same time” implies that the difference between the export date of the identical goods and export date of the goods subject to valuation does not exceed 30 calendar days as 30 days prior to export so 30 days after export.

The transaction value of goods produced by another person shall be taken into account solely when no data about the transaction value of the identical goods produced by the same manufacturer is available.

In the event, if the Tax Agency detects one or over transaction values for identical imported goods, the lesser shall be applied upon definition of the customs value of goods.¹⁷

4.3. Method of Transaction Value of Similar Goods

Similar goods shall be the goods that are not specifically valuated and have one and the same country of origin, similar characteristics and are composed of similar components that enable them to perform the same functions and be commercially substitutable.¹⁸

In view to determine whether the goods are identical to the goods subject to valuation, we shall analyze the parameters and characteristics as follows:

- a. Physical specifications:
 - a.a. size and color;
 - a.b. technical and other characteristics (degree of complexity, quality and accuracy of processing);
 - a.c. methods of manufacture;
- b. Integral components:
 - b.a. used material (glass, plastic);
 - b.b. black, ferrous or precious metal;
 - b.c. textile or paper etc.
- c. Functions:
 - c.a. functions to be exercised by the goods subject to valuation and comparison;
 - c.b. sphere of utilization thereof;
 - c.c. possibility of implementation of the same functions;
- d. Substitutability in commercial terms, namely whether the buyer accepts one type of goods instead of another (as taking the functions of goods, so commercial characteristics into account). At that, we shall take the quality of goods, reputation thereof on market and the trademark into consideration.

¹⁶ See *Charles E.*, Rationale of Valuation of Foreign Money Obligations, “Michigan Law Review”, Vol. 54, Issue 3, 312, <http://heinonline.org/HOL/Page?handle=hein.journals/mlr54&div=26&start_page=307&collection=journals&set_as_cursor=0&men_tab=srchresults>, [14.07.2016].

¹⁷ See *Sandler G. L.*, Customs Valuation and Customs Enforcement, “Lawyer of the Americas”, Vol. 11, Issues 2 3 (Summer/Fall 1979), 333, <http://heinonline.org/HOL/Page?handle=hein.journals/unmia1r11&div=29&start_page=333&collection=journals&set_as_cursor=0&men_tab=srchresults>, [14.07.2016].

¹⁸ See Tax Code of Georgia, Article 18.

For instance, we have the consignments of two tires of the same size. The tires are manufactured in one country by two different manufacturers. At that, both types have own (different) trademarks. Besides, tires of both manufacturers enjoy high reputation on Georgian market as their production is manufactured according to the similar standards and correspondingly, the productions have the similar quality. Both types of tires are sold on Georgian market. Let's consider whether they shall be considered as similar goods for the purpose of definition of customs value thereof. Despite that the tires shall not be considered utterly similar (the fact solely that they have different trademarks is the basis for non-consideration thereof as identical), taking the fact into account that the tires are produced according to one standard, implies that they are produced out of the same components, have the same quality and capability to exercise the same functions. Hence, the tires shall be considered as similar in view of definition of the customs value thereof.¹⁹

4.4. Method of Unit Price of Goods

In the event, if identical or similar goods subject to valuation are sold in Georgia in the same commodity form (unaltered), as they were imported to Georgia, the customs value of goods subject to valuation shall be defined according to the price of the unit of goods, at which the identical or similar goods subject to valuation have been sold to the persons in the highest total amount the same or almost the same time as import of the goods subject to valuation upon the first sale after import. "Imported goods" are the goods subject to valuation, the customs value of which shall be defined. "Identical goods" and "similar goods" shall be considered as they are elucidated in the above-mentioned articles. "Goods of the same class or type" are the goods, which according to the basic specifications are similar to the imported goods. They shall be at maximal extent approximated to the characteristics of imported goods and shall be attributed to the small group of the types, sequence and nomenclature of imported goods. At that, the goods shall be considered as of the same class or type, imported as from the countries of imported goods so from other countries.²⁰

However, upon definition of customs value according to the unit price method of goods, the following shall be deduced from the value:

1. Commission charges, which ordinarily are subject to be paid or preliminarily agreed to be paid, or markups, which ordinarily are implemented in view of earning the profit and covering the costs related to sale of goods of one and the same class or type in Georgia; goods of one and the same class or type are the goods, which according to the main characteristics, are similar to the goods subject to valuation. They shall at maximal extent be approximated to the characteristics of the goods subject to valuation and shall be attributed to the small group, sequence and nomenclature of the type of goods subject to valuation. At that, the goods shall be considered as of the same class or type, imported as from the countries of imported goods so from other countries.²¹
2. Ordinary costs for transportation and insurance incurred in Georgia and other related expenses;
3. Duties and other charges stipulated under the legislation of Georgia related to import or sale of goods;

In the event, if the identical or similar goods or goods subject to valuation fail to be sold the same or almost the same time as import of goods for valuation, identical or similar goods sold in Georgia during the last 90 days shall be obtained upon definition of customs value of goods for valuation.

¹⁹ See the Decree of the Minister of Finance of Georgia №996 on "Endorsement of Methods of Definition of the Customs Value of Goods".

²⁰ See *Sandler G. L.*, Customs Valuation and Customs Enforcement, "Lawyer of the Americas", Vol. 11, Issues 2 3 (Summer/Fall 1979), 334, <http://heinonline.org/HOL/Page?handle=hein.journals/unmialr11&div=29&start_page=333&collection=journals&set_as_cursor=0&men_tab=srchresults>, [14.07.2016].

²¹ See *Wulf L.D.*, Determinants of the Contribution of Customs Duties to Budgetary Revenue in Less Developed Countries, 449, <http://www.jstor.org/stable/40911626?seq=1#page_scan_tab_contents>, [14.07.2016].

For instance, various amounts of goods are sold at various prices:

Unit price of sold goods	Total amount
65	90
50	95
60	100
25	105

The hereof example provides that the consignment of maximal amount constituted 65 units, so the unit price of goods is 90.

4.5. Method of Computed Value

The computed value shall be considered as the customs value of goods, composed of the elements as follows:

Value of material used for production of goods, manufacture and/or processing; including:

- a. Commission and brokerage charges other than the commission charges incurred for purchase (“commission charges for purchase” – the commission charges paid by the importer to his/her agent in exchange for the service rendered for purchase of goods for valuation);
 - b. The price of the containers considered for the purpose of import in aggregation with the imported goods. In the event, if such containers are reusable, the value thereof with the demand of the declarant, with application of the international accounting standards, shall be pro rata distributed to the goods for valuation;
 - c. Price for packaging of goods, labor and the packaging material;
- b) Amount of profit and total costs taking place upon sale of goods of one and the same class or type by the manufacturer for export to the exporting country; “general costs” comprise direct and indirect costs for production and sale of goods for export;
- c) Transportation value and costs for loading-unloading and processing (including, storage). In the event, if various consignments are imported by the same transport means, transportation costs shall be pro rata distributed and shall be defined according to the agreement concluded with the forwarder;
- d) Insurance costs if the hereof costs are incurred by the declarant.

The Customs Authority shall not be entitled to demand submission of the documentation from the non-resident. Application of the computed value method of goods utterly depends on the seller, namely on probability of provision of necessary information thereby to the Customs Authorities.²²

4.6. Reserve Method

The last method for definition of customs value of imported goods is the reserve method. In this event, customs value shall be defined with application of expedient means corresponding to general provisions and the data available in Georgia on definition of customs value of goods.

The method of transaction value of identical goods, transaction value of similar goods and unit price of goods shall be applied within the reserve method in contrast that the volume of the hereof methods is admissible to be applied in flexible manner. Namely, any other method shall be applied to define the possible value and what cannot be defined with the reserve method.²³ For instance, upon flexible application of

²² See *Nadaraia L., Rogava Z., Rukhadze K., Bolkvadze B.*, Comments to the Tax Code of Georgia, Tbilisi, 2012, 316.

²³ See *Wulf L.D.*, Determinants of the Contribution of Customs Duties to Budgetary Revenue in Less Developed Countries, 469, <http://www.jstor.org/stable/40911626?seq=1#page_scan_tab_contents>, [14.07.2016].

the transaction value method of similar goods – the demand of export of similar goods same or almost the same time as the goods for valuation, can be freely interpreted. Identical imported goods manufactured in any country other than the exporting country of the goods for valuation can serve the basis for definition of the customs value. The customs value of identical imported goods never defined can as well be applied.

Flexible application of the method of the unit price of goods – the demand on sale of goods in the same condition as the goods were upon import can be freely interpreted: the demand on the term of 90 days can be flexibly applied, namely the term may exceed 90 days.

The prices applicable upon control of correctness of definition of customs value of goods by means of the reserve method may conclude the information obtained from open sources and the data obtained with generalization of practice, which is of the informative nature and shall be applied solely in view of determination of accuracy of definition of the customs value of goods by means of the reserve method.²⁴

In practice we often encounter the events when the investigative body defines the customs value of goods on the basis of the respective expert examination, though the Defense holds the alternative expertise on the stage of Court hearing, revealing much less customs value. Despite that sequence of application of each method is defined under the Tax Code, we shall start application of methods deriving from the lightest position for the tax-payer less restricting his/her rights and freedoms. Namely, in the event of application of the method of identical goods, we shall determine sundry identical goods instead of one and the lightest version shall be applied to the entrepreneur. As the Tax Code envisages, estimation of the customs value starts with the first method. In the event, if the first method fails to define the value, estimation proceeds according to sequence of methods allowing alteration of the method N4 (unit price of goods) and the method N5 (computed value) solely. When we deal with the identical method or similar method etc., sundry identical/similar methods shall be applied and the cheapest amongst shall be selected in order to prevent restriction of the rights of the accused.

After the tax-payer is accused, he/she shall enjoy the rights of the accused, including the most important right on solution of all the doubts in favor of the accused. It allows us preventing protracted investigation and preventing violation of the rights of the accused as investigation takes higher efforts to define the customs value and sometimes, it directly relies on the material provided by the Tax Agency.

5. Conclusion

The opinions provided in the paper can be formulated into the theses as follows:

Concept of definition of the customs value is irregularly interpreted. We hereby have formulated the position envisaging the concept of the customs value to derive from the market value of goods upon crossing the customs frontier, which is separated from the customs duties as the amount of the duty payable in favor of the budget does not matter for violation of the customs regulations.

We hereby in details considered the methods of definition of customs value and application rules thereof. Despite that the hereof methods are common, they are improperly applied. We often can find examples in practice when verification of the customs value is implemented at the stage of Court hearing, resulting in detection of the fact that the customs value is lesser. The problem lies in inconsistency of application of the hereof methods. We expressed our position envisaging application of the methods to start with the lightest for the tax-payer, namely in the event of application of the method of identical goods, we shall determine

²⁴ See *Sandler G. L.*, Customs Valuation and Customs Enforcement, “Lawyer of the Americas”, Vol. 11, Issues 2 3 (Summer/Fall 1979), 335, <http://heinonline.org/HOL/Page?handle=hein.journals/unmia1r11&div=29&start_page=333&collection=journals&set_as_cursor=0&men_tab=srchresults>, [14.07.2016].

sundry identical goods instead of one and the lightest version shall be applied to the entrepreneur. We, upon application of other methods, shall as well apply the same which less restricts the rights and freedoms thereof.

The legislation fails to dissociate the rules of customs control of imported and exported goods, and both are subject to application of same tax regulations. Taking the fact into account that reduction of the customs value mostly serves for evasion of payment of taxes, we shall set different limit upon export inasmuch as mostly, export is subject to taxation with zero percent rate.