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Alignment of Ukraine's Legislation with WTO Agreement on Customs Valuation

November 2015

Executive Summary

This paper assesses the Customs Code of Ukraine and three implementing rules (Ministry of Finance Resolutions No. 599 and 598 and State Customs Service Resolution No. 363) for alignment to the WTO customs valuation agreement. The review considered alignment of the legislation to (i) the WTO methods for determining valuation and (ii) WTO disciplines related to valuation processing.

Valuation Methods

With the exception of three minor technical inconsistencies, the Code's rules for calculating customs value are fully aligned to the WTO agreement. However, these inconsistencies likely have only limited practical effect and can be clarified through an administrative rule or interpretative instruction rather than amendment of the law.

The Code contains in full the WTO valuation committee decisions on valuation of interest charges and software.

The Code incorporates certain, but not all, of the WTO Interpretative Notes. These WTO Interpretative Notes were not included in the secondary legislation reviewed. To promote greater consistency in Customs decisions as well as provide important guidance for importers, these Interpretative Notes (and other technical interpretative decisions that Customs may have developed) should be published as a rule or formal guidance document, if they have not already been so published.

Valuation Processing

The Code is fully consistent with the WTO disciplines on valuation processing. These include provisions allowing release of goods under guarantee where valuation is delayed; written notification by Customs of reasons for valuation decisions; rights of appeal against valuation decisions; and prohibitions against disclosure of confidential valuation information.

Although the Code is fully consistent with the WTO valuation agreement, this paper further noted that the Code provisions appear to emphasize a system of valuation control based on checking and comparing documents and database values at the border at the time of clearance, as opposed to selective controls using risk and post clearance audit. It is suggested that certain trade facilitation principles, including those of the WTO Trade Facilitation Agreement, should be introduced into the law to speed up clearance and release processing related to valuation. This include-

- use of risk-based selectivity in valuation control, rather than 100% documentary examination
- eliminate the obligation to submit the supporting documents with each declaration; the declarant should be required to submit supporting documents only if the declaration is selected for control
- provide a "real" valuation benefit to those traders who qualify as authorized operators in the form of importer "self-assessment"

- enable importers to obtain release of goods under guarantee earlier in the valuation verification process, and
- eliminate the importer's obligation to provide a copy of the export declaration for the goods made in the country of shipment

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I. Introduction

This document is a review of the Customs Code of Ukraine and relevant sublegal acts to determine alignment of Ukraine's customs valuation regime with the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (Customs Valuation).

Part II of this paper summarizes the main provisions of the Customs Code and three implementing acts (Ministry of Finance Resolutions No. 599 and 598 and State Customs Service Resolution No. 363).

Following that summary, **Part III** assesses the alignment of the legislation to the WTO agreement, and provides recommendations. **Part IV** summarizes the conclusions.

II. Summary of Legislation

A. Customs Code

The technical rules for the customs valuation of goods declared for import (free circulation) are set out in Chapter 9 of the Customs Code, while the rules for valuation of goods declared for other customs procedures are contained in Chapter 10.

Valuation border procedures and documentation requirements related to the declaration and release of imported goods are set out in Chapter 8 of the Code.

1. Valuation Methods

Chapter 9 of the Code incorporates the WTO agreement definitions of the six methods of customs valuation and the rules for their use, as well as certain of the WTO interpretative notes.

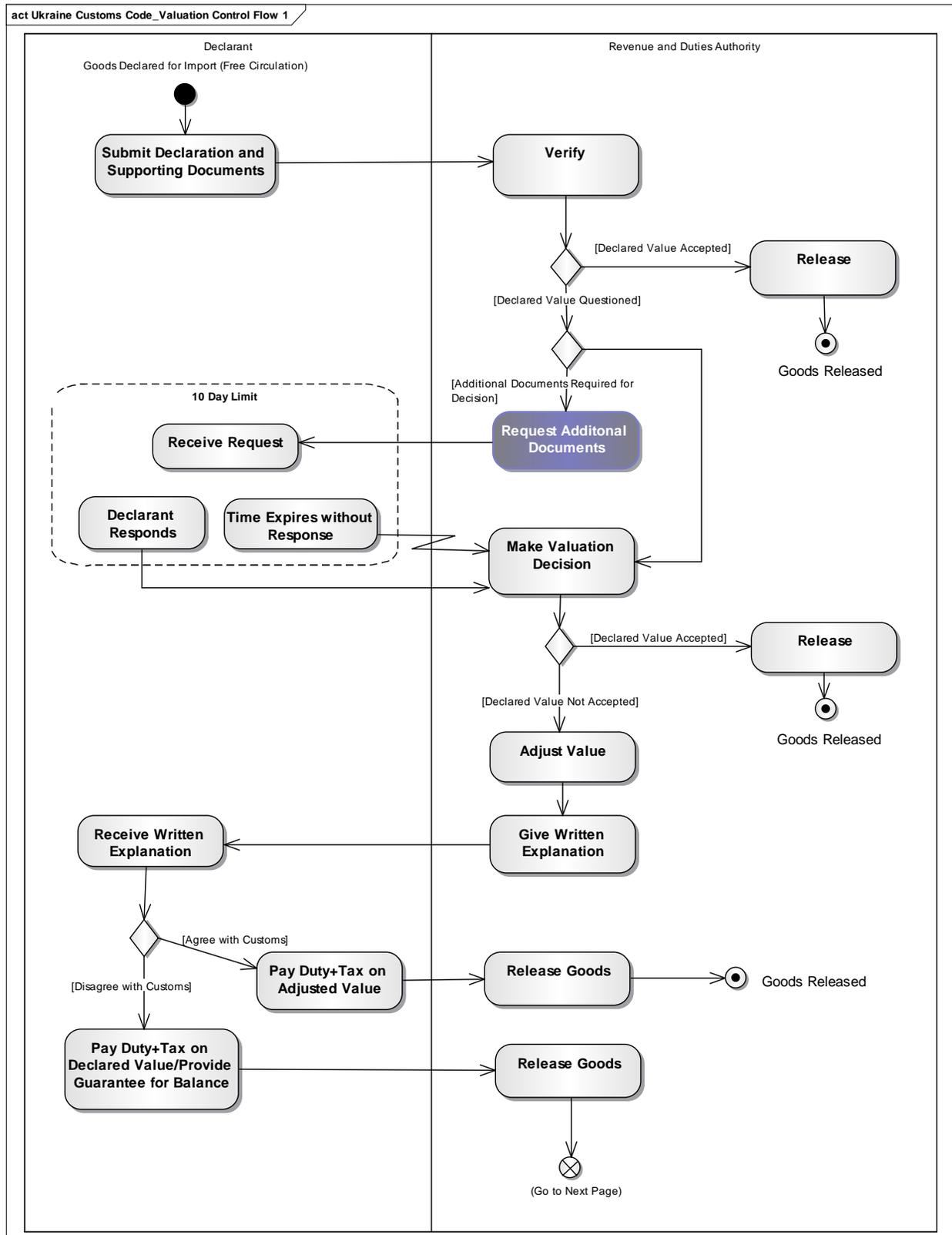
The WTO Valuation Committee Decision on software is incorporated in full in Article 51(4) (providing that only the value of the carrier medium shall be taken into account). Article 51(5) incorporates in full the WTO Valuation Committee decision on treatment of interest charges.¹

2. Valuation Procedures

Customs processing of import declarations for valuation purposes, as defined in the Customs Code, is depicted in Figure 1, below.

¹ Decisions Concerning the Interpretation and Administration of the Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation), G/VAL/5 (13 October 1995).

Figure 1 Valuation Control Process



As indicated in Figure 1, where goods are imported for import (free circulation), the declarant is required to submit, with the goods declaration, certain specified supporting documents and, under certain conditions, a completed valuation declaration form (Article 53(2)).

Required Supporting Documents

- Valuation Declaration, if required*
- Contract (or substitute document) and any exhibits
- Invoice (or pro-forma invoice, if not a purchase transaction)
- Bank payment documents, when invoice is paid
- Other payment/accounting documents confirming value and particulars
- Transport documents, where shipment costs not included in price
- Copy of import license, if applicable
- Insurance documents

*Required if customs value is greater than 5000 Euro and

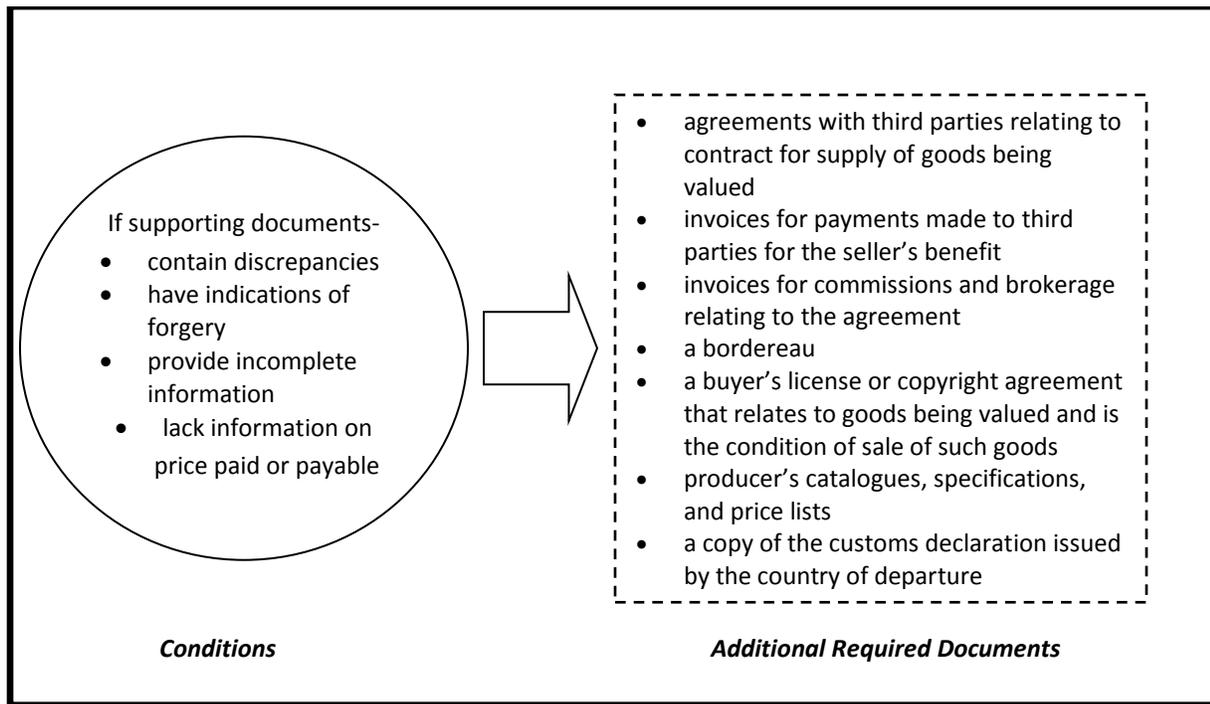
- buyer and seller are related or
- there are Article 8 additions or post-importation deductions

The Revenue and Duties Authority oversees the correct determination of customs value by verifying the “quantified” customs value declared (Article 54).

If the Revenue and Duties Authority accepts the declared value, the goods may be released on payment of duty and tax calculated on that basis, and compliance with other requirements for clearance and release of the goods.

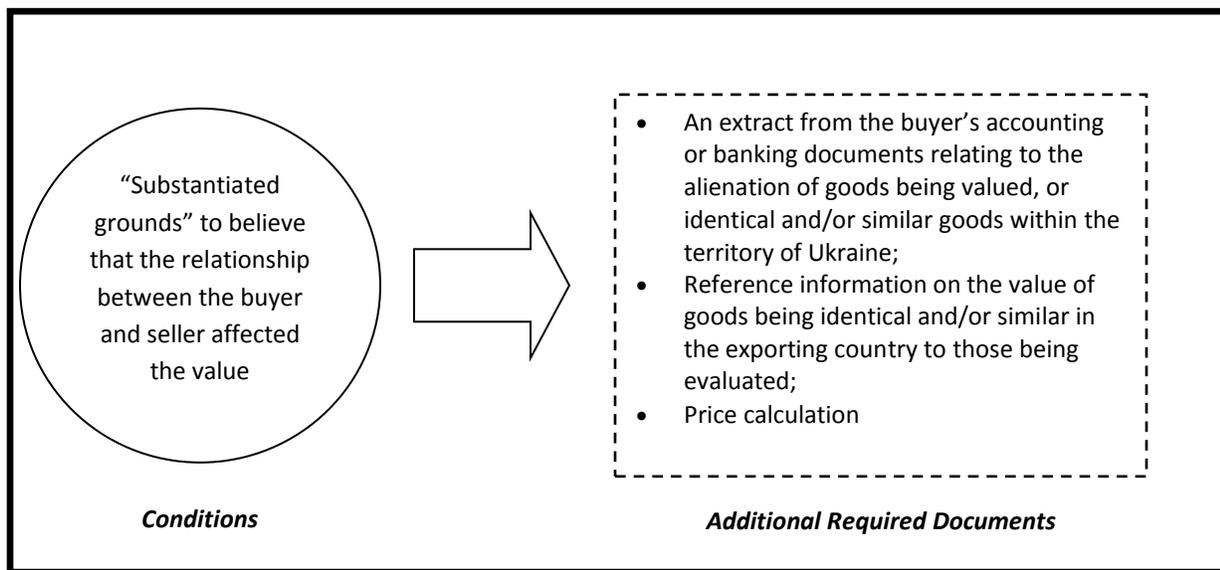
If Revenue and Duties Authority finds that the supporting documents contain discrepancies, indications of forgery, incomplete information, or “lack information on the price actually paid or payable,” it may make a written request to the declarant to produce certain specified additional documents (Article 53(3)).

Figure 2 Additional Required Documents



Alternatively (or in addition), if the Revenue and Duties Authority has “substantiated” reasons to believe that the relationship between the buyer and seller affected the price, Customs may make a written request to the declarant to provide other specified documents (Article 53(4)).

Figure 3 Additional Required Documents - Related Parties



In either case, the Code provides that it is “forbidden to request the declarant [or his agent] any documents other than those” listed in Article 53 (Article 53(5)).

The Code provides a period of 10 working days for the declarant to respond with the required documents. Upon receipt of the response of the declarant (or, if no response is made, following

expiration of the 10 day period), the Revenue and Duties Authority shall take a valuation decision, either accepting the declared value or “adjusting” the customs value of the goods.

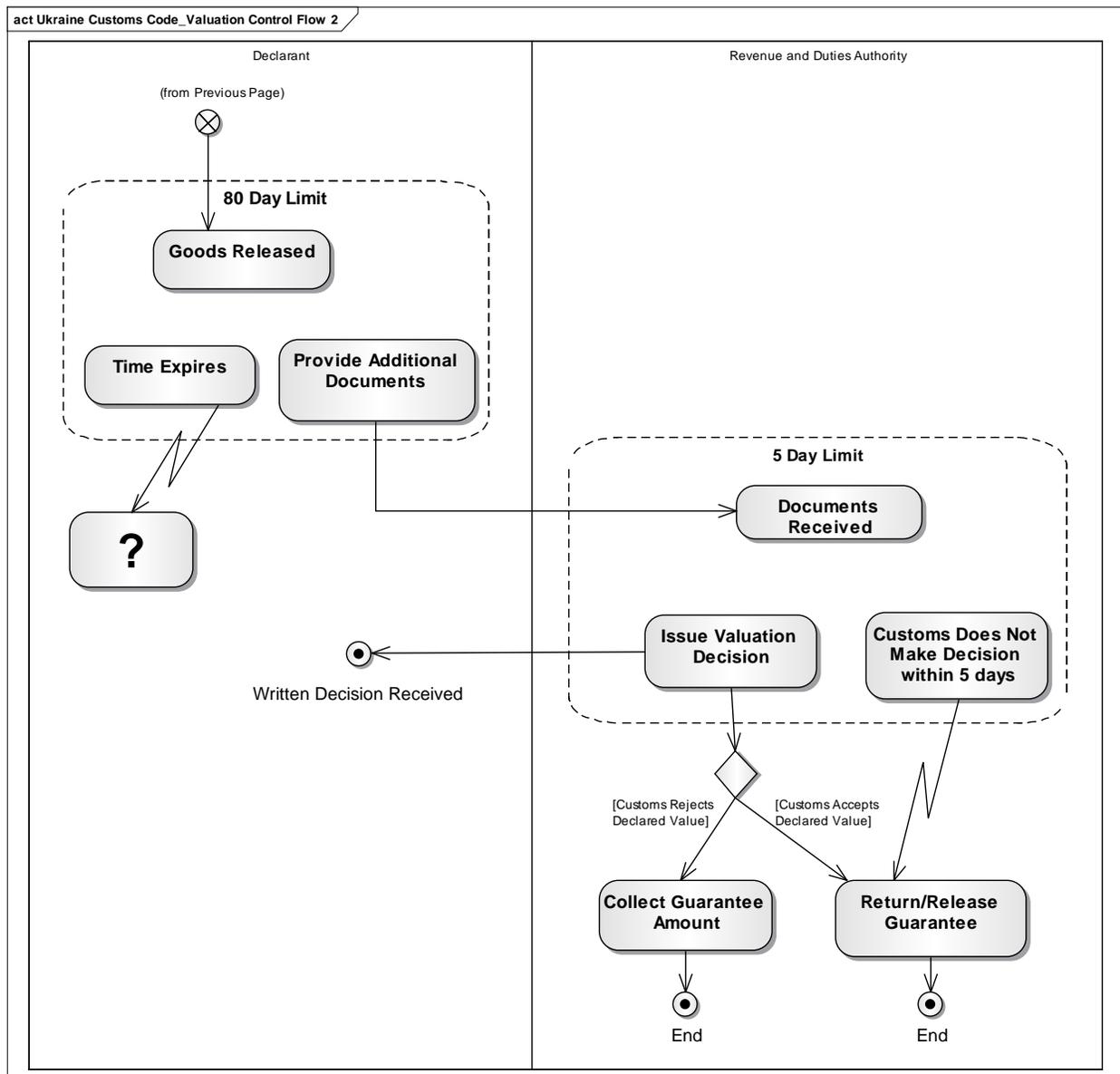
Where the Revenue and Duties Authority determines to reject the declared value, the Code requires “well-grounded proof ... that the information on the declared customs value of goods is incomplete and/or incorrect or the determination of the customs value of goods is inappropriate.” In such cases, the Revenue and Duties Authority is required to provide the declarant with a written explanation, including

- reasons why declared value cannot be accepted;
- information that gave rise to the Revenue and Duties Authority’s doubts that the declared value was correct;
- a list of additional documents referred to under Article 53(3) (see Figure 2, above) that, if provided, may allow the declared value to be accepted; and
- the adjusted value determined by the Revenue and Duties Authority (Article 55(2)).

If the declarant accepts the adjustment, he may pay the duty and tax calculated on the basis of the adjusted value, and the goods are released. If the declarant does not accept the adjustment, he may obtain release of the goods by paying duty and tax based on his declared value and providing a guarantee for the difference of duty and tax owed on difference between the declared value and the adjusted value determined by the Revenue and Duties Authority (Article 55(7)).

Following release of the goods, the declarant has a period of 80 days to provide additional documentary support for the declared value. The Revenue and Duties Authority may accept that proof and cancel the guarantee, or it may reject the declarant’s proof and collect the guarantee amount. See Figure 4, below.

Figure 4 Valuation Control - Post-Release Process



Finally, the Code provides that “authorised economic operators” shall have the “right for tacit application” of the transaction value method when determining customs value of their goods (Article 58(22) to (23)). Such operators will nevertheless be required to present a value declaration, if required, the contract and invoice, bank payment documents, and documents confirming transport and related charges (if not included in price), but Customs oversight will be conducted after release of the goods.

B. Implementing Acts

The following legal acts implementing the Customs Code valuation provisions were reviewed:

Act	Purpose
Ministry of Finance Resolution No. 599 (24 May 2012)	Customs Valuation Declaration form and rules for its completion
Ministry of Finance Resolution No. 598 (24 May 2012)	Form to be used by Custom for adjustment of value and rules for its completion
State Customs Service Resolution No. 362 (13 July 2012)	Methodological guidelines to be used by Customs officers in risk analysis, identification and assessment in accuracy control after determining customs value

- Customs Valuation Declaration Form (Finance Resolution 599)

This form is required to be submitted by a declarant under the conditions described in the Customs Code, discussed above. The layout of the form and the instructions for its completion specified in the resolution generally follow that of the EU legislation.

- Adjustment of Value Form (Finance Resolution No. 598)

As noted above, where Customs determines to adjust the declared value of imported goods, it is required to provide the declarant with written information on the grounds for not accepting the declared value and the procedure and method used to determine value and grounds for such adjustment (Articles 54 and 55). Article 55(3) provides that the form of the decision to adjust value shall be established by the central executive authority. This resolution defines the layout of this form and instructions for its completion.

- Methodological Guidelines (Customs Resolution No. 362)

These guidelines are intended to be used by Customs officers responsible for valuation, and are stated to be based in part on the WCO Guidelines for Valuation Control. It appears that they are intended to be applied at the time of clearance *after* customs value is determined for purposes of accuracy control; that is, after the declaration has undergone some documentary examination.

Essentially, these guidelines are a checklist to be used by officers to ensure accuracy/correct valuation, and require the officer to consider such factors as:

- characteristics of the goods
- itinerary of means of transport
- prices of such goods/costs of production
- value of identical/similar goods
- relationship between buyer and seller

- test values (where related parties are concerned)
- inconsistency/evidence of forgery in submitted documents
- decisions of other customs offices concerning other imports under the same contract

The guidelines require certain price sources to be checked for certain goods (e.g., check “global price agency Platts” for oil and petrochemicals; check average value of commodity stock exchanges for goods sold on such exchanges). It sets out guidelines for use of valuation methods for non-registered medicines import for pre-clinical trials and clinical tests.

The customs officer is also instructed to check the valuation method used by the declarant and to check the declarant’s calculations under the given method (e.g., check for arithmetic mistakes).

As a result of these checks of the submitted documents (described as “risk analysis”), the customs officer may request additional documents and/or adjust the value, as provided under the Code.

Finally, it is important to note that none of the implementing acts reviewed included the full Interpretative Notes to the WTO Valuation Agreement or any other rules or guidance for the application of the WTO technical valuation methods. To promote greater consistency in Customs application of valuation methods, as well as provide useful guidance to importers, these WTO Interpretative Notes should be published in the form of a rule or regulation or as a guidance document, if this has not already been done. This regulation or guidance might also include technical interpretative decisions that may have been adopted by Customs since it has been operating with the WTO agreement.

III. Analysis and Recommendations

A. Valuation Methods

With the possible exception of certain minor technical discrepancies, the Customs Code rules concerning calculation of customs valuation are fully consistent with the methods of the WTO valuation agreement.

Moreover, the Customs Code rules include some facilitations. According to its terms, the WTO agreement applies for purposes of determining “customs value of imported goods”, which is defined to mean the value of goods for purposes of levying *ad valorem* duties. Applying that limitation, Ukraine’s Code requires use of the WTO-based customs valuation rules only in cases of goods placed under the customs import (release for free circulation) procedure (Article 51.3 and 65.1).

This limited use of the WTO valuation methods simplifies the data and documentation requirements for goods declared under these other procedures and is therefore may be an important facilitation. Under all other procedures where duty is not collected, including other procedures for inward movement of goods other than free circulation (e.g., warehouse, temporary import, inward processing), the customs value of the goods is simply the price indicated in the invoice or pro-forma invoice presented by the declarant (Articles 65-66).

However, despite this general alignment with the WTO methods, there appear to be a small number of minor technical discrepancies. These are as follows-

- **Use of Related Party Prices**

Article 58(1) states that transaction value shall be used where the buyer and seller are not related or “where the buyer and seller are related it does not affect the value of the goods.”

This is not technically correct. A price between a related buyer and seller *can* be used as the basis for transaction value even if the relationship affected the price, if Customs nevertheless determines the price is “acceptable.” A price that is influenced by the parties’ relationship may be acceptable if it closely approximates a “test value,” which includes a price of identical or similar goods in a sale between unrelated parties (these test values are properly set out in Article 58.18).

This is a technical discrepancy only, and it is not clear that it would lead to practical results inconsistent with the WTO rules.

- **Inconsistent use of defined terms**

Under the WTO agreement, “duties and taxes” imposed on the imported goods by Ukraine are not to be included in customs value. The Customs Code contains this principle, but refers only to “taxes.”

According to the definition section of the Customs Code, the term “taxes” does not include duties. The word that should be used is “charges” which is defined in the Code to include both duties and taxes.

- **Definition of Related Parties**

Persons that can be considered related parties for purposes of the valuation rules are not set out in the Code; rather, Article 58(16) of the Code states that related parties shall be those so defined in “Article 15 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (1994).”

Incorporating by reference the WTO definition of related parties is not incorrect. However, all other provisions of the WTO agreement are set out in full detail in the Code, and it is not clear why this one definition should not also be included. For greater transparency and accessibility of the law, it would be useful to include a definition of related parties in Ukraine’s national legislation.

- **Definition of Transaction Value of Identical and Similar Goods**

The Code defines the second valuation method in part as “transaction value of identical goods sold for export to Ukraine *from the same country*” (Article 59).

Technically, this is not fully correct. A transaction value of identical goods requires the goods to have the same *country of origin* as the goods under valuation; however, the place of export to Ukraine can be different. For example, if Malaysian-origin goods are under valuation, the “transaction value of identical goods” may include Malaysian-origin goods exported directly from Malaysia to Ukraine or Malaysian-origin goods exported from Singapore to Ukraine.

In addition, Article 59(1) indicates that identical goods must have the same producer. This is not correct. However, the correct statement of the WTO principle does appear under Article 61(2) (“Goods produced by the person other than the producer of the goods being valued shall be taken account of only if there are no identical or similar goods produced by the person who is the producer of the goods being valued.”)

Finally, Article 61.3 states that goods may not be considered identical or similar to the goods being valued if they were produced with engineering, development, design work *etc.* that was undertaken in Ukraine. This is not fully correct. Technically, such goods cannot be considered identical or similar if such work was undertaken in Ukraine AND the cost or value of such work was not included in the price of the goods.

B. Valuation Control Procedures

1. WTO Valuation Agreement Alignment

The Code provisions are fully consistent with the WTO valuation agreement provisions concerning customs valuation processing and procedures.

The WTO Agreement provides that national legislation shall allow an importer to withdraw goods from customs under guarantee where there is a delay in the final determination of customs value. As noted above, Article 55 of the Code allows a declarant who disagrees with Customs adjustment of declared value to obtain release of the goods, upon payment of duty and tax calculated on the basis of the declared value and provision of a guarantee for the difference between the amount declared and the amount determined by Customs.

The WTO Agreement provides that an importer shall have the right to an explanation as to how the customs value of his goods was determined. As described above, Article 54 requires Customs to provide written information to the declarant in cases where it does not accept the declared value.

Consistent with the WTO Agreement requirements concerning confidentiality of valuation information, Article 11 of the Code prohibits disclosure of information obtained by the Revenue and Duties Authorities without permission of the person who provided.

Finally, the Code provides for right of appeal against decisions by the Revenue and Duties Authorities to adjust the declared value of the goods, either to a superior official or directly to a court.

2. Trade Facilitation Issues

A review of the background to the 2012 Customs Code amendments indicates that the valuation control process and documentation requirements that are defined in the law were proposed and promoted by the Ukrainian business community in order to resolve certain specific difficulties they faced with Customs under the prior law. See PWC, *The New Customs Code: Making Some Positive Changes* (December 2012)(I. Dankov/R. Zeldy) www.pwc.com/ua/en/publications/2013/acc_customs_code.html. In particular-

The customs valuation provisions of the old Code were based on WTO principles (the Agreement on Implementation of Article VII of the GATT). However, the customs authorities have often misused these provisions in order to increase revenue collections, as:

- The focus was not on the rules for determining the customs value of goods, but on the supporting documents;
- Customs did not explain why they rejected declared values;
- The authorities used information from their internal price database to define customs value.

As a result, the customs authorities have challenged declared value without sufficiently explaining their reasons for doing so. The basis for such a challenge could be the availability of higher prices in their internal database. The next step was to request that the importer present additional documents to support the declared value. As a rule, customs was requesting documents that either did not exist (e.g., price calculations of the goods) or that were difficult to obtain (e.g., a foreign export customs declaration, even if the exporter could declare the goods electronically).

Should the importer fail to present the additional documents, the customs authorities have the right to define customs value themselves. The old customs valuation rules were thus favorable for customs and denied the importer the ability to determine customs value.

from: Dankov and Zeldy

To overcome these issues, the business community proposed that the declarant shall be required to submit only the “main” documents with the declaration; that Customs may require specific additional documents under specified conditions only; that no other documents may be requested other than those listed; and that Customs must substantiate and provide a written explanation to the declarant if it decides to reject a declared value. The Code reflects these proposals, as noted above.

These 2012 amendments create greater fairness and transparency in the valuation process, as well as better enable the declarant to challenge in a judicial proceeding Customs rejection of declared values. However, they do not appear to change the basic emphasis of the law on control of valuation at the border based on checking and comparing documents (to catch inconsistencies) and database values rather than, for example, post-clearance audit and risk techniques (to verify total amounts actually paid for the goods). The controls and documentation requirements provided in the law could be further streamlined and reduced to speed up release by introduction of certain trade facilitation principles into the law. These are discussed below.

Given that the Code current provisions on valuation processing reflects the business community’s proposals and respond to specific concerns, any changes to the valuation processing should be vetted with those stakeholders.

- **Selectivity in Valuation Control based on Risk Assessment**

The Code appears to require 100% documentary examination for purposes of valuation control. It states that Customs “shall” oversee customs value of goods by verifying the “quantified” customs value declared by the declarant or his agent and confirming the value declared against the supporting documents (Article 54(4)). These provisions imply that verification will be conducted in all cases. Even

in the case of authorized operators, customs verification of the declared value is required, albeit after the goods are released (Article 58(22)).

As a general principle, Customs control, whether in the form of documentary checks or physical inspection, should be selective and based on principles of risk management. In fact, this principle is stated elsewhere in the Code:

Article 320. Selectivity of customs supervision

1. Forms and scope of controls, sufficient to ensure that the customs legislation and international treaties of Ukraine are observed at the time of customs clearance, shall be selected by the customs offices (customs stations) on the basis of the risk management system.

Article 361. Objectives of risk management system

...

2. The revenue and duties authorities shall apply risk management system to identify goods, means of transport, **documents** and persons that are subject to customs supervision, customs controls applicable to such goods, means of transport, **documents** and persons, as well as scope of customs supervision.

from: Customs Code of Ukraine (emphasis added)

It appears that Ukraine has established a valuation database for control purposes, and that the law allows for electronic submission of the goods declaration and the value declaration. If risk management principles are applied, only those declarations that are determined to be higher risk, based on assessment against the valuation database and other valuation-related risk factors,² should be selected for checks at the time of clearance, and the valuation declared in all other declarations should be accepted without checking by a Customs officer, other than random selections and subject to post-clearance verification/audit, where justified by risk.

To clarify that the application of selective examination of declarations for valuation controls should be based on risk management principles, Chapter 9 of the Code should be reviewed and revised, where necessary, to remove impediments to use of selective, risk-based control for valuation purposes. For example, the law might be restated to provide Customs with authority to verify declared values, but remove or revise language that suggests that such verification shall be undertaken with respect to all declarations.

- **Documents on Demand**

As described above, Article 53(2) of the Code requires a “main” set of 8 or more supporting documents to be submitted with the declaration for import.

² To be consistent with WTO rules, Ukraine Customs should ensure that its use of the valuation database as a risk management tool conforms to the WCO guidelines on the subject.

If risk-based selectivity in customs valuation control is applied as recommended above, this requirement should be restated. Under a risk-based system of control, Customs will examine declaration and supporting documents for higher risk transactions, and allow low risk declarations to pass without documentary checks. If that is the case, then there is no need for the declarant to present the “main” documents unless the declaration is selected for control as higher risk, in which case the Customs officer (or the processing system) may call for the documents. Supporting documents must be “available,” but required to be submitted only if Customs intends to examine them for control purposes. A model for this approach is found in the EU Union Code:

EU Union Code

Article 163

Supporting documents

1. The supporting documents required for the application of the provisions governing the customs procedure for which the goods are declared shall be in the declarant's possession and at the disposal of the customs authorities at the time when the customs declaration is lodged.

This saves time and cost for declarants – who do not have to make copies and present the documents unless Customs will actually check them – and reduces Customs paperwork and recordkeeping. As provided under the current Code, declarants are nonetheless required to maintain these documents for a period of time and provide them on request for purposes of customs audit (Articles 353, 355).

- **Treatment of Authorized Operator**

The Code provides that authorised economic operators shall provide essentially the same documents as other importers for clearance and release of the goods but that the transaction value shall be “tacitly” accepted and Customs oversight of correct determination of value shall be performed solely upon completion of clearance and release (Article 59(22)-(23)).

However, in a risk-based selective control system, “tacit” acceptance of the declared transaction value should be applied to all traders or transactions that are determined to be low risk, not just those who have qualified for AEO status. Moreover, if the trader is determined to be low risk for valuation purposes (including an AEO), it is not clear why the trader should be required to present the full set of supporting documents to clear his goods, other than in the case of a random control.

A real facilitation benefit related to customs valuation that the law might allow to traders who qualify as authorised operators is “self-assessment” of duty and tax.

Self-assessment of duties and taxes using commercial records

This procedure is a system whereby the trader himself is authorized to determine the duties and taxes due. It is based on the principle that, in international trade, systems are required for commercial purposes in order to control the movement, supply and storage of goods and to carry out effective fiscal controls. Once Customs performs an audit of the trader's relevant system and commercial records and is satisfied that they meet the criteria necessary for authorization to use special procedures, Customs has a reasonable assurance that it can rely on the system for Customs control. In effect Customs control becomes an integral part of the authorized person's commercial activities.

Goods imported under the self-assessment procedure should be released at importation immediately upon their arrival in the Customs territory. .. Minimum checks or indeed no checks at all should be carried out at a Customs office or at the trader's premises in either situation under normal circumstances, other than random checks conducted as part of the risk management programme. Detailed checks are always appropriate in exceptional circumstances, for instance, where it is suspected that the procedure is being abused or where information is received that a consignment may be misrepresented or used as a medium to import or export illicit goods.

Once the physical movement of the goods has taken place for import or export, a declaration should be furnished by the authorized person or their representative. This normally indicates the amount of duties and taxes that will be due. Other information may be required in the declaration, such as value and origin, but it should be kept to a minimum.

from Revised Kyoto Convention Guidelines, General Annex, Chapter 3

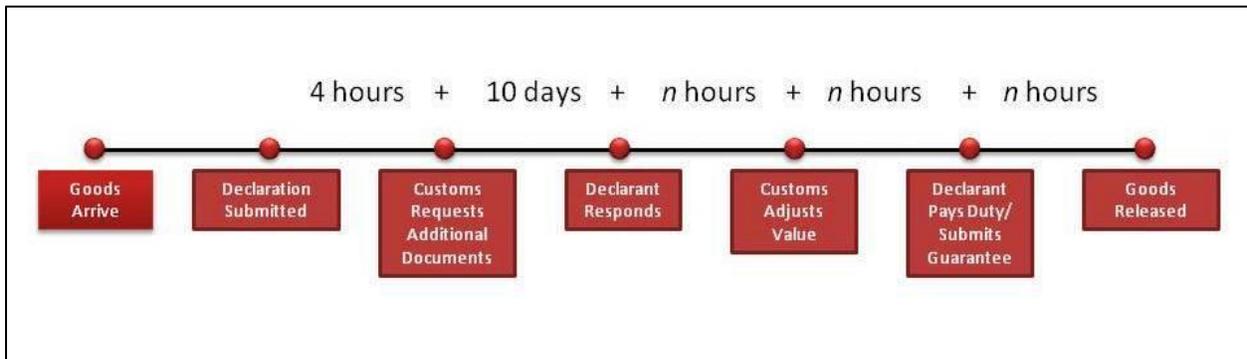
These benefits might be included under the AEO articles of the law, where other benefits are described, rather than under the valuation methods.

- **Rapid Release Under Guarantee**

As described above, the Code includes a mechanism whereby the declarant may obtain release of goods under guarantee where the declarant disputes Customs adjustment of the declared value. However, it appears that release under these provisions can be delayed.

The Code generally requires customs clearance to be completed within 4 hours, but provides an exception where Customs requests additional documents for valuation purposes (Article 255). In such cases, as noted above, the declarant has up to 10 days to respond, and Customs thereafter has some period of time to make a decision. If Customs decision is to reject the value, the goods may released under the guarantee

Figure 5 Release under Guarantee - Time



Certain of the time periods are within the declarant's power to control, such as the period to time to respond to a request for additional documents. However, as was observed in the PWC report, certain of the additional documents that may be requested by Customs are not easily available to the declarant, and may take time to obtain or produce.

The WTO Trade Facilitation Agreement requires WTO members to adopt procedures for release of goods prior to final determination of duty and tax (*e.g.*, prior to final decision on customs valuation) if such final determination is not done *upon arrival or as rapidly as possible thereafter*.

**WTO Trade Facilitation Agreement
Article 7.3**

3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

3.1 Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

To more closely align to this new WTO requirement, the law should be revised to allow a declarant the choice to obtain release of the goods under guarantee earlier in the process. For example, the law might be revised to clearly provide a right for release under guarantee prior to final determination at the moment of the initial request for additional documents. Although Customs may not have made its value determination at that point, nevertheless the valuation database and other sources might be used to estimate a value for purposes of determining the amount of guarantee.

- **Requirement of an export declaration**

As noted above, Article 53(3) provides that Customs may require the declarant to provide "a copy of the custom declaration issued by the country of departure," among other additional documents, where the documents submitted with the declaration are found to contain discrepancies, indication of forgery or incomplete information. Customs may refuse to clear goods if the documents are not provided (Article 54(6)).

Under the new WTO Trade Facilitation Agreement, this requirement of submission of the export declaration is prohibited.

<p style="text-align: center;">WTO Trade Facilitation Agreement Article 10.2</p> <p>2. Acceptance of Copies</p> <p>...</p> <p>2.3 A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.</p>

Although the export declaration cannot be required from the importer, the WTO agreement provides for Customs-to-Customs exchange of such information, under specific conditions.

To align to this obligation under the WTO Trade Facilitation Agreement, this requirement should be deleted from the law.

IV. Conclusions

Ukraine's Customs Code is aligned to the WTO customs valuation agreement, with the exception of certain minor technical inconsistencies concerning definitions and terminology. These inconsistencies, which would appear to have little practical impact, might be clarified by an administrative rule or instruction, rather than amendment of the law.

As noted above, the WTO Interpretative Notes are not fully set out in the Customs Code or contained in the 3 implementing acts that were reviewed in this assessment. These should be published as a rule or interpretative instruction, if this has not already been done. The technical clarifications referenced in the preceding paragraph might also be included in this rule or instruction.

Although the Code and implementing rules are fully consistent with WTO valuation agreement disciplines concerning valuation processing and procedures, the law should be reviewed and revised, consistent with the WTO Trade Facilitation Agreement, to de-emphasize border control of valuation in favor of enable risk-based selective documentary examination and post-clearance audit.