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European Commission

COMPENDIUM OF CUSTOMS VALUATION TEXTS

Edition 2025

Taxation and Customs Union

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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Foreword

A Compendium of the legal provisions and accompanying texts relating to application of Customs Valuation legislation was last published in consolidated form in 2022. Since then, a number of developments have intervened i.e. additional rulings and conclusions have been adopted.

This is an updated and revised version of the Compendium of customs valuation texts as concerns instruments concluded by the Customs Code Committee and the Customs Expert group - Customs Valuation Section.

The present compendium has been prepared primarily for Member States administrations but should be available to all interested parties.

The instruments of the Compendium are the result of considerations in the Committee and Expert Group. In the case of commentaries, guidance is given on how to apply a specific provision. Conclusions are the result of examination of particular practical cases. They reflect the view of the Customs Code Committee and of the Customs Expert Group – Customs Valuation Section and support uniform interpretation and application. Economic operators are however advised to consult their national customs administration as regards concrete decisions in individual cases.

A summary of judgements of the Court of Justice of the European Union is included.

A section indicating instruments adopted by the Technical Committee for Customs Valuation of the World Customs Organisation is also included for the sake of completeness.

The authentic texts of EU Regulations and Directives are those published in the Official Journal of the EU. As regards judgements of the European Court of Justice of the European Union the authentic texts are those given in the reports of cases before the Court of Justice of the European Union.

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SECTION A: EU LEGAL TEXTS ON CUSTOMS VALUATION

(REFERENCES)

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The UCC package

THE UCC

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

Articles 69-76

THE UCC DA

Commission Delegated Regulation (EU) 2015/2246 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

Article 71

THE UCC IA

Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 (the UCC IA) laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

Articles 127-146

Annexes 23-01 and 23-02

THE UCC TRANSITIONAL DELEGATED ACT

Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending delegated Regulation 2015/2246

Article 6

Annex 8

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Other provisions of the UCC referring to the establishment of the customs value[1]

a) Customs formalities

Article 5 - Definitions

Article 15 – Provision of information to the customs authorities

Article 18 – Customs representative

Articles 22-30 – Decisions relating to the application of the customs legislation

Article 51 – Keeping of documents and other information

Article 53 – Currency conversion

Articles 77-80 - Incurrence of a customs debt on import

Article 85 – General rules for calculating the amount of import or export duty

Article 86 – Special rules for calculating the amount of import duty

Article 87 – Place where the customs debt is incurred

Article 127 – Lodging of an entry summary declaration

b) General rules on customs procedures

Article 162 – Content of a standard customs declaration

Article 163 – Supporting documents

Article 166 – Simplified declaration

Article 167 – Supplementary declaration

Article 172 – Acceptance of a customs declaration

c) Release for free circulation and special procedures

Article 201 – Release for free circulation – scope and effect

Article 226 – External transit

Article 240 – Storage in customs warehouses

[1] This list is limited to the UCC provisions most relevant for customs valuation. These provisions are implemented or supplemented, as the case may be, in accordance with the relevant conferral of implementing power or delegation of power, by additional provisions of the UCC IA and DA.

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Article 250 – Temporary admission

Article 254 – End-Use procedure

Article 256 – Scope of inward processing

Article 259 – Scope of outward processing

Other provisions of the EU legislation referring to the establishment of the customs value

a) Import value for VAT purposes

COUNCIL DIRECTIVE 2006/112/EC of 28 November 2006 on the common system of value added tax – Article 85

b) External trade statistics

Commission Implementing Regulation (EU) 2020/1197 of 30 July 2020 laying down technical specifications and arrangements pursuant to Regulation (EU) 2019/2152 of the European Parliament and of the Council on European business statistics repealing 10 legal acts in the field of business statistics – Annex V, Chapter 2, Section 10

c) Measures in the field of the Common Agriculture Policy

REGULATION (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products – Article 181

REGULATION (EU) 2017/891 of 13 March 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors and amending Commission Implementing Regulation (EU) No 543/2011 – Articles 73 – 75

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SECTION B: INTERPRETATIVE NOTES ON CUSTOMS VALUATION

(WTO Customs Valuation Agreement)

Note: This Section reproduces the Interpretative Notes to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (also referred to as "the WTO Customs Valuation Agreement" or "CVA"), of which they form integral part. The CVA is binding for all WTO members, and must be reflected in their legislation.

These interpretative notes have now been grouped according to the valuation method they refer to, with the indication in front of each of them of the relevant EU legal Provisions.

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Transaction value method	
Provisions of the UCC and the UCC IA	**Notes**
Article 70 (1) and (2) UCC *Article 129 UCC IA*	The price paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value. An example of indirect payment in the meaning of Article 129 UCC IA would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.
Article 70 (3)(a)(iii) UCC	An example of such restriction would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.
Article 70 (3)(b) UCC *Article 133 UCC IA*	Some examples of this include: a) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities; b) The price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods; c) The price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the Union shall not result in rejection of the transaction value for the purposes of Article 70 UCC.
Article 70 (3)(d) UCC *Article 134 UCC IA*	1. Article 134 UCC IA provides different means of establishing the acceptability of a transaction value. 2. Paragraph 1 provides that where the buyer and seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs authorities have no doubts about

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	the acceptability of the price, it should be accepted without requesting further information from the declarant. For example, the customs authorities may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price. 3. Where the customs authorities are unable to accept the transaction value without further inquiry, the should give the declarant an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs authorities should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and the seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that that the buyer and the seller, although related under the provisions of Article 127 UCC IA, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced. 4. Paragraph 2 provides an opportunity for the declarant to demonstrate that the transaction value closely approximates to a 'test' value previously accepted by the customs authorities and is therefore acceptable under the provisions of Article 70 UCC. Where a test under paragraph 2 is met, it is not necessary to examine the question of influence under paragraph 1. If the customs authorities already have sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2 has been met, there is no reason for them to require the declarant to demonstrate that the test can be met. 5. A number of factors must be taken into consideration in determining whether one value 'closely approximates' to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and whether the difference in value is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might

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	be acceptable in determining whether the transaction value closely approximates to the 'test' values set forth in Article 134 (2) IA.
Article 71 (1)(b) (ii) UCC *Article 135 UCC IA*	1. There are two factors involved in the apportionment of the elements specified in Article 71 (1) (b) (ii) to the imported goods – the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be in reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. 2. Concerning the value of the element, if the buyer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the buyer or by a person related to him, its value should be the cost of producing it. If the element had been previously used by the buyer, regardless of whether it had been acquired or produced by him, the original cost of acquisition or production would have to be adjusted downwards to reflect its use in order to arrive at the value of the element. 3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment, if the buyer wishes to pay duty on the entire value at one time. As another example, he may request that value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the buyer. 4. As an illustration of the above, a buyer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The buyer may request the customs authorities to apportion the value of the mould over 1,000 or 4,000 or 10,000 units.
Article 71 (1)(b) (iv) UCC *Article 135 UCC IA*	1. Additions for the elements specified in Article 71 (1) (b) (iv) should be based on objective and quantifiable data. In order to minimize the burden for both the declarant and the customs authorities in determining the values to be added, data readily available in the buyer's commercial record system should be used insofar as possible. 2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for the elements available in the public domain, other than the cost of obtaining copies of them.

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	3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods. 4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment can be made under the provisions of Article 71. 5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 71 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports. 6. Variations to the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation. 7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the Union.
Article 71 (1)(c) UCC *Article 136 UCC IA*	The royalties and licence fees referred to in Article 71 (1) (c) may include, among other things, payments in respect to patents, trademark and copyrights.
Article 71 (2) UCC	Where objective and quantifiable data do not exist with regard to the additions required under the provisions of Article 71, the transaction value cannot be determined under the provisions of Article 70. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the Kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller) it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price paid or payable can be made.

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Methods of identical and similar goods	
Provisions of the UCC and the UCC IA	**Notes**
Article 74 (2)(a) and (b) UCC *Article 141 UCC IA*	1. In applying these provisions, the customs authorities shall, where possible, use a sale of identical or similar goods, as appropriate, at the same commercial level and in substantially the same quantity as the goods being valued. Where no such sale is found, a sale of identical or similar goods, as appropriate, that takes place under any one of the following three conditions may be used: a) A sale at the same commercial level but in a different quantity; b) A sale at different commercial level but in substantially the same quantity; c) A sale at a different commercial level and in different quantity. 2. In Article 141 (1) IA the expression 'and/or' allows the flexibility to use the sales and make the necessary adjustments in any one of the Three conditions here above described. 3. Having found a sale under any one of these three conditions, adjustments will then be made, as the case may be, for a) Quantity factors only; b) Commercial level factors only; or c) Both commercial level and quantity factors. 4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or decrease of the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical or similar imported goods, as appropriate, for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 74 (1) and (2) is not appropriate.

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Deductive (unit price) method	
Provisions of the UCC and the UCC IA	**Notes**
Article 74 (2)(c) UCC *Article 142 UCC IA*	1. In Article 142 (5) (a) IA the words "profit and general expenses" should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by the declarant unless his figures are inconsistent with those obtaining in sales in the Union of imported goods of the same class or kind. Where the declarant's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by the declarant. 2. In determining either the commissions or the usual profits and general expenses under this provision, the question whether certain goods are of the same class as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of this provision, 'goods of the same class or kind' includes goods imported from the same country as the goods being valued as well as goods imported from other countries. 3. Whether this method of valuation is used, deductions made for the value added for further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of constructions, and other industry practices would form the basis of the calculations. 4. This method of valuation would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the Union that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

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Article 74 (2)(c) UCC

Article 142 UCC IA

1. As an example of the notion of 'greatest aggregate quantity', goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1 to 10 units	100	10 sales of 5 units 5 sales of 3 units	65
11 to 25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

2. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

3. A third example would be the following situation where various quantities are sold at various prices

a. Sales

Sale quantity	*Unit price*
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

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	b. Total *Total quantity sold* — *Unit price* 65 — 90 50 — 95 60 — 100 25 — 105 In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

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Computed value method	
Provisions of the UCC and the UCC IA	**Notes**
Article 74 (2)(d) UCC *Article 143 UCC IA*	1. As a general rule, customs value is determined under these provisions on the basis of information readily available in the Union. In order to determine a computed value, however, it may be necessary to examine the cost of producing the goods being valued and other information which has t be obtained from outside the Union. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the Member State. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of import the necessary costings and to provide facilities for any subsequent verification which may be necessary. 2. The 'cost or value' referred to in Article 74 (2) (d) first indent, is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced. 3. The 'amount for profit and general expenses' referred to in Article 74 (2) (d) second indent, is to be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation. 4. No cost or value of the elements referred to in this Article shall be counted twice in determining the computed value. 5. It should be noted in this context that the 'amount for profit and general expenses' has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the Union and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry

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	concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods. 6. Whether certain goods are 'of the same class or kind' as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 74 (2) (d), sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 74 (2) (d), 'goods of the same class or kind' must be from the same country as the goods being valued.

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Residual (fall-back) method	
Provisions of the UCC and the UCC IA	**Notes**
Article 74 (3) UCC *Article 144 UCC IA*	1. Customs values determined under the provisions of Article 74 (3) should, to the greatest extent possible, be based on previously determined customs values. 2. The methods of valuation to be employed under Article 74 (3) should be those laid down in Articles 70 and 74 (1) and (2), but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 74 (3). 3. Some examples of reasonable flexibility are as follows: a. *Identical goods* – the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Article 74 (2) (c) and (d) could be used; b. *Similar goods* – the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexible interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Article 74 (2) (c) and (d) could be used; c. *Deductive method* – the requirement that the goods shall have been sold in the 'condition as imported' in Article 142 (1) IA could be flexibly interpreted; the '90 days' requirement could be administered flexibly.

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SECTION C: COMMENTARIES OF THE CUSTOMS CODE COMMITTEE AND THE CUSTOMS EXPERT GROUP

(VALUATION SECTIONS)

Note: The instruments of this section do not constitute legally binding acts and are of an explanatory nature. The purpose is to ensure a common understanding for both customs authorities and economic operators and to provide tools to facilitate the correct and harmonised application by Member States.

Legal provisions of customs legislation take precedence over the content of these instruments and should always be consulted. The authentic texts of the EU legal provisions are those published in the Official Journal of the European Union.

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Commentary No 1: Application of Article 71(1)(b) of the UCC on the valuation of goods for customs purposes

Introduction

1. The practical application of the above provisions should be uniform throughout the Union. This commentary has been written therefore to provide guidance in interpreting these provisions.

Legal basis

2. Article 71(1)(b) of the UCC is applicable in cases where :

   - the customs value of the imported goods is determined under Article 70 of that Regulation even where the contract is only for working or processing of goods, and
   - the buyer of the imported goods has supplied certain goods or services (referred to below as "assists") either free of charge or at reduced cost, for use in connection with the production and sale for export of those imported goods

Country from which the assists are supplied

3. The country from which assists are supplied is not relevant in determining whether particular goods or services fall within the scope of Article 71(1)(b). For example, the goods in question may, before they are supplied to the producer, be physically present in the country where the imported goods are produced; alternatively they may have been transported to the producer from another third country or from the Union itself. However, in keeping with the provisions of Article 71(1)(b)(iv), the value of engineering, development, artwork, design work, and plans and sketches supplied for the production of goods may not be added under Article 71(1)(b) if the work referred to has been carried out in the Union.

Transport and associated costs

5. By reason of Article 135 UCC IA, the value of an assist is either the cost of its acquisition or the cost of its production, as appropriate. There is no specific provision related to the treatment of costs of delivery of assists to the producer of the imported goods. The following are regarded as costs of delivery of assists:

   - cost of transport and insurance;
   - cost of loading, unloading and handling.

6. Consequently, in determining a value under Article 71(1)(b), costs of delivery of assists to the producer of the imported goods are not to be added to the cost of acquisition or cost of production of those assists. However they would be part of that value to the extent that, in the case of acquisition, they are included in the price.

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Example 1: Company A in the EU orders the manufacture of shirts by Company B in third country X. A supplies to B free of charge the cloth and the buttons from which the shirts are to be manufactured. A buys the cloth from company C in third country Y, with delivery terms "CIF port of unloading" in country X. A makes the buttons in its own factory in third country Z. Both the cloth and the buttons constitute assists under Article 71(1)(b). The value of the cloth for the purposes of that provision is the price CIF port of unloading. The value of the buttons is the cost of their production only; it does not include any delivery charges.

Amount to be included in the customs value

7. In keeping with Article 71(1)(b), the amount of the value of an assist to be included in the customs value of imported goods is affected by two factors :

   - the need for apportionment,

   - the extent to which such value has not been included in the price for the imported goods.

8. The contract for the supply of the imported goods and the relevant invoice may indicate the extent to which the value of any assist is not included in the price for the imported goods. The amount of the value not so included must be declared to the Customs and must form part of the customs value. In order to determine that amount, it is necessary to know also the total value of the assist and to know how that value is being apportioned.

   Example 2: Company A in the union imports shirts made to order from A's materials by company B in third country X. The contract indicates that materials are supplied by A to B at 40% of cost to A. The invoice from B to A indicates an amount for "the manufacture and supply of shirts". It may be assumed that 40% of cost of the materials is part of the amount invoiced by B to A. The value of the materials for the purposes of Article 71(1)(b) is their total cost. The amount of that value not included in the price for the imported goods is 60% of the total cost of the assist. Consequently the amount of the value of the assist still to be included in the customs value of the shirts is the latter amount.

   Example 3: Company A above orders the manufacture of jackets from company B above. B itself procures the constituent materials for the jackets, but A buys the patterns for the jackets from a design company in third country Z, and supplies them free of charge to B. The invoice from B to A indicates an amount for "the manufacture and supply of jackets". The value of the design has not to any extent been included in the price for the imported goods. Consequently the amount of the value of the assist for the purposes of Article 71(1)(b) to be included in the customs value of the jackets is the whole price for the patterns.

   Note: See also case C-116/89 of the European Court of Justice.

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Commentary No 2: Application of Article 132 of the UCC IA

Introduction

1. Article 132 UCC IA sets out the treatment available where goods are damaged or defective at time of importation.

2. Under Article 132, the customs valuation rules expressly allow the defective nature of the goods to be taken into account, by accepting an adjustment of the price paid or payable for the goods, provided the adjustment is made entirely within the terms of the sales contract entered into before the acceptance of the customs declaration or in accordance with a statutory obligation applicable to the goods, and is made exclusively for the purpose of taking into account the defective nature of the goods. For this purpose, the sales contract must contain a provision which allows for the possibility of an adjustment to the price.

3. The defective goods must be covered by concrete and precise warranty provisions, which are also referenced in the provision relating to the possibility of adjustment of the price. Details of the warranty provisions can also be set out in a separate document provided this is linked to the sales contract and both documents form part of the relevant commercial transaction between buyer and seller.

4. The price adjustment must lead to a regular financial settlement between buyer and seller, in a manner which establishes that the initial price of the goods has been adjusted in accordance with the relevant contract or in accordance with a statutory obligation applicable to the goods. This would exclude forms of indirect or postponed compensation e.g., payments to 3rd parties, or exchange goods which cannot be regarded as acceptable forms of price adjustment.

Nature of defective goods

5. The UCC already contains provisions on defective goods. No particular definition of what constitutes defective goods is provided for in Article 132 UCC IA. The defective state (and as appropriate the state of being non defective) of goods is determined by defined standards or criteria, and with reference to the relevant sales and warranty agreement. The importer has the obligation to demonstrate to the customs authorities that the imported goods were defective at the material time for valuation for customs purposes.

6. Article 132 (b) requires that goods must be covered by a warranty which provides guarantees as to the nature of the imported goods. Goods sold without a warranty do not come within the scope of the provision. Goods sold subject to assurance as to their marketability, or goods sold subject to variations in the relevant indicators (for example: quality, uniform size, freshness) are not covered. It is expected for the above reasons that agricultural goods do not generally fall within the scope of this provision.

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Price adjustment

7. Without prejudice to the situation covered by the amendment in relation to defective goods, Article 132 does not otherwise indicate that a legal basis exists for the acceptance of price review mechanisms.

CASE STUDY A: TRANSACTION VALUE IN A WARRANTY SITUATION

Facts

1. Manufacturer M in a third country sells motor vehicles to an independent distributor D in the Union. Firm D resells the vehicles through a network of local dealers to the ultimate customers.

2. There is a sales and distribution agreement between M and D. This sales agreement includes provisions relating to warranties. Each imported motor vehicle is allocated its own identification number. M gives a mileage warranty on all new vehicles. The warranty is effective from the date of registration of the vehicle.

3. Under this sale and warranty arrangement M accepts that where within a mileage of up to 100.000 km, defects as a result of materials or manufacturing faults are present[2], M is in breach of contract and will compensate D for making good the defects by means of an adjustment of the price initially paid.

4. The warranty claims procedure is as follows:

   - the customer discovers a fault and returns the vehicle to the dealer for repair.

   - the dealer rectifies the fault, returns the vehicles to the customer and prepares a warranty claim based on the cost incurred.

   - the dealer sends the claim to D for processing.

   - D checks that the claim is valid and, where the fault relates for example to a manufacturing defect, D advises M that an adjustment is required.

   - M checks that the claim is valid and, where M is satisfied that the fault relates to the manufacturing defect, compensates D for the cost of rectifying the fault by means of an adjustment of the price initially paid.

5. D, as the importer of the defective vehicle, makes a claim to Customs for a refund of duty for an adjustment of the price that was made within a period of three years from the date on which the customs debt was communicated to the debtor. Customs checks that there is a clear audit trail and verifies the relevant warranty

[2] Defects to be established on the basis of manufacturer's specifications and technical norms set out in the relevant warranty documentation.

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claims documents. In particular Customs examines evidence that shows that the fault rectified stems from the manufacturing defect. It is also confirmed that the amount paid by M relates to the cost of rectifying the fault found in the imported vehicle for which a refund of duty has been claimed.

Question

6. Can the Customs authorities establish that the adjustment of the price can be taken into account for the determination of the customs value under Article 70 of the UCC and Article 132 UCC IA?

Conclusion

7. The parties to the sale which serves as a basis for customs valuation have based the total price paid for the goods on the condition of the goods as guaranteed. In the contractual arrangements determining the sale of goods are provisions which specify that the goods are of a specific quality (in accordance with agreed technical norms). This is a condition of the sale.

8. The seller and buyer of the goods have established that the imported vehicle was, at entry for free circulation, defective as a result of a fault at the manufacturing stage. The following have been demonstrated to the satisfaction of the Customs authorities:

   (i) the requisite contractual requirements,

   (ii) the existence and acceptance of the manufacturing defect,

   (iii) the correction of the manufacturing defect,

   (iv) a price adjustment within a period of three years from the date on which the customs debt was notified to the debtor.

9. The manufacturer has:

   a) accepted and confirmed the existence of the manufacturing defect,

   b) taken the necessary corrective measures and

   c) adjusted the price paid, in accordance with the contract.

10. Thus Customs could establish that the adjustment of the price can be taken into account for the determination of the customs value under Article 70 of the UCC and Article 132 of the UCC IA.

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CASE STUDY B : TRANSACTION VALUE IN A WARRANTY SITUATION

Facts

1. Manufacturer M in a third country sells motor vehicles to an Importer D in the Union.

2. There is a sales and distribution agreement between M and D. This agreement includes provisions relating to warranties. Each imported motor vehicle is allocated its own identification number. M gives a mileage warranty on all new vehicles. The warranty is effective from the date of registration of the vehicle.

3. Under this sale and warranty arrangement M accepts that where within a mileage of up to 100.000 km, defects as a result of materials, manufacture or design faults are present[3], M is in breach of contract and will compensate D for making good the defects by means of an adjustment of the price initially paid.

4. The warranty claims procedure is as follows:

   - When a fault is discovered, D has the fault rectified and prepares a warranty claim based on the cost incurred.

   - where the fault relates for example to a manufacturing defect, D advises M that an adjustment is required.

   - M checks that the claim is valid and, where M is satisfied that the fault relates to the manufacturing defect, compensates D for the cost of rectifying the fault by means of an adjustment of the price initially paid.

5. Manufacturer M discovers that under certain operating conditions, components in the suspension system of certain vehicles may not perform in a reliable manner and this could pose risks relating to the road worthiness of the vehicle. Consequently, M asks owners of all of the vehicles to return them (recall) to the point of purchase for examination and possible adjustment as a precautionary measure.

   This situation is attributed to aspects of the conception and design of the vehicles.

Question

6. Can the Customs authorities establish that the adjustment of the price can be taken into account for the determination of the customs value under Article 70 of the UCC and Article 132 of the UCC IA?

Conclusion

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[3] Defects to be established on the basis of manufacturer's specifications and technical norms set out in the relevant warranty documentation.

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7. The parties to the sale which serves as a basis for customs valuation have based the total price paid for the goods on the condition of the goods as guaranteed. In the contractual arrangements determining the sale of goods are provisions which specify that the goods are of a specific quality (in accordance with agreed technical norms). This is a condition of the sale.

8. The seller and buyer of the goods have established that at entry for free circulation, there was a manufacture-related risk that concerning the suspension system of certain vehicles that could cause that the goods might become defective in use[4].

   The following have been demonstrated to the satisfaction of the Customs authorities:

   (i) the requisite contractual requirements,

   (ii) the existence and acceptance of the manufacture-related risk that cause that the goods might become defective in use,

   (iii) the correction of the manufacture-related risk,

   (iv) a price adjustment within a period of three years from the date on which the customs debt was notified to the debtor.

9. The manufacturer has:

   a) accepted and confirmed the existence of the manufacture-related risk,

   b) taken the necessary corrective measures, and

   c) adjusted the price paid, in accordance with the contract.

10. The Customs could establish that the adjustment of the price can be taken into account for the determination of the customs value under Article 70 of the UCC and Article 132 of the UCC IA.

[4] See the ruling issued in the case X BV v Staatssecretaris van Financiëne (C-661/15).

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Commentary No 3: Incidence of royalties and licence fees in the customs value

Introduction

1. The practical application of the principles set out in Union legislation, which govern the inclusion of amounts paid as royalties and licence fees in the customs value of imported goods, should be uniform in the whole Union. This Commentary by the Customs Valuation Committee has been written therefore to provide some general guidance on this subject.

2. The Union legal provisions relating to the incidence of royalties and licence fees in customs value are:

   - Article 71(1)(c), Article 71(2) and Article 72(d) and (g) of the UCC;

   - Article 136 of the UCC

Payment of royalty or licence fees

3. Usually royalty or licence fee payments are in the form of repeated instalments (e.g. monthly, quarterly, annually). Sometimes the payment may take the form of a single lump sum, or even an initial lump sum (commonly referred to as a "fee for disclosure") followed by repeated instalments thereafter. The instalments are usually calculated as a percentage of the proceeds of sale of the licensed products.

4. A definition of "know-how" is reproduced in paragraph 12 of the OECD Commentary on Article 12 of the OECD Model Double Taxation Convention on Income and on Capital (1977) Convention, as follows:

> "all the undivulged technical information, whether capable of being patented or not, that is necessary for the industrial reproduction of a product or process, directly and under the same conditions; inasmuch as it is derived from experience, know-how represents what a manufacturer cannot know from mere examination of the product and mere knowledge of the progress of technique."

Rights and know-how

5. The need to examine the incidence of royalties and licence fees in customs value is clear when the imported goods are themselves the subject of the licence agreement (i.e. they are the licensed product). The need also exists however where the imported goods are ingredients or components of the licensed product or where the imported goods (e.g. specialised production machinery or industrial plant) themselves produce or manufacture licensed products.

6. "Know-how" provided under a licence agreement will often involve the supply of designs, recipes, formulae and basic instructions as to the use of the licensed

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product. Where such know-how applies to the imported goods, any royalty or licence fee payment therefore will need to be considered for inclusion in the customs value. Some licence agreements however (for example in the area of "franchising") involve the supply of services such as the training of the licensee's staff in the manufacture of the licensed product or in the use of machinery/plant. Technical assistance in the areas of management, administration, marketing, accounting, etc. may also be involved. In such cases the royalty or licence fee payment for those services would not be eligible for inclusion in the customs value.

7. In many cases examination of licence agreements and contracts of sale will reveal that a part only of the royalty payment will be seen to be potentially dutiable. Where under a licence agreement the benefits conferred are a mixture of potentially dutiable and non-dutiable elements but the licensee does not in fact avail himself of the non-dutiable elements, it may nevertheless be appropriate to regard the whole of the royalty or licence fee as eligible for inclusion in the customs value.

Royalties and licence fees related to the goods to be valued

8. In determining whether a royalty relates to the goods to be valued, the key issue is not how the royalty is calculated but why it is paid i.e. what in fact the licensee receives in return for the payment. Thus in the case of an imported component or ingredient of the licensed product, or in the case of imported production machinery or plant, a royalty payment based on the realisation on sale of the licensed product may relate wholly, partially or not at all to the imported goods.

Royalties and licence fees paid as a condition of sale of the goods to be valued

9. When goods are purchased from one person and a royalty or licence fee is paid to another person, the payment may nevertheless be regarded as a condition of sale of the goods. The seller, or a person related to him, may be regarded as requiring the buyer to make that payment when, for example, in a multinational group goods are bought from one member of the group and the royalty is required to be paid to another member of the same group. Likewise, the same would apply when the seller is a licensee of the recipient of the royalty and the latter controls the conditions of the sale.

Calculation of the amount to be added to the price actually paid or payable as representing the royalty or licence fee (Article 71(2) of the UCC)

10. In general royalties and licence fees are calculated after importation of the goods to be valued. In such cases final valuation may be delayed. A general adjustment may be determined based on results over a representative period and updated regularly. This is a matter for agreement between importers and customs authorities.

11. When a part only of a royalty payment is held to be includible in the customs value, consultation between the importer and the customs authorities is particularly desirable.

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12. The basis for apportionment of the total payment into dutiable and non-dutiable elements can sometimes be found in the licence agreement itself, when for example a 7% total royalty may be specified as representing 3% for patent rights, 2% for marketing know-how and 2% for trademark usage. More often than not however the basis for apportionment cannot be so found. The respective values of rights and know-how can at times be established by evaluating the extent to which know-how is transferred or availed of and deducting that sum from the total royalty paid or payable.

13. Also at the joint request of importer and customs the licensor himself may often be prepared to indicate an appropriate apportionment based on his own calculations.

14. Further, inspection of correspondence between licensor and licensee, inter office reports of negotiations which preceded the drawing up of the licence agreement or discussion with one of the negotiators of the licence agreement will frequently provide the bases for apportionment when at first sight apportionment would not seem possible.

Exceptions

15. In accordance with Article 72(d) and (g) of the UCC, royalties and licence fees are not to be added to the price actually paid or payable when they represent

    (a) charges for the right to reproduce the imported goods in the Union; or

    (b) payments made by the buyer for the right to distribute or resell the imported goods if such payments are not a condition of the sale for export to the Union of the goods.

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Commentary No 4: Rates of exchange to be used in the determination of the customs value

The rules regarding the rates of exchange to be used in determining the customs value of imported goods are set out in Article 146 UCC IA. They implement the basic principles laid down in Article 53 UCC.

The exchange rates to be used:

- are published and/or made available by the competent authorities of the Member States; and

- apply during a fixed period.

The rates of exchange used in determining the customs value are fixed monthly and remain unchanged for the whole following month.,

The provisions of Article 146 UCC IA are commented on below:

Paragraph 2

The rates of exchange recorded on the exchange markets on the second-last Wednesday become the rates to be used during the following calendar month. These rates must be published on the day they are recorded.

Paragraph 4

This provision deals with the situation where a rate of exchange is not published on the second-last Wednesday of a given month (either for all or particular currencies

The absence of a publication may arise for such reasons as the closing of the exchange markets on a public holiday or the suspension of dealings pending official currency realignment. A suspension could occur, for example, if the government of a third country intends to realign its currency and requests suspension of dealings in that currency world-wide over a fixed period of days.

Example of application of Article 146(4)

Resort to use of the most recent published rate would apply where the markets are closed on a Wednesday and consequently no rates are recorded for that day. For example, if the 24 December is a Wednesday and the markets are closed from Saturday 20 December until Thursday 1st January inclusive, then the rates recorded Friday 19th December are to be used from January 1st in accordance with Article 146 (4).

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Commentary No 5: Assessment of certain elements to be included in or excluded from the customs value of imported goods

Introduction

1. Articles 71 and 72 of the UCC specify certain elements to be included in or excluded from the customs value of imported goods. With a view to the equal treatment of importers in this regard, the practical application of those provisions should be uniform throughout the Union. The purpose of this commentary is to provide guidance regarding the practical assessment of these elements, without prejudice of the specific provisions regarding some of them (like for examples Articles 135 and 136 UCC IA).

2. As laid down in Article 71(2) UCC, additions to the price paid or payable shall be made only on the basis of objective and quantifiable data. Although this requirement is specifically laid down with reference to additions only, it must be considered to be a general valuation principle, applicable therefore also to the elements referred to in Article 72 (elements to be excluded from the customs value).

3. The elements referred to in Article 72 of the UCC are the following:

   - costs of transport of the goods after their entry into the customs territory of the Union

   - charges for construction, erection, assembly, maintenance or technical assistance undertaken after the entry into the customs territory of the Union

   - charges for interest under a financial arrangement entered into by the buyer and relating to the purchase of the goods being valued;

   - charges for the right to reproduce imported goods
   - buying commissions
   - import duties or other charges payable in the Union by reason of the import or sale of the goods.

   Some of the above listed elements are also the subject of specific comment at paragraphs 9 to 14.

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General

4. For the purpose of satisfying the requirement of the existence of objective and quantifiable data on whose basis additions and/or deductions are made, it is necessary that the value of these elements is clearly identifiable and separate from the price of the goods.

5. To this purpose, it is necessary not only to make a claim in the appropriate boxes of the declaration (or where still used, of the value declaration) but also, where appropriate, to establish the nature of the element and its amount in monetary terms.

6. Any type of commercial documentation, including documents of long-term validity relating to more than one import transaction, (e.g. contract, invoice for the goods, or invoice for transport) relating to the goods being valued can in principle serve to establish this "nature" and "amount". In the absence of such commercial documentation, this purpose could also be served in the case of transport costs, if the declarant submits a statement referring to a schedule of freight rates normally applied for the mode of transport in question and showing how the "amount" was arrived at. If so required by the Customs, the declarant may also have to submit the schedule referred to.

   However, the customs have the right to check that the "nature" and "amount" declared are not fictitious. This check would be particularly relevant in cases where the deductions claimed are based solely on statements drawn up by the buyer, the seller or the declarant.

7. To facilitate valuation, declarants should make prior arrangement to have the documentary evidence referred to at paragraph 6 above available at the time of acceptance of the customs entry. However where the necessary documents are not available at that time, the Customs may allow a period, determined in particular in accordance with the provisions on simplified declarations, for the declarant to obtain the documents in question and communicate them to the Customs.

8. Normally the conditions referred to at paragraphs 4 to 7 above must be met before an exemption can be allowed in the determination of the customs value.

Customs duties and other taxes

9. The concept of the segregation of the indication of the amounts to be deducted with regard to import duties and other charges payable by reason of the importation or sale of the goods has been given in an Advisory Opinion by the WCO Technical Committee on Customs Valuation. There it is stated that duties and taxes of a country of importation do not form part of the customs value, insofar as, by their nature, they are *distinguishable* from the price actually paid or payable. They are, in fact, a matter of public record.

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10. The facts on which the Advisory Opinion is based state that duties/taxes were not shown separately on the invoice; but, obviously, it must be presumed in the context of the Advisory Opinion that some clear indication exists on the invoice or on some other accompanying document that the price actually paid or payable includes these charges.

11. In keeping with paragraph 4 above, the amount to be excluded from the customs value should be specified in the declaration (or in the value declaration, where applicable).

Interest charges

12. Regarding the exclusion of interest charges from customs value, Article 72(1)(c) of the UCC prescribes additional conditions to be met. It is to be expected that the document containing the written financing arrangement referred to in that provision would serve to establish the amount mentioned on the declaration in accordance with paragraph 5 above.

Cost of transport after arrival at place of introduction in the customs territory of the Union

13. Where the goods are imported at a price which includes delivery at a destination within the customs territory of the Union, the invoice or other commercial documents may not separately specify the cost of transport inside the Union. It is likely that in such cases a declarant will declare a customs value which does not include the cost of transport within the Union and will indicate this cost in the appropriate box. This, of course, would not in itself be sufficient for these costs to be considered as "distinguishable". The amount to be excluded must also be established in the manner mentioned at paragraph 6 above.

14. A number of methods would be acceptable for the purpose of showing how the amount to be excluded is arrived at.

    For example:

    (a) If goods are carried by different means of transport under a single transport document to a point beyond the place of introduction into the customs territory of the Union, and if only the total cost of this transport is established, the portion of it attributable to the cost of transport incurred after introduction into the Union, calculated by splitting the cost in proportion to distances covered outside and inside the customs territory of the Community, may be accepted for the purposes of Article 72(a) of the UCC.

    (b) If the total cost of transport is not known (e.g. in the case of a "free domicile" price), or if for some other reason apportionment is not considered appropriate, it is acceptable to deduct from the price actually paid or payable an amount which corresponds to the actual cost incurred for transport after introduction into the customs territory of the Union or, lacking that, the usual

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cost for such transport. In the latter case it is reasonable to expect that the deductions allowed with reference to internal transport should not be greater than the costs corresponding to a schedule of freight rates normally applied for the same mode of transport in the country of the carrier concerned; and the amount of these deductions may not exceed an amount corresponding to the minimum schedule of Union freight rates.

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Commentary No 6: Documents and information which customs may require as evidence for the determination of a customs value

Introduction

1. The declarant must provide the necessary information for the determination of the customs value of imported goods. With the entry into force of the UCC package, it is now stipulated that the relevant elements for the determination of the customs value, previously provided by means of the DV1 document, are now to be included directly into the customs declaration.

2. Nonetheless, Article 6 of Regulation No 2016/341 (the UCC Transitional Delegated Act) stipulates that, until the upgrading of the relevant national IT system, the particulars referring to customs value can still be provided by means other than data processing techniques, by means of a form substantially identical to the "old" DV1.

3. Like other declarations or statements presented to the Customs the information relating to a customs value, however provided, may need to be established with supporting evidence. So the particulars referred to customs value are usually accompanied by certain documents (e.g. invoices) in support of the particulars declared. However, where the necessary information, in documentary or other form, to support particulars of the customs value is insufficient, the customs have the right to require the declarant to present further particulars or information.

   Under specific circumstances, the customs may waive the requirement of certain particulars referring to the customs value.

Legal basis

4. A general right of the Customs to require documents or information in support of a customs declaration is laid down in Article 15 of the Union Customs Code.

Documents or information which the Customs may require in the course of the determination of the Customs Value

5. Article 15 of the Code stipulates that all requisite information and documents for the accomplishment of customs formalities shall be supplied to the Customs. This provision does not specify what documents or information have to support the different particulars declared.

6. Concerning the determination of the customs value, Article 145 UCC IA stipulates that the invoice related to the declared transaction value is required as a supporting document of the declaration.

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However, the invoice above may be insufficient to satisfy the Customs as to the truth or accuracy of every particular of a customs value declaration.

7. The following examples (which are not exhaustive) indicate some of the documents which the Customs may require, depending on the circumstances of the transaction and/or in case of doubt in respect of some or all of the particulars declared.

(a) A commercial invoice for the goods, if any (box 4 of the DV 1)

According to Article 145 UCC IA Provisions the declarant shall furnish the customs with a copy of the invoice on the basis of which the transaction value of the imported goods is declared. It is evident that an invoice can only be furnished where the goods being valued have been sold.

However there are also cases where the goods have been sold without any invoice. In these cases the importer has to supply the documents that could be regarded as equivalent to the invoice. An invoice may not only be used/required for establishing the price referred to in Article 70 of the UCC, but also for establishing other particulars, such as the following :

- the price of goods when resold in the Union, for the purposes of applying the deductive method laid down in Article 74(2)(c) of the UCC;

- the cost of assists

(b) A contract of sale can be used/required in support of various aspects of the invoice, such as:

- any possible restriction, condition or consideration

- any possible arrangement between the seller and the buyer affecting the customs value of the goods

- activities undertaken after importation

- the currency in which a price is settled

- contracts and other documents concerning reproduction rights for the imported goods

(c) A royalty contract for establishing whether or not a royalty payment should be included in the customs value and, if so, to what extent.

(d) An agency contract for establishing an addition for commissions or brokerage or for the exclusion of a buying commission.

(e) Transport and insurance documents for the purpose of determining, inter alia:

- the terms of delivery

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- the costs of delivery to the place of entry into the EU customs territory and
- the costs of transport after arrival at that point of entry.

(f) Accounting records, notably those of the importer or buyer, for reasons such as ascertaining the actual transfer of funds to the exporter or seller, or for obtaining information on commissions, profit or general expenses in applying the deductive and computed value methods.

(g) Schedules of freight rates for ascertaining in certain cases the transport costs

(h) Other documents e.g.

- concerning the ownership of the companies involved in the transaction, for establishing a possible relationship between the seller and the buyer,
- the invoice and contract of sale or transfer of quota charges
- the invoice for payments made for certificates of authenticity
- contracts for advertising, marketing and other activities undertaken after importation
- financial documents, e.g. for establishing the amount of interest charges
- contracts, licensing agreements or other documents concerning copyrights.

Form of presentation of documents

8. Documents represent pieces of evidence, whose form of presentation can vary. Their main function is to reflect the commercial life of the goods while recording details of the transactions to which they refer. Accordingly, Customs should be prepared to accept any document irrespective of its form of presentation, insofar as :

(a) the authenticity of the document is not questioned, and

(b) the information contained in the document is suitable for supporting the particulars declared or the information required.

9. An example of a document that presents differences in its form is one in which the buyer indicates the goods he has received and their price. Buyer and seller agree contractually in advance that such documents are acceptable for this purpose. The information contained in this document is the same as the information normally contained in an invoice. The Customs may accept this document for establishing the customs value of the imported goods on a case by case basis, and taking into account:

(a) the possibility of verifying the information contained therein,

(b) the trustworthiness of the buyer, and

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(c) the details available in the contract of sale.

10. The presentation of a document may also vary according to the means used for its transmission e.g. EDI. Again, in these cases, the customs may accept any such documents or other forms of evidence subject to the conditions stated above in paragraph 8.

In principle, for customs purposes, an invoice:

(a) does not have to be signed nor be the original copy

(b) may be designated as "for customs use only" or "pro-forma invoices" (or similar). These documents could not be acceptable as supporting documents for a declared transaction value. However, for goods that have been sold such documents would be regarded as provisional and should be replaced subsequently by a definitive invoice.

(c) should be translated if customs so require.

Persons responsible for presenting documents and furnishing information

11. Article 15 of the UCC stipulates that any person directly or indirectly involved in the accomplishment of customs formalities or in customs control shall, at the request of the customs authorities and within any time-limit specified, provide the customs authorities with all requisite information and documents, and all the assistance necessary for the completion of customs formalities and controls.

The wording "any person directly or indirectly involved in the completion of customs formalities" in principle includes the declarant (as defined in Article 5(15) of the UCC) and, as the case may be, a representative in accordance with Article 18 of the UCC,

12. That does not prevent the Customs requiring a document from a person other than the declarant, e.g. where a deduction for a buying commission is claimed and the Customs consider that the invoice issued by the manufacturer of the imported goods is necessary for determining its amount. In this case, the Customs may request parties other than the declarant (e.g. the manufacturer or buying agent) to provide the documentation required.

Confidential character of documents and information supplied to the customs

13. All information which is by nature confidential or provided as a confidential basis shall be treated by the customs authorities in accordance with the provisions of Article 12 of the UCC.

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Acceptance of information supplied to the customs authorities

14. Customs are entitled to request further information in accordance with Article 140 UCC IA. All relevant documents could be presented and examined in the context of such a procedure. In any case, customs administrations would not be limited to examination of the documents listed in this commentary.

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Commentary No 7: Deleted

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Commentary No 8: Treatment of discounts under Article 70 UCC and Article 130 UCC IA

1. A discount is taken to be a reduction in the list price for goods or services allowed to particular customers, under particular circumstances and at particular times. It is expressed either as an absolute amount or as a percentage of the list price.

At the material time, a discount can affect the amount of the price paid or payable in accordance with the relevant provisions applicable (Articles 70 UCC and 130 UCC IA).

2. For customs valuation purposes the discount must relate to the imported goods and there must be a valid contractual entitlement at the material time.

3. Three cases could be distinguished for valuation purposes:

a) a discount is available to the buyer and the payment reflecting this discount has been made at the material time (applied discount as reflected in the invoice price).

b) a discount is available to the buyer but the payment reflecting the discount has not yet been made by him at the material time.

c) a 'discount' has not been offered or is not available at the material time (i.e., a retroactive offer by the seller).

4.1. If the discount has already been indicated in the price paid or payable at the material time, this price is the determining factor. A discount already applying at the material time by virtue of the reason or level specified in the sales contract will be recognised if this discount is specified in the documentation provided to the customs authorities at the time of importation of the goods. It is not essential that the discount is already calculated - although this is normally the case - in the invoice for the goods. If there is a contractual claim at the material time, it can be recognised, even if the actual amount is not evidenced in the price paid until a later date.

4.2. Where the price has not been paid for the imported goods at the material time, it is only possible to determine the discount and the final price from the information available. Under these circumstances application of Article 70 of the Code is conditional on a price reduction being granted and on the amount of this discount being determined at the material time.

5. It is not necessary to determine whether a given discount is standard commercial practice or is also granted to other buyers.[5]

[5] Nevertheless, the rules governing the acceptance of the price paid between related buyers and sellers also apply to discounts. In this context, amongst the factors to consider are (a) the availability of a discount and (b) the price actually paid or payable (net price, i.e. amount net of the discount).

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6. The price payable for settlement at the material time shall, as a general rule, be taken as a basis for customs value (Art. 130 (2) UCC IA). Following commercial terminology, it is not necessary to consider retrospective adjustments, as the term 'discounts' is not applied in this context; a reduction which is granted only after (e.g. at the end of the year) the date of valuation i.e. when no claim exists from the outset, will not be taken into account.

Quantity discount

7. A form of discount is the quantity discount, where a reduced price is offered on the basis of the quantity bought by the buyer. Sometimes the offer relates to the total quantity bought over a certain period (e.g., one year). The valuation rules do now set out a basis for acceptance of the price paid or payable in such cases.

8. For quantity discounts the entire quantity on which the discount is based does not have to have been imported into the customs territory of the Union nor remain there. Quantity discounts could be accepted even for imports of part consignments provided they are sold for export into the importing country. It is not relevant in which importing country the goods are finally delivered. The quantity discount is given on the basis of the total sale's price. Therefore the importer receives the discount as well for the part of the consignment which is imported into the customs territory of the Union.

Discounts for early payment

9. For early payment discounts the following applies:

a) The discount is accepted at the level declared if the payment reflecting this discount has been made at the material time.

b) If the payment has not been made at the material time, an invoiced early payment discount which is valid at that moment can be accepted at the level declared provided it is a discount generally accepted within the trade sector concerned.

   If several possibilities of early payments are granted according to the terms of payment (e.g., 5% for immediate payment, 3% for payment within 14 days, 2% for payment within one month), the maximum discount may be accepted at the material time.

c) A discount for early payment which is higher than is generally accepted within the trade sector concerned should only be accepted if the buyer can demonstrate, where required, that the goods are actually sold at the price declared as the price actually paid or payable and the discount is still available at the material time.

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Commentary No 9: Apportionment of air transport costs (according to Annex 23-01 of the UCC IA)

Can air transport apportionment be applied to the whole or only part of a journey when the goods are transported on two consecutive flights on different airlines during the journey from the country of dispatch to the EU?

EXAMPLE

The buyer purchases the goods from a supplier in Colombia, where the goods originate, and are transferred by airfreight to an MS. However the journey is split into two, the first leg being Bogotá to Miami, then in Miami the goods are transferred to a different airline for the remainder of the journey to the EU. Separate airway bills (and freight charges) are issued for each leg.

OPTION 1

The full amount for the 1st leg of the journey (Bogotá to Miami) should be included in the customs value and a percentage apportionment is made for the 2nd leg of the journey (Miami to EU), using the percentage which applies for an operation beginning at that airport of departure, as per Annex 23-01 UCC IA (Zone B).

OPTION 2

The air transport apportionment is applied to the whole airfreight cost (Bogotá to Miami plus Miami to EU) using the Bogotá rate in Annex 23-01 UCC IA (also Zone B).

CONCLUSION

In the case outlined above the apportionment in principle should apply only to the air transport costs from Miami to the EU, on the basis that the transport of the goods was really interrupted in Miami: the airline was different and separate airway bills were issued. The transport from Bogotá to Miami is not necessarily related to the transport from Miami to the EU, as required by the rule of the "same mode of transport" (Article 138 (1) UCC IA).

The apportionment in Annex 23-01 simplifies the calculation of transport costs with a view to avoid having to calculate the intra-EU transport costs which have to be left out of the total air freight.

If the mode of transport had changed in Miami from sea to air, the full sea freight would have been included in the customs value.

In other cases the conclusion might be different. A case by case study is necessary. If the transport is only interrupted for logistical reasons and only one airway bill exists, the appropriate percentage applicable to the total transport costs for the distance from the initial airport (zone) of departure to the airport of destination (zone) in the Union will be included in the customs value.

In such a case it would have to be proven to the satisfaction of the customs authorities that the interruption is due to logistical reasons and that the journey has to be considered as a single transport operation (one airway bill). Only then can the whole transport operation be apportioned according to Annex 23-01.

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Commentary No 10: valuation of free goods accompanying paying goods

Case No 1: a certain quantity of goods in slight surplus as to the quantity ordered is shipped together with the identical paying goods with the purpose of covering risks of losses or damage.

Case No 2: a salesman grants to a customer a commercial discount in the form of a certain quantity of free goods in surplus to the quantity of identical paying goods ordered by the customer. This case should be treated according to the rules on price reductions and discounts For example: a company imports 100 televisions invoiced at 2000 monetary units part and receives, in the same shipment, 10 televisions that the salesperson offers free of charge to thank it for its fidelity.

Conclusion to case No 1 and 2:

In the two situations, the price of the paying goods that has been paid or is to be paid is supposed to cover the total quantity imported and therefore the free goods accompanying the paying goods should not be evaluated separately.

The two following situations are different.

Case No 3: a certain quantity of goods in surplus as to the quantity ordered is shipped together with the paying goods. These free goods are used as a "tester" in the importer's marketing areas.

These goods are identical as to the paying goods, except for a label that mentions its use as a tester. For example: a company imports 4000 bottles of perfume accompanied by 1000 identical bottles (same physical characteristics, quality and reputation) that are delivered free of charge, bearing the same name but labelled as "tester - cannot be sold".

Question: should the testers delivered free of charge be evaluated separately? How?

Case No 4: a certain quantity of free samples is shipped together with the paying goods. These samples are similar to the paying goods, either in the same packaging, or in a smaller packaging. For example: a company imports 2000 bottles of perfume of 100 ml accompanied by 500 bottles of 1.5 ml delivered free of charge and intended to be distributed as samples.

Question: should the samples be evaluated separately? How?

Conclusion to case No 3 and 4:

If the contracting arrangements include the free samples, its value forms part of the customs value which is the price paid or to be paid according to Art. 70 of the Code. An indication that the samples are included free of charge in the supply should be indicated in the sales contract, on the invoice or in any other document.

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Customs should not ignore the proportion between the sold goods and the samples (one delivery could include 15% samples and they could be proportionally more expensive than the sold goods).

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Commentary No 11: Deleted

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Commentary No 12: Treatment of transport costs (sea and air freight)

Treatment of additional air freight costs incurred because of late shipment

Background

To meet a contractual deadline another mode of transport is used, other than the one declared for customs valuation purposes, with the supplier bearing the additional cost of transportation. That cost is the difference between the normal sea freight and air transport cost. Only the lower sea freight cost is declared at the time of importation under the provisions of Article 71(1)(e) of the UCC.

The valuation treatment of real transport costs should not be different, depending on whether CIF or FOB arrangements are in place.

Description of the facts

Company A, a large importer and retailer of apparel, orders dresses from Company B, a Far Eastern manufacturer and supplier of garments, on CIF or FOB sea freight terms. The contract of sale stipulates that Company B will bear any additional transport costs for goods that are shipped late by a different mode of transport (normally by air) to meet agreed delivery deadlines.

If the goods are shipped late by air, on entry into the Member State the agent declares either the CIF value of the goods with no additional transport costs or the FOB price plus an amount representing the normal schedule rate for sea transportation. The actual higher airfreight costs incurred by Company B are currently always excluded from the customs value in the MS exposing the case.

Conclusion

Art. 71 (1) (e) of the Code applies. All transport costs until the point of introduction into the EU have to be included in the customs value. It is not relevant who pays these costs.

As regards the cases in question this means that the declared customs value based on the CIF price or the FOB price must correctly reflect the actual transport costs.

Annex 23-01 UCC IA (apportionment of airfreight costs) can be applied if the airfreight costs are separately shown.

In case the goods are originally invoiced CIF or FOB, buyer and seller have to agree before presenting the goods to customs that the invoiced price shall remain the same in case the delivery deadline cannot be met and the goods have to be transported by air instead of sea. In this case the same price is confirmed under the new delivery term CIP. This CIP price is the basis for the determination of the customs value.

The following examples shall illustrate this case:

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CIF

Originally A buys an article at a price of 40,000 € with the terms of delivery "CIF port of arrival". The intended transport method is sea transport (The freight charges are 1,000 € for this mode of transport, which the seller B has included in the CIF price. The price of the goods thus amounts to 39,000 €). Because B cannot keep the agreed deadline for delivery, the goods will be shipped via air. The delivery terms change automatically into “CIP arrival airport”. The same price of 40,000 € is paid by the buyer, even if the air freight bill shows that B paid 2,000 € for air freight. Under the new delivery terms the full transport costs are again included. As a consequence to the applicable air freight charges of 2.000 € the price for the goods is 38.000 €[6].

As regards the intra-Union costs, the total portion of these freight costs included in the invoiced CIP price (for deliveries from China 30% of 2,000 € = 600 €, see annex 2 3-01 UCC IA) can be deducted according to Article 72 UCC. The customs value of the imported goods will therefore add up to 39,400 €.

FOB

The goods are originally invoiced 40,000 € with the terms of delivery "FOB port China".

Intended delivery type is sea transport (The freight charges would be 1,000 € for this mode of transport, which would be paid by A). Because seller B cannot maintain the agreed delivery time, the goods will be shipped via air freight with the delivery terms “CIP arrival airport” instead of by sea. The delivery terms are thus modified from FOB to CIP. The air freight bill shows the air freight costs of 2,000 €. But A must still only pay the total agreed purchase price of 40,000 €. Under the new delivery terms the full transport costs are again included. As a consequence to the applicable air freight charges of 2,000 € the price for the goods is 38,000 €[1].

As regards the intra-Union costs, the total portion of these freight costs included in the invoiced CIP price (for deliveries from China 30% of 2,000 € = 600 €, see annex 2 3-01 ICC IA) can be deducted according to Article72 UCC. The customs value of the imported goods will therefore add up to 39,400 €.

[6] This calculation is done for illustration purposes only, the invoice may only show the total amount of 40.000€.

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Commentary No 13: Guidance on Articles 128 and 136 UCC IA

Section 1 - Introduction

1. This guidance is set out in terms of the structure and order of the relevant UCC IA provisions, and focuses on new elements of customs valuation rules. It revises and replaces previous guidance on those elements.

2. A full integration within the Compendium of Customs Valuation Texts[7] took place during 2021.

Section 2 – Transaction Value

2.1 Sale for export

Article 70(1) UCC

The primary basis for the customs value of goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the customs territory of the Union, adjusted, where necessary.

Article 128(1) UCC IA

The transaction value of the goods sold for export to the customs territory of the Union shall be determined at the time of acceptance of the customs declaration on the basis of the sale occurring immediately before the goods were brought into that customs territory.

1. Article 128(1) UCC IA establishes the principle that the relevant sale, for the application of the transaction value method, is the *sale occurring immediately* before the introduction of the goods into the EU customs territory, on condition that such sale actually constitutes a "sale for export" to the customs territory of the Union.

2. The relevant moment for determining the transaction value of the goods being valued is therefore when goods are brought into the customs territory of the Union (see the provisions of Title IV UCC). The relevant sale for goods brought

[7] Compendium of Customs Valuation Texts, available at: UCC - Guidance documents - European Commission (europa.eu)

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into the Union is the sale when crossing the border, i.e., the ultimate sale taking place, in performance of the contract of sale, at that time.

3. Usually the seller is located in a country of exportation and the buyer is located in the Union. However, it should be underlined that the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the WTO Valuation Agreement) does not contain provisions relating to a country where parties of a sale transaction are to be located, in order to recognise the sale as the sale for export to the country of importation. In this context, it is useful to note the European Court of Justice ruling dated 6 June 1990 (C-11/89[8]) where the Court underlines that "*The price stipulated in a contract of sale concluded between persons established in the Community may, therefore, be regarded as the transaction value (…)"*. Also the WCO Technical Committee on Customs Valuation pointed out in its *Advisory Opinion 14.1 – Meaning of the expression "sold for export to the country of importation"* that a country where a sale took place does not influence an understanding of the notion "sale for export to the country of importation" (see example 2 in the TCCV instrument)[9].

4. Article 128(1) UCC IA stipulates that the relevant sale to determine the value of goods is the sale or export that brings the goods into the Union. This is the sale *occurring immediately before* the introduction of the goods into the customs territory of the Union.

5. This sale allows the application of the transaction value method in a manner that takes into account the substance of the entire commercial transaction at the time of acceptance of the customs declaration. It allows the proper application of other relevant provisions (e.g. provisions on additions and deductions). Where this is not possible, the application of the transaction value method is not possible.

6. Therefore, this is the sale that allows economic operators and customs to actually apply the transaction value method.

7. A simple example goes as follows:

   B buys from A and the goods are brought into the Union. This sale is the sale that is occurring (takes place) before the goods arrive into the Union (see an example 1 under point 2.3).

   or

   B buys from A and then B sells to C, and this latter sale (B to C) is the sale occurring before the goods arrive into the EU. The sale from B to C is

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[8] Judgement of the Court of 6 June 1990, *Unifert* v *Hauptzollamt Münster*, C-11/89, ECLI:EU:C:1990:237 (available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61989CJ0011) and Compendium of Customs Valuation Texts (see Section E)

[9] See also Commentary 22.1 – Meaning of the expression "sold for export to the country of importation" in a series of sales, issued by the WCO Technical Committee on Customs Valuation.

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therefore the sale which qualifies as the sale (immediately) occurring before introduction into the Union (see an example 2 under point 2.3).

8. The WTO Valuation Agreement does not provide a definition for "sale". However *Advisory Opinion 1.1 – The concept of "sale" in the Agreement*, issued by the WCO Technical Committee on Customs Valuation, stipulates that "…*in conformity with the basic intention of the Agreement that the transaction value of imported goods should be used to the greatest extent possible for Customs valuation purposes, uniformity of interpretation and application can be achieved by taking the term "sale" in the widest sense…"*

9. Article 128 UCC IA does not introduce changes in the scope of what can be deemed a sale of goods for customs valuation purposes. The fundamentals of the transaction value remain in place. The meaning (and concept) of what constitutes a sale is not altered.

10. It is of course necessary to ensure that the transaction being used as the basis of the customs value under Article 70 UCC takes the form of an actual sale, with an actual buyer and seller. In other words, in order to determine a customs value under Article 70 UCC, it must be established whether the parties to a transaction can be regarded as buyer and seller and thus whether the transaction constitutes a sale in legal terms, as well as in a commercial sense. For example, it is not possible to consider that an actual sale occurs when the goods were imported on consignment; were imported by branches of the same company which are not separate legal entities; or were imported under a hire or leasing contract (even if the contracts includes an option to purchase the goods). Also, a purchase order cannot serve as the basis for the determination of the customs value for the imported goods. A purchase order is an official offer submitted by a potential buyer to a potential seller, expressing the will of the first entity to conclude a sale agreement. Unlike a sales agreement, a purchase order in itself is not a binding contractual arrangement. Only when the future seller confirms (accepts) the purchase order a sale agreement is deemed to be concluded between the buyer and the seller. This applies to transactions in general, as offers may also be submitted by a potential seller (offeror/promisor) to a potential buyer (offeree/promisee).

11. Additionally, it should be underlined that in accordance with Article 145 UCC IA "*The invoice which relates to the declared transaction value is required as a supporting document"* in the meaning of Article 163 (1) UCC. Such invoice is issued in connection with the sale transaction not only concluded but also being performed by its parties. The price actually paid or payable is a basic element of the customs value determined under the transaction value method. Therefore, an invoice identified in Article 145 UCC IA is a fundamental document from the point of the application of the Union customs provisions dedicated to the determination of the customs value under Article 70 UCC.

12. The information about a price for the purchased goods is only one of the pieces of data required for the customs valuation purposes (other required data to be provided by a declarant for the customs valuation purposes are set out in Annex B to UCC DA (Article 2 (2) UCC DA). The declarant shall be in possession of all

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information/data necessary to declare the customs value under Article 70 UCC, except where the provisions on simplified customs declarations are applicable (Articles 166 and 167 UCC).

13. The Union customs legislation indicates which data and documents are mandatory in order to place goods under a given customs procedure. In the absence of information and/or documents required by Union customs law in force to declare a customs value under Article 70 UCC, the transaction value method will not be applicable. Because of this fact, one of the secondary methods will have to be used (Article 74 UCC and its implementing provisions).

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2.2 Article 128 (2) UCC IA - Sales of goods held under certain special customs situations before entry to free circulation

Article 128(2) UCC IA

Where the goods are sold for export to the customs territory of the Union not before they were brought into that customs territory but while in temporary storage or while placed under a special procedure other than internal transit, end-use or outward processing, the transaction value will be determined on the basis of that sale.

1. This relates to the customs value of goods, inter alia, in a customs warehouse, when these are declared for release for free circulation. This rule is not limited to goods sold while held in a customs warehouse. Other customs situations (goods in temporary storage or for goods placed under a special procedure other than internal transit, end-use or outward processing) are also eligible. However, for ease of reference and because the customs warehouse procedure is the most common procedure used in this context, this guidance will refer to the customs warehousing procedure only.

2. Article 128(2) UCC IA covers cases where the goods are "sold for export" in a warehouse, where there is no sale which covered the goods on arrival into the Union.

3. Therefore, the circumstances covered are those where, on entry into the Union, the goods are not declared for release for free circulation, but placed in temporary storage or under a special procedure (warehousing, inward processing, external transit or temporary admission) for which the customs debt is not incurred yet.

4. If a sale for export exists when the goods arrive into the Union that is the basis for the determination of customs value (Article 128(1) UCC IA).

5. When no such sale exists, the sale (deemed to be a "sale for export") taking place when the goods are placed under the warehousing procedure will be the relevant basis for the declarant to declare a customs value under the transaction value method.

6. In such situations, where the goods are the subject of a sale and fulfil the conditions laid down in Article 70 UCC after being placed under a special procedure, such sale shall be used for the determination of the customs value under the transaction value method.

7. The application of Article 128 (2) UCC IA relies on the meaning intended by the Union legislator when saying that, in situations indicated in the provisions of paragraph 2 of the Article, *the transaction value will be determined* ***on the basis of that sale.*** The provisions of paragraph 2 of the Article cannot be applied in isolation from the provisions of paragraph 1 of that Article. Taking into account

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the wording of the provisions of paragraph 1 of the Article, it should be assumed that ***that sale*** means the sale occurring closest to the moment of the introduction of the goods into the customs territory of the Union.

8. Moreover, a distinction should be made between identifying a sale for the customs valuation purpose and the acceptance of a customs declaration where the customs value is determined in order to calculate an amount of customs duties. The fact that there was no sale of goods to the customs territory of the Union before the goods were brought into that customs territory and placed under the warehousing procedure, and that the relevant sale took place only when the goods were already in warehousing, does not invalidate this distinction. Therefore, if the goods placed under the customs warehousing procedure were the subject of more than one sale, only the sale that was concluded closest to the moment of the introduction of the goods into the customs territory of the Union is the relevant sale for declaring the customs value ***under the transaction value method***. Any other subsequent sales, including the last sale before the goods are presented to be released for free circulation into the customs territory of the Union, cannot be used for this purpose.

9. In more general terms, the customs value should be based on transaction value of a sale taking place in / from a customs warehouse within the Union territory only if the following conditions are met cumulatively:
   - There is no sale for export in accordance with Article 128(1) UCC IA;
   - The sale in the customs warehouse meets the requirements of Article 70 UCC.

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2.3 Practical examples to illustrate the relevant sale for the determination of the transaction value in accordance with Article 128 (1) and (2) UCC IA (where goods are placed under certain special customs situations (e.g. the warehousing procedure))

1. The basic aim of the following examples is to illustrate the application of Article 128 UCC IA. Two key aspects were considered. First, the identification of a sale for export to the customs territory of the Union, which could serve to declare a customs value of the imported goods under the transaction value method as defined in Article 70 UCC. Second, the access to a commercial invoice as a supporting document in the meaning of Article 145 UCC IA in conjunction with Article 163 (1) UCC. The second issue becomes noticeable in cases of successive sales scenario.

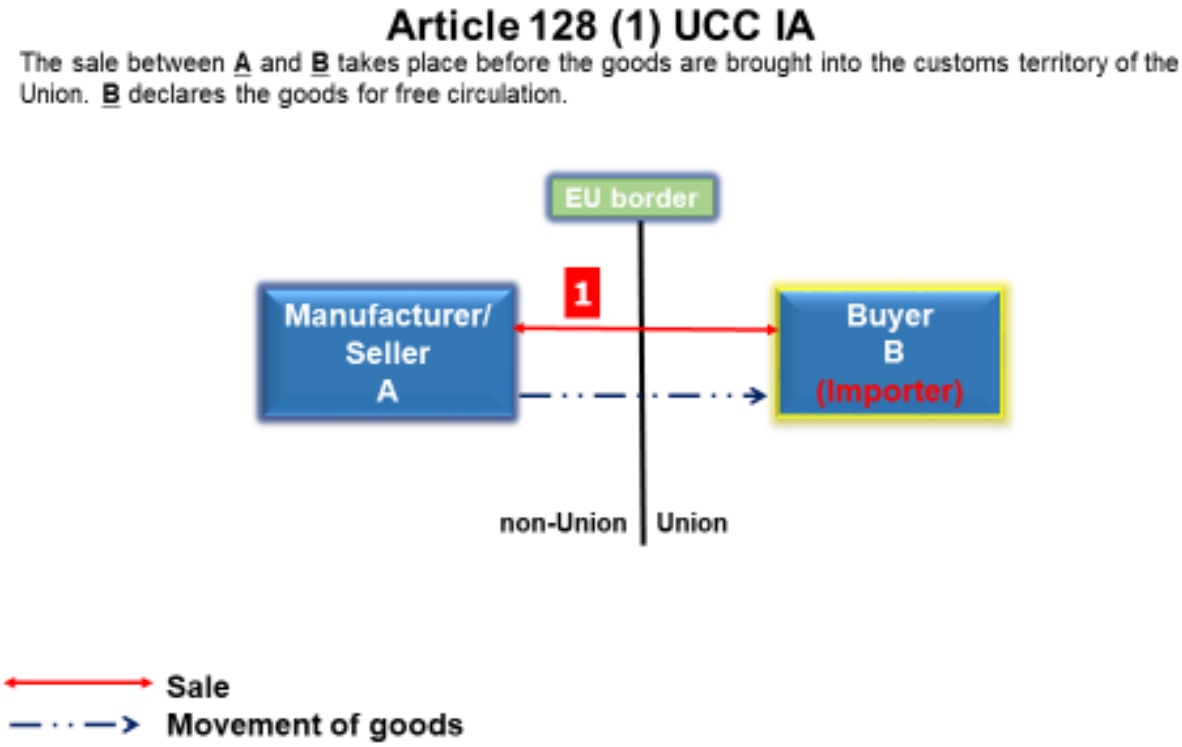
2. In the framework of the Union customs legislation, taking into account the fulfilment of customs formalities, different actors can be identified, like, e.g. exporters and importers, consignors and consignees, buyers and sellers, declarants, carriers, holders of the authorisations and representatives. Sometimes, the same entity can assume several roles. For example a buyer of the imported goods could be also an importer and a declarant.

3. The examples below refer to *buyers* and *importers*. It is recalled that a key notion for the application of the Union customs provisions dedicated to the transaction value method is *a sale for export to the customs territory of the Union.* The existence of such sale is the first legal condition to apply the method. Therefore, the graphs below present the parties in sales transactions as *sellers* and *buyers.* As a legal aspect of the customs value appears in the context of import operations, it is also necessary to identify an importer in the below presented graphs. According to the Union customs legislation *an **importer** is the party who makes, or on whose behalf an import declaration is made*[10].

10 Annex B to UCC DA, Common data requirements for declarations, notifications and proof of the customs status of Union goods, TITLE II Notes in relation with data requirements, Group 3 – Parties, data 3/15 Importer.

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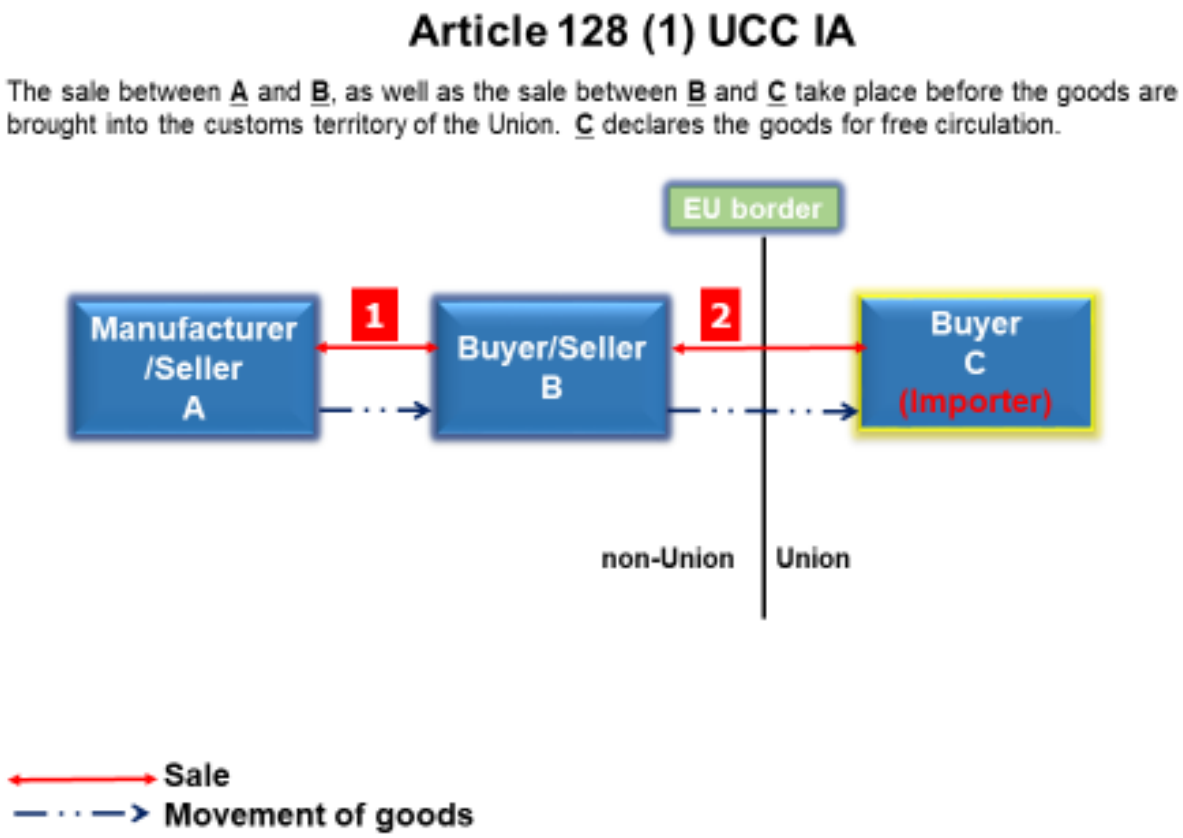
EXAMPLE 1



There is only one sale occurring immediately before the goods were brought into the customs territory of the Union. This sale shall be the basis for the declaration of the customs value under the transaction value method as defined in Article 70 (1) UCC.

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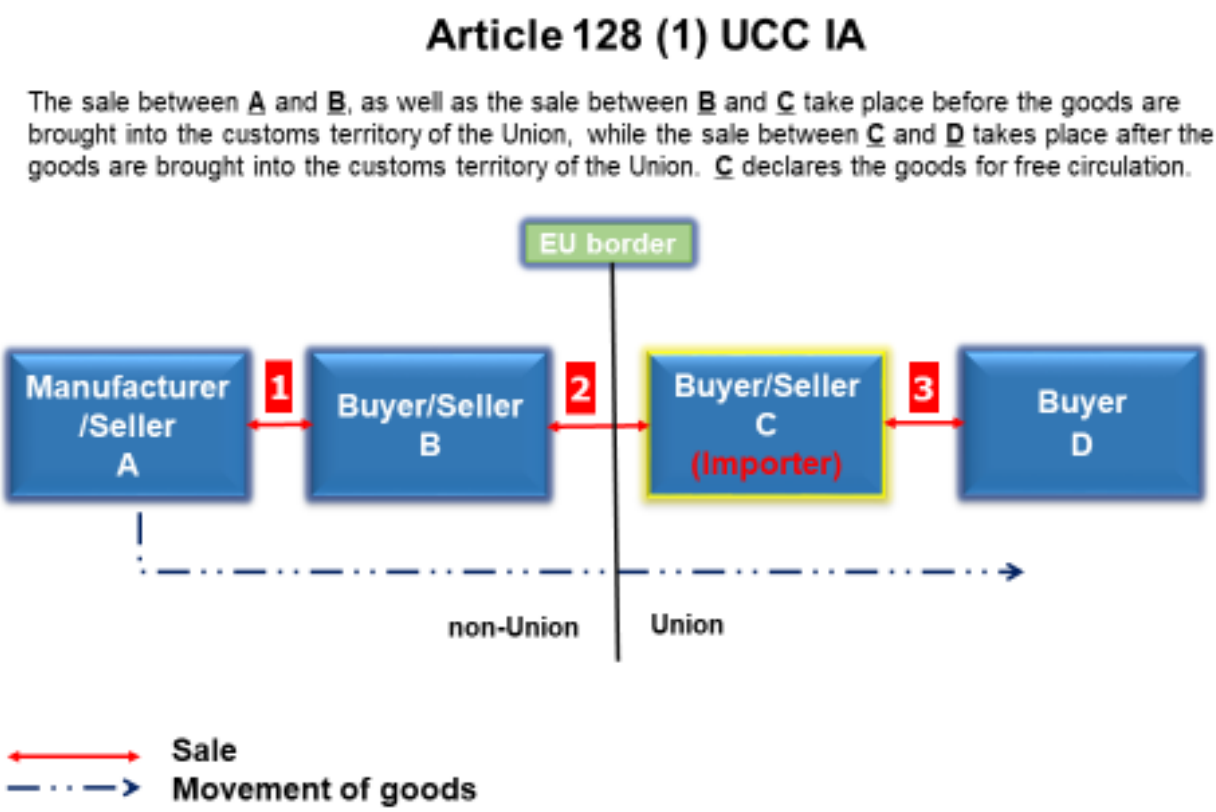
EXAMPLE 2



The sale occurring immediately before the goods were brought into the customs territory of the Union is the sale concluded between **B** and **C**. This sale is the sale for export to the customs territory of the Union and shall be used in order to determine the customs value under the transaction value method as defined in Article 70 (1) UCC.

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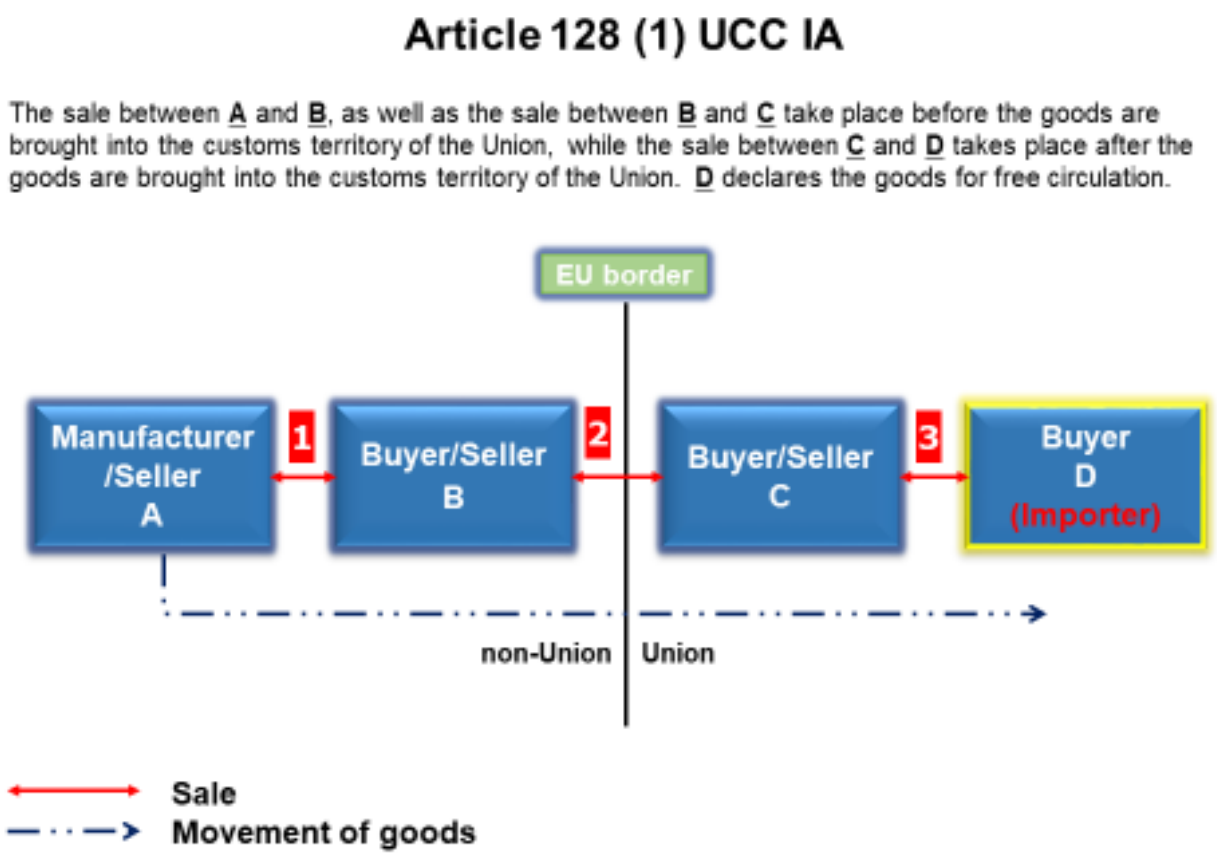
EXAMPLE 3.a



The sale occurring immediately before the goods were brought into the customs territory of the Union is the sale concluded between **B** and **C**. This sale is the sale for export to the customs territory of the Union and shall be used in order to determine the customs value under the transaction value method as defined in Article 70 (1) UCC.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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EXAMPLE 3.b



The sale occurring immediately before the goods were brought into the customs territory of the Union is the sale concluded between **B** and **C**. This sale is the sale for export to the customs territory of the Union and shall be used in order to determine the customs value under the transaction value method as defined in Article 70 (1) UCC.

However, the possibility to use the transaction value method depends on the accessibility of the importer (**D**) to an invoice, which refers to the sale transaction concluded between **B** and **C** (Article 145 UCC IA in conjunction with Article 163 (1) UCC). When the importer does not have access to this invoice, the transaction value method is not applicable.

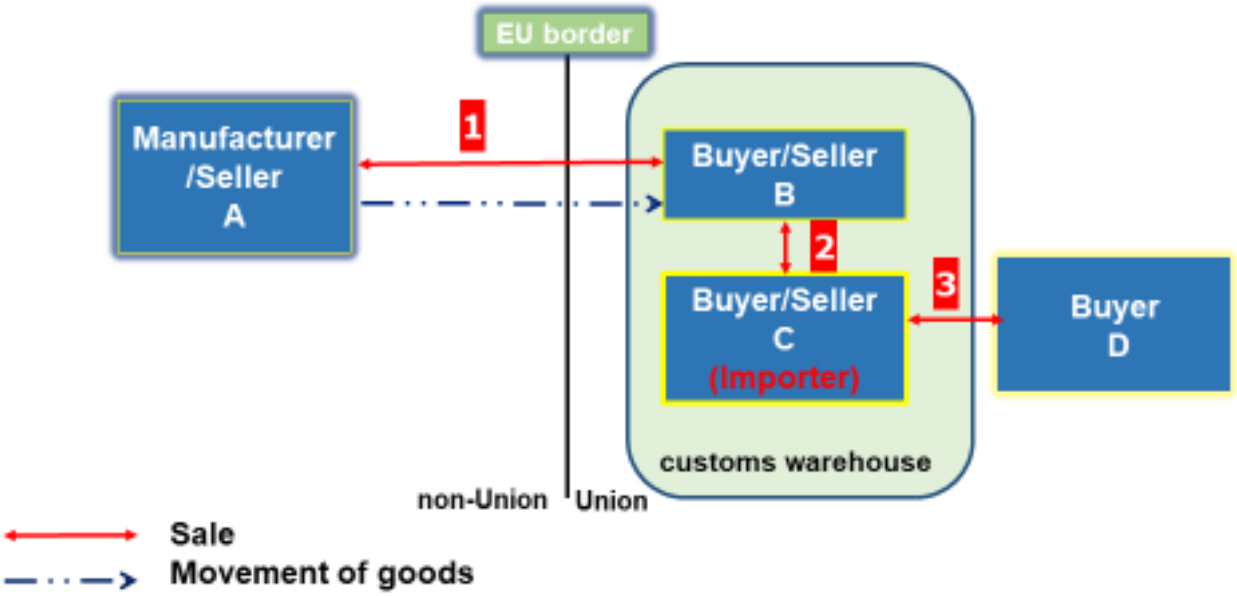
*N.B. the only difference between Example 3.a and 3.b is who acts as importer (in the Example 3.a the importer is **C**, in Example 3.b the importer is **D**).*

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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EXAMPLE 4.a

Article 128 (1) UCC IA

A sells the goods to B before the goods are brought into the customs territory of the Union. The goods are delivered directly from A to the Union, where B stores them in a customs warehouse. While the goods are stored in the customs warehouse B sells them to C. Then C sells the goods to D. C declares the goods for free circulation.

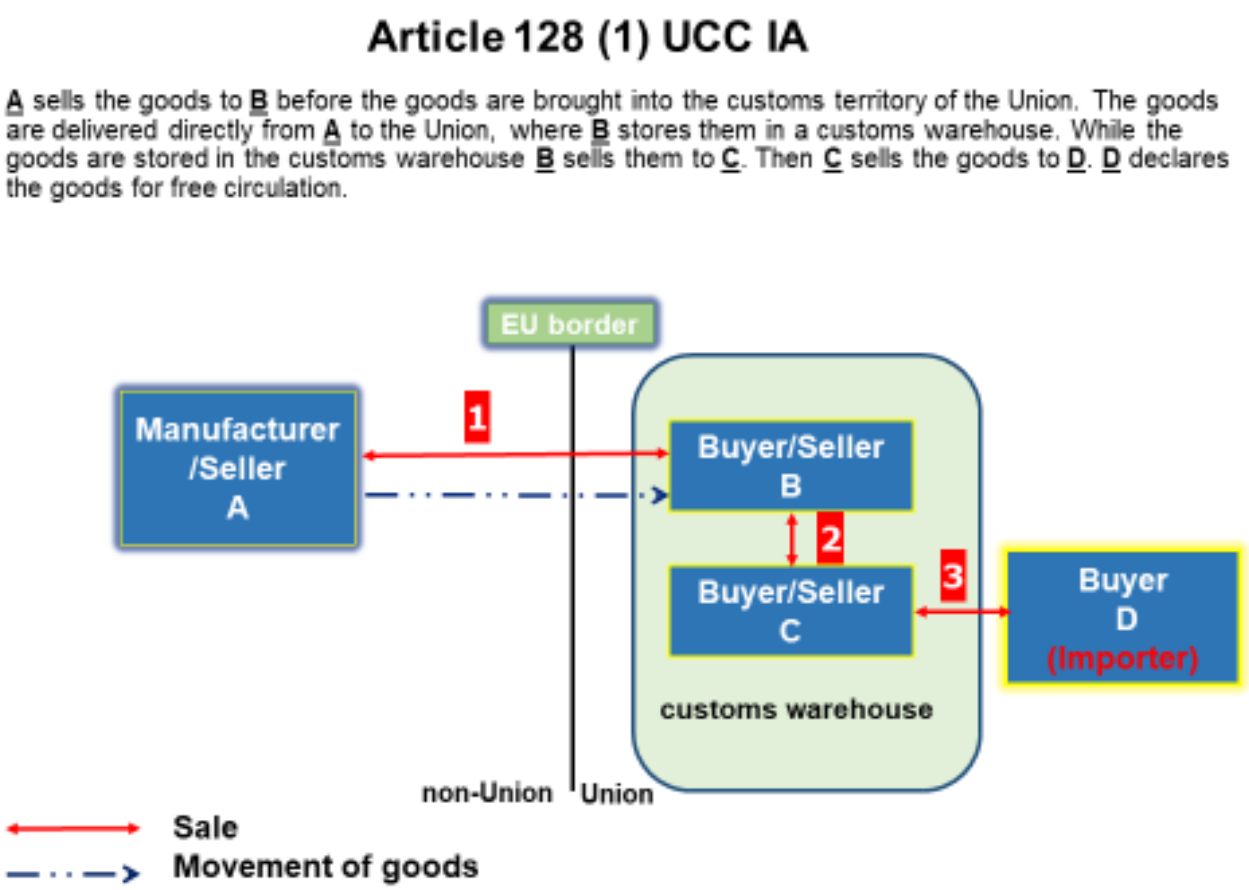


The sale occurring immediately before the goods were brought into the customs territory of the Union is the sale concluded between **A** and **B**. This sale is the sale for export to the customs territory of the Union and shall be used in order to determine the customs value under the transaction value method as defined in Article 70 (1) UCC.

However, the possibility to use the transaction value method depends on the accessibility of the importer (**C**) to an invoice, which refers to the sale transaction concluded between **A** and **B** (Article 145 UCC IA in conjunction with Article 163 (1) UCC). When **C** does not have access to this invoice, the transaction value method is not applicable.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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EXAMPLE 4.b



The sale occurring immediately before the goods were brought into the customs territory of the Union is the sale concluded between **A** and **B**. This sale is the sale for export to the customs territory of the Union and shall be used in order to determine the customs value under the transaction value method as defined in Article 70 (1) UCC.

However, the possibility to use the transaction value method depends on the accessibility of the importer (**D**) to an invoice, which refers to the sale transaction concluded between **A** and **B** (Article 145 UCC IA in conjunction with Article 163 (1) UCC). When **D** does not have access to this invoice, the transaction value method is not applicable.

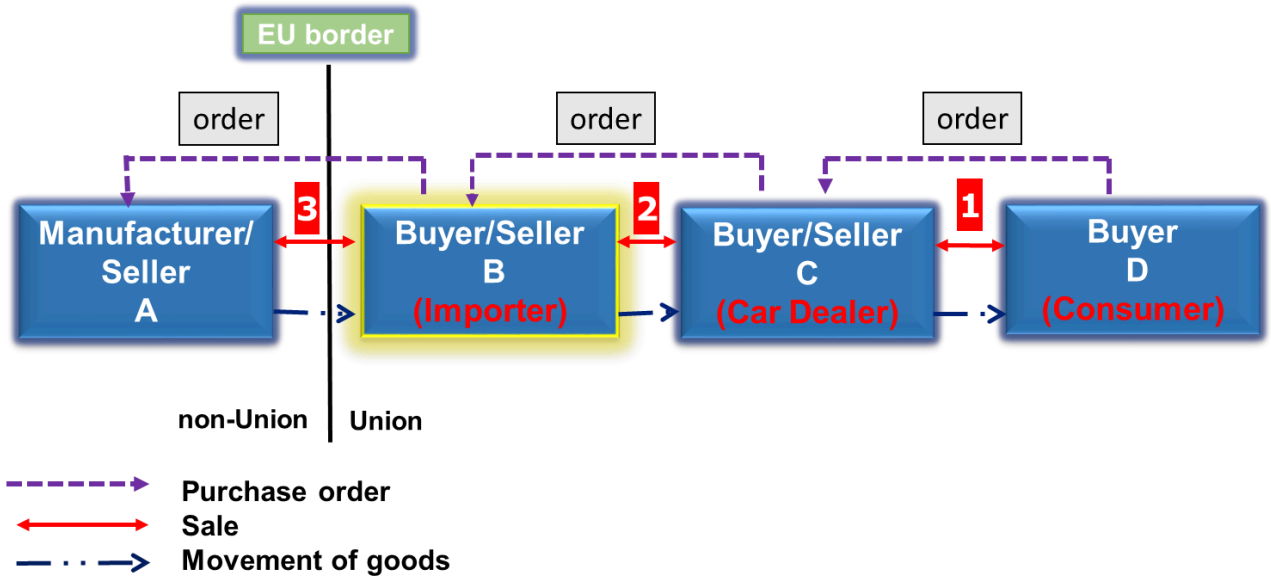
*N.B. the only difference between Example 4.a and 4.b is who acts as importer (in the Example 4.a the importer is **C**, in Example 4.b the importer is **D**).*

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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EXAMPLE 5

Article 128 (1) UCC IA

This is an example of a succession of orders followed by the corresponding acceptance of such orders, which leads to a succession of sales, starting from the EU consumer (Buyer **D**), through the car dealer (Buyer **C**), up to the importer (Buyer **B**). The sales transactions take place before the goods are brought into the customs territory of the Union. The sale concluded between **B** and **A** is the sale occurring immediately before the goods were brought into the customs territory of the Union. **B** declares the goods for free circulation.

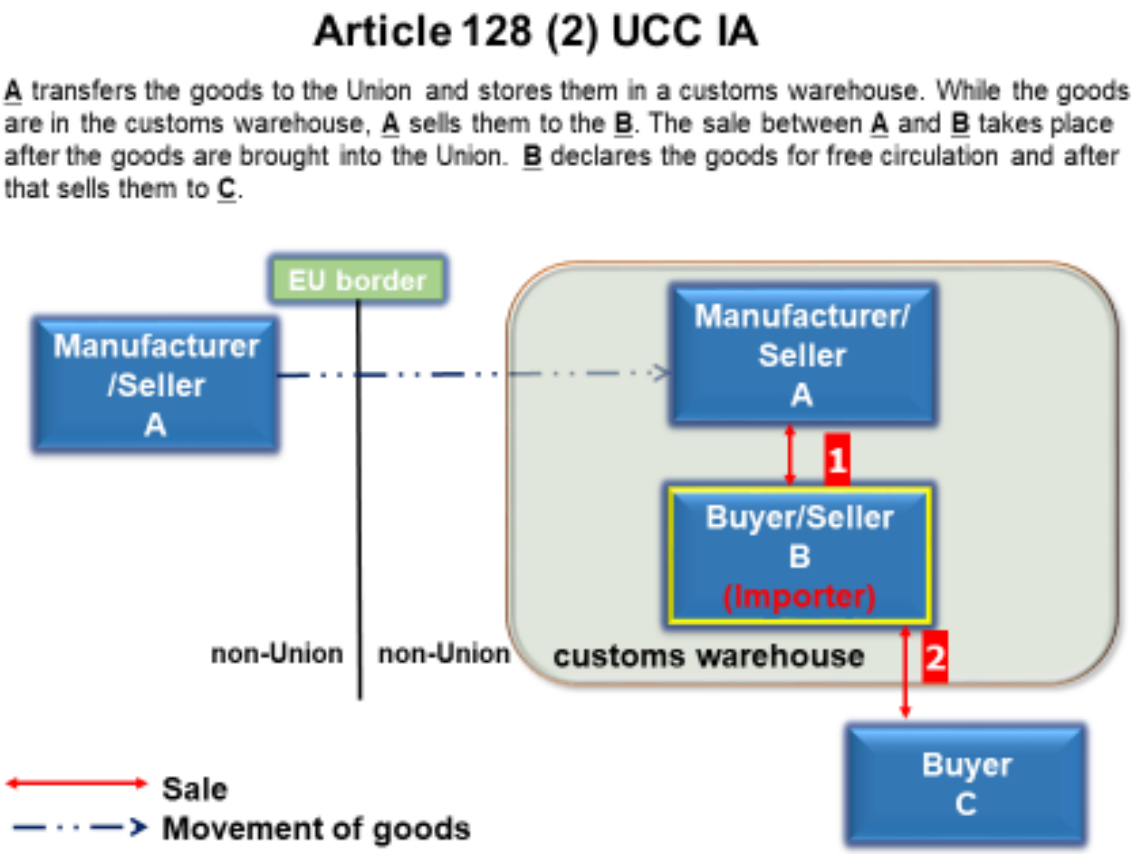


This is an example of a succession of orders followed by the corresponding acceptance of such orders, which leads to a succession of sales (see more on purchase orders in section 2.1, paragraph 10 above).

In the presented example the sale occurring immediately before the goods were brought into the customs territory of the Union is the sale concluded between **A** and **B**. The sale involved an actual transfer of the goods across the Union border. This sale is the sale for export to the customs territory of the Union and shall be used in order to determine the customs value under the transaction value method as defined in Article 70 (1) UCC.

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EXAMPLE 6



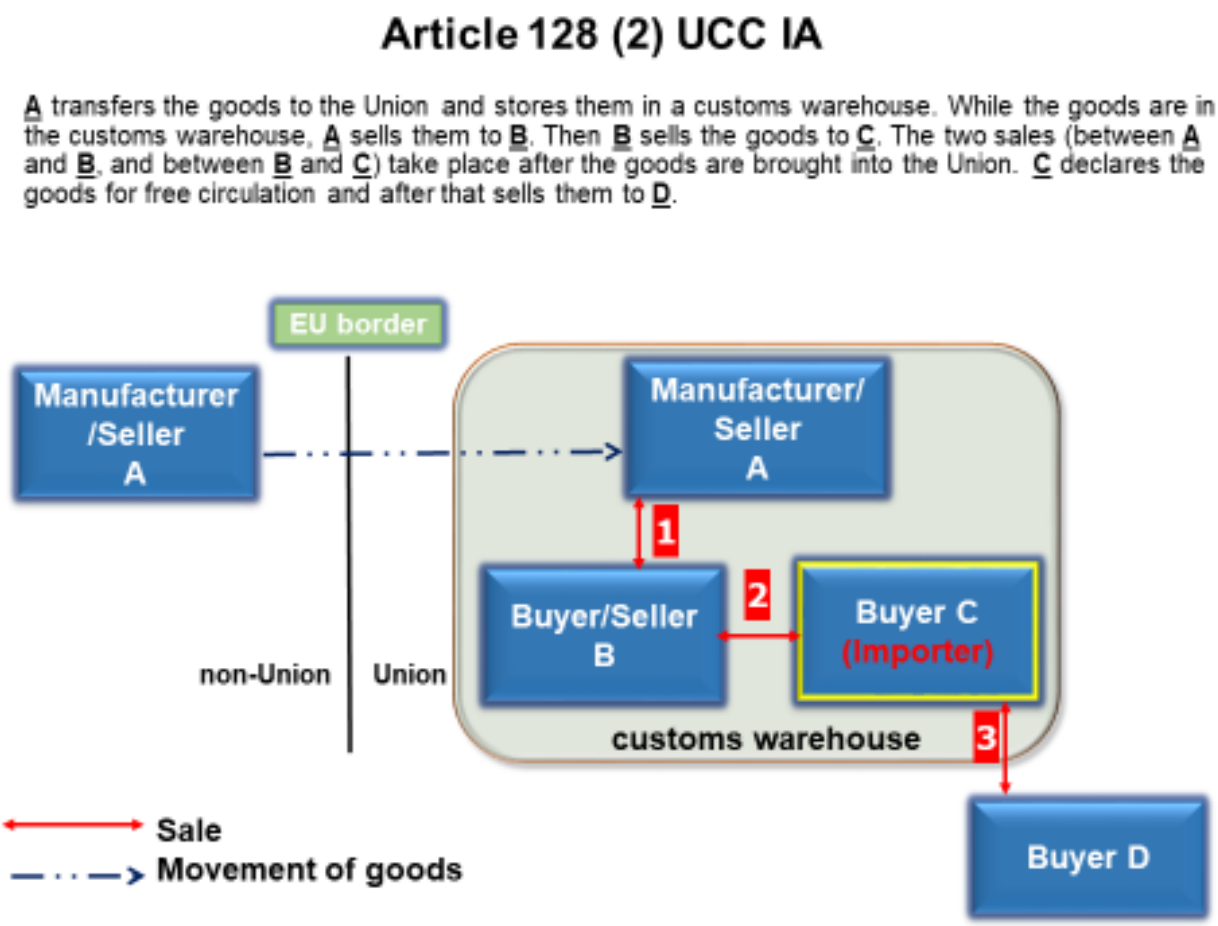
There is no sale occurring immediately before the goods were brought into the Union. Therefore the provisions of Article 128 (1) UCC IA are not applicable.

However, while placed under the customs warehousing procedure, the imported goods are subject of a sale concluded between **A** and **B**.

Taking into account that the provisions of paragraph 2 of the Article 128 UCC IA cannot be applied in isolation from the provisions of paragraph 1 of that Article, the sale concluded between **A** and **B** shall be used to determine the customs value under the transaction value method as defined in Article 70 (1) UCC.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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EXAMPLE 7



There is no sale occurring immediately before the goods were brought into the Union. Therefore the provisions of Article 128 (1) UCC IA are not applicable.

However, while placed under the customs warehousing procedure, the imported goods were subject of two sales: a sale concluded between **A** and **B** and a sale concluded between **B** and **C**.

Taking into account that the provisions of paragraph 2 of the Article 128 UCC IA cannot be applied in isolation from the provisions of paragraph 1 of that Article, the sale concluded between **A** and **B** shall be used to determine the customs value under the transaction value method as defined in Article 70 (1) UCC. Otherwise said, the sale that took place closest to the moment of the introduction of the goods into the customs territory of the Union is the relevant sale for declaring the customs value under the transaction value method.

However, the possibility to use the transaction value method depends on the accessibility of the importer (**C**) to an invoice, which refers to the sale transaction concluded between **A** and **B** (Article 145 UCC IA in conjunction with Article 163 (1) UCC). When **C** does not have access to this invoice, the transaction value method is not applicable.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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2.4 Transitional Measure in force until 31 December 2017

Article 347 UCC IA

1. *The transaction value of the goods may be determined on the basis of a sale occurring before the sale referred to in Article 128 (1) of this Regulation where the person on whose behalf the declaration is lodged is bound by a contract concluded prior to 18 January 2016.*

1. Article 347 UCC IA introduced a temporary measure, which allowed importers to take into account (honour) their bona fide contracts in place at the date of 18 January 2016 (time of entry into force of the new Regulation) and to provide them with reasonable time to adapt, where necessary, their relevant trade patterns. The provisions were applicable until 31 December 2017.

2. Even if Art. 347 UCC IA were applicable until 31 December 2017, there still may be cases concerning the application of the Article that are a subject of customs proceedings or judicial proceedings. In such situations, the customs authorities or the national administrative courts will have to examine facts and circumstances of a given case in the light of the said provisions.
3. As a result of this temporary measure, the importer was allowed to use a sale other than the sale indicated by Article 128(1) UCC IA - including for example, an "earlier" sale (a sale occurring before the sale specified in Article 128(1) UCC IA) - where the economic operator was constrained or bound in this respect by any contract concluded before the entry into force of the new legislation.
4. If such contract assumed the use of a specific sale (including an earlier sale) which, under the previous legislation[11] would have been considered eligible as sale for export, then the same sale could still be used, provided that the contract remained in force, until 31 December 2017.
5. The reference to a "relevant contract" was not intended to be restricted to a sales contract between buyer and seller: such a contract might be concluded between parties such as between the buyer of the goods and parties with whom this buyer had forward contractual commitments and engagements. Economic operators were allowed "legitimate expectations" in relation to contractual arrangements in this regard.
6. No specific conditions were set out in relation to the form or structure of the contract in question. As a consequence, this contract needed not relate exclusively to a product, a precise delivery date, quantity and a purchase price. Therefore, so-called "framework contracts" might be covered by this provision.

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[11] Article 147 (1) of the Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

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Section 3 – Royalties and licence fees

Article 71 UCC and Article 136 UCC IA

Article 71 UCC

Elements of the transaction value

1. In determining the customs value under Article 70, the price actually paid or payable for the imported goods shall be supplemented by:

….

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

This provision is implemented by Article 136 UCC IA

1. Article 136 UCC IA contains some new provisions which are relatively minor, and for the most part these do not go much further than to simply re-state some basic and self-evident aspects of the major rules in the UCC. The more significant changes relate to the fact that some rules that were found in the CCIP are no longer provided in the UCC legal package.

3.1 Royalties and Licence Fees

1. Imported goods often incorporate elements (e.g., intellectual property rights) that are compensated for (paid for) by means of *payments which are described as royalties or licence fees*.

2. Article 71 UCC recognises that these payments are part of the customs value of goods. Where such payments are already included in the price of the goods, then such value is automatically included in the customs value.

3. Article 71 UCC also provides that, where the value of such elements is *not included* in the price of the goods, then the inclusion of such payments in the customs value is foreseen, in terms of an adjustment of the price of the goods.

4. Therefore, in accordance with Article 71 UCC, payments to use the rights in question (i.e., intangible property) are to be taken into consideration when the customs value of the imported goods is determined.

5. There is an implicit recognition that the commercial practices and the legal framework related to intellectual property rights, royalties and licence

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payments, are relevant and applicable. However, EU customs legislation does not provide a definition of royalties and licence fees[12].

3.2 Scope

1. A general definition of "royalties and licence fees" can be found in Article 12(2) of the OECD Model Tax Convention on Income and on Capital (2017 Edition), as follows:

   "payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience".[13]

2. The above definition is useful[14] and indicates that royalties and licence fees are payments for a range of rights (intangibles). The UCC framework does not distinguish between the various rights. Therefore, royalties and licence fees payments for the right to use, for example, a trade mark are no longer the subject of specific provisions, but fall under the general provisions of Article 71 UCC and 136 UCC IA.

3. The scope of licensing arrangements are not addressed in valuation rules, as these come under the relevant commercial contracts. However, typical examples include: the manufacture and/or sale for export of imported goods (incorporating, e.g., patents, designs, models and manufacturing know-how, trade marks), the use or resale of imported goods (in particular, copyright, manufacturing processes inseparably embodied in the imported goods).

3.3 Contracts and Licensing

1. When royalties and licence fees are payable, the arrangements are often set out in a separate formal written contract or agreement – usually defined as "licence agreement" - which specifies in detail the licensed product, the nature of the rights assigned and know-how provided, the responsibilities of the licensor and the licensee, the methods of calculation and payment of the royalties or licence fees, the legal consequences of their non-payment, etc.

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12 Conversely, the WTO Valuation Agreement does not set out the scope of royalties or licence fees either.

13 https://www.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version_g2g972ee-en

14 This definition was included in the previous legislation (Article 157 Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code).

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2. Examination of the licence agreement will provide sufficient information on the relevance of the royalty or licence fee to the customs value of goods imported. However, it is also necessary to take into account the terms of the sale contract and the link which may exist between the sales contract and the licence agreement.

3. In most cases, the contract of sale for the goods does not explicitly mention that a payment for royalties or licence fees has to be made for the goods.

4. Article 71(1)(c) UCC states that royalties or licence fees must be added to the price paid or payable when:
   - they are not included in the price paid or payable;
   - they are related to the goods being valued; and
   - the buyer must pay them, either directly or indirectly, as a condition of sale of the goods being valued.

3.4 Related to the goods being valued

1. Article 136(1) UCC IA states that royalties or licence fees are related to the imported goods where, in particular, *the rights transferred under the licence or royalties agreement are embodied in the goods*.

2. A direct link to the imported goods is particularly clear where the imported goods are themselves the subject of the licence agreement (i.e. if the imported goods incorporate the trade mark for which the licence fee is paid, this must be considered as related to the imported goods). The same link may also exist where the licensed goods are ingredients or components of the imported goods.

3.5 Existing guidance

1. In order to establish whether a royalty relates to the goods to be valued, the key issue is to determine what the licensee receives in return for the payment. For instance, "know-how" provided under a licence agreement will often involve the supply of designs, recipes, formulae and basic instructions as to the use of the licensed product.

2. Where such know-how applies to the imported goods, any royalty or licence fee payment will therefore need to be considered for inclusion in the customs value.

3. A licence agreement (for example in the area of "franchising") sometimes involves the supply of services such as the training of the licensee's staff in the manufacture of the licensed product or in the use of machinery/plant. Technical assistance in the areas of management, administration, marketing, accounting, etc. may also be involved. In such cases the royalty or licence fee payment for those services would not be eligible for inclusion in the customs value.

4. The way the amount of royalties paid is calculated is not a decisive factor for the determination of their inclusion in the customs value (see the last sentence of Article 136 (1) UCC IA).

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Example:

in the case of an imported component or ingredient of the licensed product, or in the case of imported production machinery or plant, a royalty payment based on the realisation of a sale of the licensed product may relate wholly, partially or not at all to the imported goods.

3.6 Condition of sale of the imported goods

1. Article 136 (4) UCC IA states that royalties and licence *fees are considered to be paid as a condition of sale for the imported goods* if

   (a) the seller or a person related to the seller requires the buyer to make this payment, or
   (b) the payment is made to satisfy an obligation of the seller, or
   (c) the goods cannot be sold to, or purchased by the buyer without payment of the royalties or licence fees.

2. The criterion[15] applicable is whether the seller can sell or whether the buyer can buy the goods without the payment of a royalty or licence fee. The condition may be explicit or implicit. In some cases it will be specified in the licence agreement whether the sale of the imported goods is conditional upon payment of a royalty or licence fee. It is not, however, required that it should be so stipulated.

3. A further indication is also now provided in Article 136 (4)(c) UCC IA, which refers to the payment of royalties to the licensor. This is not a major clarification, it simply makes explicit the fact that royalties are, by definition, paid to the owner (licensor) of the licenced rights and are usually paid by the buyer of the goods.[16]

4. The rule indicates that condition of sale provisions are based on commitments entered into by, and binding on, the buyer or the seller. This indicates that the "condition of sale" criterion refers not only to conditions imposed by or on the seller, but also on the buyer, and this is a useful clarification.

5. This also reflects the wording of Article 71(1)(c) UCC which refers to:
   "*royalties and licence fees related to the goods being valued that the buyer must pay*", **as a condition of sale of the goods** being valued.

6. Therefore, the underlying *condition of sale test* will continue to play a role.

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[15] Largely reflecting current guidance (see for example Commentary No 3: Incidence of royalties and licence fees in the customs value, Compendium of Customs Valuation Texts, UCC - Guidance documents - European Commission (europa.eu)

[16] Article 136 (4) (c) also reflects Commentary No 25.1 of the Technical Committee on Customs Valuation in this regard (see point 7 of Commentary No 25.1).

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3.7 Royalties paid to third parties

1. Royalties may be paid to the seller or to a third party. Royalties paid to a third party may arise where the payment to the third party is made, for example, to satisfy an obligation of the seller.

2. A third party may be the owner or licensor of the relevant rights. In such cases, the relevance (and therefore the application) of the "condition of sale" test may not be directly applicable, because the commercial circumstances are outside of the circumstances governed by the "condition of sale" rule in the first place.

3. However, it is advisable to apply the same basic approach and that is what is set out in the UCC IA.

4. Thus, this clause reflects basic elements of the sale of goods, including the transfer of title and all rights in the goods, within the contractual framework in force. It is not intended that customs should seek to determine whether a seller can sell, or a buyer can buy the goods, in terms of independent or new criteria, without taking into account contractual provisions (including royalty contracts). Therefore, priority should be given to the commercial circumstances and the relevant contractual arrangements.

5. All the circumstances surrounding the sale (and the import of the goods) should be examined if required. This includes, in particular, possible links between sale and licensing agreements and other relevant information.

6. Each individual situation must be analysed based on all facts surrounding the sale and import of the goods, including contractual and legal obligation of the parties, and other pertinent information.

7. Persons to whom royalties or licence fees are paid are not relevant, in terms of the place of residence of such persons. EU legislation has always made this clear (see Article 136 (5) UCC IA).

8. Finally, Article 136 UCC IA does not indicate an assumption that royalties and licence fees are *automatically includible* in the customs value.

9. There can be various situations where the payment of royalties or licence fees is considered a condition of sale when paid to an unrelated third party.

10. However*, Article 136 UCC IA does not state* that the basic conditions (i.e., *related to the goods* and a *condition of sale*) are assumed to be met, and that royalties and licence fees are therefore includible in the customs value *unless the declarant demonstrates the contrary*. Customs will examine all commercial contracts or reach conclusions on contractual intentions or obligations, where necessary.

3.8 International Guidance

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1. There is substantial guidance available from the WCO Technical Committee on Customs Valuation. Notably, WCO Commentary N° 25.1 provides for a non-exhaustive list of factors that can be taken into account in determining whether the payment of an amount for royalties or licence fees constitutes a condition of sale of the imported goods.

3.9 Practical examples

Hereafter, three different cases are examined, and an approach to the treatment of each case is put forward.

CASE 1

Facts

The license agreement obliges the licensee to conclude a manufacturing agreement with the manufacturer of the licensed products to deliver them exclusively to the licensee. The manufacturer is not related to the licensor in the meaning of Article 127 UCC IA. The license agreement requires the licensee to use a template for such manufacturing agreement or to instruct manufacturers of the licensed products to produce these goods only for the licensee and supply them only to him. In the cases in question the products are neither created nor developed by the licensor.

The rationale of such approach may be to ensure that the licensed goods are only supplied to the licensee, so that he can benefit from the exclusive trade mark rights within a given territory. This protects, on the one hand, the trade mark and, on the other hand, it is ensured that the licensor receives the royalty or license fee from the licensee after the resale of the products.

In some cases the licensor does not explicitly indicate or influence the choice of the manufacturer. The manufacturer is therefore chosen by the licensee and signs the manufacturing agreement, which may contain the clause that the manufacturer only produces for the licensee. There are no further links or interdependencies between the license agreement and the sale contract.

The question is whether in such cases the payments for the license fees are to be considered as made as a condition of sale, in the meaning of Article 136 (4)(c) UCC IA, and therefore included in the customs value of the imported goods.

Analysis and conclusion

In the cases described above, the seller is obliged by virtue of a manufacturing agreement to sell the goods only to licensees – who in turn have to pay royalties or license fees to the licensor pursuant to the license agreement.

As a consequence, therefore, the goods covered by the license agreement may be sold by the manufacturer/seller only to licensees designated by the licensor.

Moreover, the obligation to conclude a manufacturing agreement (or the obligation for the exclusive delivery to the licensees) is set up by the licensor, who is therefore

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guaranteed to receive royalties and license fees for all the goods supplied by the manufacturer.

The licensee/buyer cannot purchase the goods in question without payment of the royalties or license fees to the licensor. It seems appropriate to conclude that, for the case described, the payment for the license fees/royalty is made as a condition of sale in accordance with Article 136 (4)(c) UCC IA and must therefore be included in the customs value in accordance with Article 71 of the Code .

CASE 2

Facts

A buying agent – related both with the licensor as owner of trade mark/property right and with the licensee - is involved in the import of licensed goods. The producer/seller is not related with any of the other parties (licensor, buyer/licensee, buying agent).

The buying agent is in charge of choosing for the buyer/licensee suitable producers/sellers of the goods. He also carries out general tasks of a buying agent in the context of purchases. The licensor, as the owner of trade mark/property right, will ensure that the producer/seller of the licensed goods sells only to buyers – the licensees - designated by him, which are paying royalties for these goods.

In this context, the buying agent is able to intervene in the production process and/or the sale by imposing limits on sales volume, stipulating selling prices etc.

Are the payments for the license fees, made by the buyer/licensee, to be considered as made as a condition of sale, in the meaning of Article 136(4)(c) UCC IA, and therefore included in the customs value of the imported goods.

Analysis and conclusion

The situation described above is in principle identical to that of case 1. Here, it is the buying agent (related both to the licensor and the buyer/licensee) who, in its functions of buying agent, ensures that the goods are sold by the seller only to licensees, thus guaranteeing the licensor on the payment of royalties for all goods sold.

Therefore, it is appropriate to conclude that the payment for the license fees/royalty is made as a condition of sale in accordance with Article 136(4)(c) UCC IA and these payments must therefore be included in the customs value in accordance with Article 71 of the Code.

CASE 3

Facts

The buyer provides the producer/seller (not related with the licensor in the meaning of Article 127 UCC IA) with free of charge services in order to produce the imported goods. This concerns in particular design and manufacturing know-how. Without these services the producer/seller would not be able to produce and supply the imported goods.

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The above-mentioned free of charge services were previously provided by the licensor to the licensee/buyer, who paid in turn royalties to the licensor. Therefore the payment of a royalty is a requirement for the production and delivery of the imported goods to the licensee/buyer. Often, the buyer is also obligated to pay a royalty to the licensor to obtain the right to use a trade mark on the imported goods.

Analysis and conclusion

The production factors which are provided free of charge to the producer/seller of the imported goods for their manufacturing (for example design or manufacturing know-how) must be assessed in the light of the criteria in Article 71(1)(b) of the UCC ("assists"), even if the availability of these production factors is depending on the payment of royalties.[17]

Should the license agreement also impose on the buyer the obligation to pay royalties for the right to use other forms of intellectual properties paid as a condition of sale of the goods being valued (e.g. trade marks), Article 71(1)(c) of the UCC in conjunction with Article 136(4)(c) UCC IA would be applicable.

[17] See also Conclusion No 30: Application of Articles 71(1)(b) and 71(1)(c) of the UCC (relationship between assists and royalties; Compendium of Customs Valuation Texts, UCC - Guidance documents - European Commission (europa.eu)

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Commentary No 14: Customs value of hunting trophies

I. Background

1. In their daily practice, customs officers may encounter situations where a subject of importation is a hunting trophy[18]. Typically, private persons who have hunted animals themselves (the hunters) bring such goods into the customs territory of the EU and place them under the release for free circulation procedure.

2. Normally the hunts are organized by professional hunting farms, which offer (usually through Internet) the hunters a package of services connected with these kind of activities. Based on typical offers addressed to potential hunters available in Internet, it may be assumed that a standard package for taking part in a hunt may include accommodation, meals, services of a professional hunter, transport and the supply of a trophy. The price may also include all taxes, licence and permit fees applicable in the country where the hunt takes place.

3. The hunters are also charged with the costs of taxidermy work, dipping and packing trophies, medallion/wooden base, as well as the transportation to a secured facility before trophies' departure to the EU. Usually, suppliers who cooperate with hunting farms to provide such services are invoiced separately from the prices charged by the hunting farms.

4. Legal export/import of such goods is possible only after obtaining certificates/permits (e.g. CITES documents) specified by law in force in both the exporting and importing country. The competent authorities are usually charging fees for the issuance of such documents.

II. Issue at stake

1. Taking into account that hunting trophies are not purchased as such, the transaction value method cannot be applied (Article 70 UCC[19]). Therefore, the customs value of such goods shall be determined in accordance with one of the secondary methods. It seems that the specificity of the goods dictates using the fall-back method for this purpose (Article 74 (3) UCC and its implementing provisions – Article 144 UCC IA[20]).

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18 Usually the head, hide, skin, horns, antlers, teeth of a hunted animal, specifically prepared for preservation by a taxidermist.

19 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

20 Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

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2. The aim of this document is to consider which costs should be taken into account in order to determine the customs value of a hunting trophy under the fall-back method.

III. Relevant regulatory provisions:

Article 74 UCC
Article 144 UCC IA

IV. Preliminary observations

1. In order to decide about the treatment of the mentioned costs for the customs valuation purposes it is necessary to consider their nature.

2. Based on generally available information, it is considered that we may talk about different types of hunting fees. A distinction should be made between a hunting permit fee and a trophy fee.

Hunting permit fee

3. In order to hunt, the hunter has to obtain **a hunting permit** from the country where a hunt will take place, under the relevant national provisions.

4. The fee for the hunting permit has to be paid regardless of whether or not the hunt will be successful for the hunter. Therefore, it should be assumed that a direct link between the fee and a hunting trophy does not exist.

Trophy fee

5. The trophy fee is a payment made by a hunter for a raw trophy regardless of whether the hunter decides to retain it or not. Hunting farms (outfitters) may also require hunters to pay trophy fees for wounded animals.[21] The level of trophy fees is determined by the market conditions and differs from one hunting outfitter to another. The amount of the fee depends on the number and species of animal to be hunted.

6. There is a direct link between the fee and the hunting trophy to be imported into the customs territory of the Union. The fee has to be paid when an animal is hunted

[21] Based on the Interpretation Note to Value-Added Tax Act No. 89 of 1991: No 81 (issue 2) dated 9 April 2015 by the South African Revenue Service.

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or wounded. Without the payment of the fee, the importer (hunter) would not be allowed to take the possession of the raw trophy.

Fees for CITES certificates, export/import permissions and similar documents

7. The legal movement of the hunting trophies across borders might be conditioned by the existence of export/import permissions and CITES certificates issued by, respectively, the competent authorities in the country of exportation and in the EU.[22] Although these documents are related to specific items, in the same time they have to be obtained in every case identified by the legislation in force in order to meet legal requirements related to international trade in hunting trophies. The objectives of these specific regulations are different from an objective of the provisions dedicated to the determination of customs value, i.e. establishing a fair, uniform and neutral system of customs valuation of goods for the application of the Common Customs Tariff and non-tariff measures.[23]

8. Normally, the competent authorities of the country of exportation and of the country of importation levy fees for the issuance of such documents.

9. There is no legal basis to consider such fees as costs related to the transportation of the goods being valued, because the documents are not required for transporting the goods from the country of exportation to the customs territory of the Union. [24]

10. The same approach may be used for the costs of the preparation of an export customs declaration in the country of exportation for the purposes of the determination of the customs value of the hunting trophies.

11. For the above-presented reasons, such fees/costs should not form part of the customs value for hunting trophies based on the fall-back method.

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[22] All relevant legal acts and guidelines may be found on the following website: http://ec.europa.eu/environment/cites/legislation_en.htm#chapter9

[23] See also the ruling of the ECJ issued in the case 7/83 (Ospig Textilgesellschaft KG V. Ahlers).

[24] Two instruments issued by the CCC - Valuation Section may be useful to consider a treatment of different costs associated with the imported goods for customs valuation purposes, even if the instruments do not refer directly to the costs of the issuance of CITES certificates or similar documents: *Conclusion 33: Treatment of certain costs for weighting of containers* and *Conclusion 27: Treatment for customs valuation purposes of fees related to Entry Summary Declarations,* Compendium of Customs Valuation Texts.

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V. Conclusion

1. The hierarchy of the alternative methods (at the request of an importer the order of application of points (c) and (d) of Article 74(1) UCC shall be reversed) should be also respected in relation to the determination of customs value for hunting trophies. However, taking into account the nature of the goods, the fall-back method as referred to in Article 74(3) UCC and its implementing provisions (Article 144 UCC IA) will be applicable.

2. Taking into account the nature of available information on the costs of the obtaining a hunting trophy, it may be considered that the customs value of such consignment will be determined on the basis of the fall-back method with the flexible application of the computed value method (Article 144(1) UCC IA). If not possible, the customs value of the hunting trophy is to be determined on the basis of information available in the Union by using *other appropriate methods* (Article 144(2) UCC IA).

3. As it was mentioned in point I of the document, many offers coming from hunting outfitters are available in Internet. This source of information may be used when the fall-back method is applicable if only the customs authorities are satisfied themselves on its truthfulness and accuracy.[25]

4. Another source of information used in cases in which the customs value of the hunting trophy is determined under the fall-back method may be price information provided by national associations of hunters, under the same conditions as mentioned in the paragraph above in what concerns truthfulness and accuracy.

5. In order to determine the customs value of a hunting trophy under the fall-back method all costs directly connected with the obtaining of a hunting trophy and made it prepared for export to the customs territory of the Union should be taken into account, mainly:
   - trophy fee,
   - field preparation of the trophy,
   - costs of dip and pack and taxidermy services,
   - costs of medallion/wooden base,
   - transportation costs to a secured facility before the trophy's departure to the customs territory of the EU.

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[25] *The Advisory Opinion 12.3 Use of Data from Foreign Sources in Applying Article 7* issued by the Technical Committee on Customs Valuation.

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6. The customs value of the hunting trophy based on the fall-back method should also reflect the costs of its transportation and insurance, as well as loading and handling charges associated with its transportation up to the place where the consignment was brought into the customs territory of the Union (Article 74 (3) UCC, Article 71 (1) (e) UCC). Other costs such as the hunter's accommodation, meals and travelling costs should not be reflected in the customs value.

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Commentary No 15: Valuation of waste

I. General observations

1. Usually, waste is subject of importation into the customs territory of the Union as[26]:
   a) waste containing recoverable materials;
   b) waste to be further processed;
   c) waste to be destroyed/neutralised.

2. The importation of waste into the customs territory of the Union falls under the general rules on the determination of customs value applicable in the Union referred to in Articles 69 – 76 UCC[27] and Articles 127-146 UCC IA.[28] Nevertheless, the importation of waste into the Union is also subject to special legislation[29] that may influence in each particular case the elements to consider in determining the customs value of the waste.

3. The waste may be a subject of a sale of goods contract. When such a sale meets all legal requirements mentioned in Article 70 UCC, the price paid or to be paid for the waste is to be used as a basis for the determination of the customs value under the transaction value method (Articles 70, 71 and 72 UCC and their relevant implementing provisions). The waste containing recoverable materials is usually subject to these circumstances - for example scrap iron from a third country, sold for export to the Union under a sale of goods contract and released for free circulation into the Union, to be used as such in the production of steel.

4. The waste to be further processed or reactivated in the customs territory of Union (for example, spent catalysts imported into the Union with the aim to extract and sell the valuable metals contained by them) is usually placed under the inward customs procedure.[30] If the processed products[31] resulting from the waste are released for free circulation in the customs territory of the Union[32], their customs value is to be determined in accordance with the general rules regarding the determination of the customs value.

5. The waste imported into the customs territory of the Union to be destroyed/neutralised (for example, destruction of dangerous waste) is usually not subject of sale for export to the Union as the exporter pays the importer for the destruction services.[33]

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26 See European business statistics compilers' manual for international trade in goods statistics – detailed data – 2023 edition - Products Manuals and Guidelines - Eurostat (europa.eu); par. 417 and next.

27 Regulation(EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

28 Commission Implementing Regulation(EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation(EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code

29 https://ec.europa.eu/environment/waste/legislation/index.htm

30 Articles 256-258 UCC

31 Article 5(30) UCC

32 Article 215(1) UCC in conjunction with Article 85(1) UCC

33 See also point VII of *the Advisory Opinion 1.1 The concept of "sale" in the Agreement* issued by the WCO Technical Committee on Customs Valuation

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II. Determination of the customs value of the imported waste and processed products resulting from waste under the secondary methods

1. In some of cases encountered in practice, and due to the absence of a sale for export, the customs value for waste imported into the customs territory of the Union would be determined under one of the secondary methods.

2. In such cases, the hierarchy of the secondary methods should be respected in relation to the determination of customs value for waste (at the request of an importer the order of application of points (c) and (d) of Article 74(2) UCC shall be reversed).

3. The choice of the proper secondary method will depend on the availability of information necessary to determine the customs value of the goods.

Transaction value of identical or similar goods (Article 74(2) (a) and (b) UCC and Article 141 UCC IA)

4. To apply the transaction value of identical/similar goods method, it is necessary to identify identical/similar goods sold for export to the customs territory of the Union and exported at or about the same time as the goods being valued, which would meet requirements of the legal definitions of *identical/similar goods* (Article 1(2), subparagraphs (4) and (14) UCC IA).

5. Nevertheless, the specificity of waste (i.e. its diversity of composition, occurrence in a form mixed with non-recoverable elements, etc.) makes it very difficult or even impossible to use the transaction value of identical/similar goods methods.

Deductive method (Article 74(2)(c) UCC and Article 142 UCC IA)

6. If the customs value cannot be determined based on the above two methods, it may be determined based on the deductive method, as provided in Article 142 UCC IA.

7. The notions *identical/similar goods* and *related parties* referred to in the provisions concerning the deductive method should be understood as presented in Articles 1(2), subparagraphs (4) and (14) and 127 UCC IA respectively.

8. Again, because the specificity of waste as imported items, also the application of the deductive value method is subject to certain limitations. Nevertheless, the method may be used in cases in which the processed products resulting from the imported waste are not subject of sale before they are placed under the release for free circulation procedure. In such cases, the sale price for the processed products obtained when the goods are sold in the customs territory of the Union at the first commercial level to non-related persons may be a starting point for the calculation of a unit price to be used to determine the customs value under the method.

Computed value method (Article 74(2)(d) UCC and Article 143 UCC IA)

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9. The computed value method would not be applicable to determine the customs value for imported waste because the waste is not produced as such.

Fall-back method (Article 74(3) UCC and Article 144 UCC IA)

10. Taking into account the limitations in applying the secondary methods described above, the fall-back method would be used de facto more frequently in determining the customs value for imported waste.

11. According to Article 74(3) UCC, under the fall-back method the customs value "…*shall be determined on the basis of data available in the customs territory of the Union, using reasonable means consistent with the principles and general provisions of all of the following:*
    (a) the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade;
    (b) Article VII of the General Agreement on Tariffs and Trade;
    (c) This Chapter" [Title II, Chapter 3 UCC].

12. There are two alternatives in using the method by: 1) flexible application of the previous methods (Article 144(1) UCC IA) or, when it is not possible, by 2) using "*other appropriate methods",* as per Article 144(2) UCC IA.

    Examples:

    a) The fall-back method may be used in cases in which waste is imported into the customs territory of the Union to be destroyed/neutralised in the territory (e.g. dangerous/hazardous waste), with the exporter paying the importer for this service and without any secondary valuable by-products resulting from it. As the waste is intended strictly for destruction, and the destruction is performed as a service paid by the exporter, the customs value for such waste may be determined therefore on the basis of **a symbolic value**.[34]

    b) The fall-back method may be also used in cases in which the deductive method cannot be applied as such. The case presented in Annex II is an example of such situation.

    c) If the processed goods obtained from waste are commodities (e.g. metals obtained from spent catalysers), the prices quoted on recognised commodity exchange markets in the customs territory of the Union may serve as a starting point to calculate the customs value for the goods under the fall-back method. Such commodity exchange markets are trading platforms where the commodities (e.g. metals) are sold and purchased by traders. Therefore it can be considered that the prices quoted on such commodity exchange markets reflect the value of the commodities in question at a given time.

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[34] See European business statistics compilers' manual for international trade in goods statistics – detailed data – 2023 edition - Products Manuals and Guidelines - Eurostat (europa.eu); par. 422.

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Transportation and insurance costs

13. In accordance with Article 71(1)(e) UCC the costs of its transportation and insurance, as well as loading and handling charges associated with its transportation incurred up to the place where the consignment was brought into the customs territory of the Union shall be included into the customs value based on the transaction value method where necessary. Insofar as the reference is made to the secondary methods concerning the determination of customs value for the imported goods, the provisions of the article are not applicable per se. However, as under the Union customs legislation the customs value of the imported goods is determined on CIF basis, the general principle in terms of the treatment of transportation and insurance costs for the customs valuation purposes, remains relevant whatever valuation method is applied.

Note: This Commentary is supplemented by a **Case Study on the use of the fall-back method on imported waste from fertilisers**

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Case study - Use of the fall-back method on imported waste from fertilisers

I. Background

Economic activities in a free zone

1. Company **X** registered in a Member State (MS) provides forwarding services related to fertilisers to clients of company **Z**, registered in a third country, by carrying out the storage and transhipment of fertilisers in the framework of free zone procedure in the customs territory of the Union.

2. In the examined case, the fertilisers are transported by rail to the free zone. **X** transhipsthe goods onto vessels and then the goods are further transported to final recipients in third countries – **Z**'s clients.

3. **X** is not involved in contractual arrangements between **Z** and its clients in the third countries. The transhipped fertilisers remain in the ownership of **Z**.

4. Waste from fertilisers (various fertilisers which fall on the ground during transhipment, mixed with coal, sawdust and dirt) is a side effect of the activities carried out by **X** in the free zone. Within the terms of an agreement between **X** and **Z**, the waste might be treated at the discretion of **X.**

5. Although the waste does not meet the criteria and standards of the original fertilisers brought into the free zone, it retains, nevertheless, the main characteristics of fertilisers and can be further used in agriculture.

Customs clearance

6. **X** declares the waste from fertilizers for releasing for free circulation into the customs territory of the Union and immediately - after the customs clearance is completed - sells the goods to its subsidiary **Y**, also located in that MS.

7. The price declared at the time of placing the goods under the release for free circulation procedure (16.30 EUR/ton) is the result of the self-made calculation of **X**. According to the statement of the company, the price reflects the direct costs related to the transport and collection of fertilisers, the indirect costs related to the administrative costs, as well as the planned amount of profit.

8. Having purchased the waste from fertilizers, **Y** does not sort, store, pack or process the goods, but removes them immediately from the free zone using its own vehicles, and then sells and delivers them to final buyers (agriculture farms).

Post-release control

9. The customs authorities of the MS performed a post-release control concerning the customs activities carried out by X.

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10. In the framework of the control the customs authorities of the MS established that the resale price for the waste from fertilizer set by Y was substantially higher than the price at which the goods were acquired from X. The significant difference between the declared customs value of the waste from fertilisers declared by X and the price at which Y, the company related to X, sold the goods to the final buyers, immediately after the customs clearance was finalised, triggered reasonable doubts as regards the reliability of the declared customs value.

11. Additionally, the customs authorities of the MS found out that the waste from fertiliser were not a subject of sale for export to the customs territory of the EU. The imported goods were sold just after being released for free circulation. The sale took place between related companies X and Y.

12. There were two reasons to question the declared customs value: one formal – i.e. a lack of sale for export to the customs territory of the Union; and another related to substance – i.e. a significant difference between the declared customs value and the resale price for the waste in the Union.

II. Issue at stake

How should the customs value of the waste from fertilizers be determined, in the context described above?

III. Relevant regulatory provisions:

Articles 70-74 UCC
Articles 140-144 UCC IA

IV. Preliminary observations

1. In the context of post-audit clearance described in the points 9-11 above, at the time of the acceptance of the customs declaration, the goods (waste from fertilisers) were not subject of a sale for export to the customs territory of the Union. **Z** and **X** were not parties of a sale transaction. A legal consequence of this fact was the inapplicability of the transaction value method as referred to in Article 70 UCC in order to determine the customs value of the goods.

2. Consequently, an alternative method of the determination of the customs value had to be used to determine the customs value, as defined in Article 74 UCC and its implementing provisions in UCC IA.

Customs value of identical or similar goods

3. Taking into account that the waste from fertilizers was composed of various fertilisers felt on the ground, with increased moisture content, mixed with impurities of by-products of port operations in variable amounts, identification of identical/similar goods, which would meet requirements of the legal definitions of the two notions (Article 1(4) and (14) UCC IA), was not possible. For that reason, neither the transaction value method of identical goods nor the transaction value method of similar goods were applicable to determine the customs value of the goods.

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Deductive method

4. The deductive method could not be used in order to determine the customs value of the waste from fertilisers, because **X** sold the goods to its subsidiary **Y**. According to Articles 74(2)(c) UCC and 142(4) (b) UCC IA a sale to related person cannot be taken into account for the purposes of determining the customs value under this method.

Computed value method

5. The computed value method could not be used either in this particular case, because the waste did not result from production process (Article 74(2)(d) UCC).

Fall-back method

6. Thus, the customs value of the waste from fertilisers was determined under the fall-back method as referred to in Article 74(3) UCC and its implementing provisions.

7. According to Article 74 (3) UCC, under the fall-back method the customs value *shall be determined on the basis of data available in the customs territory of the Union, using reasonable means consistent with the principles and general provisions of all of the following:*
   (a) the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade;
   (b) Article VII of the General Agreement on Tariffs and Trade;
   (c) This Chapter [Title II, Chapter 3 UCC].

8. There are two alternatives in using the method by: 1) flexible application of the previous methods (Article 144 (1) UCC IA) or, when it is not possible, by 2) using *other appropriate methods,* as per Article 144 (2) UCC IA.

9. The customs value of the goods was established based on information available in the Union (Article 144 (2) UCC IA). The price set by company **Y** when selling the waste from fertilisers to non-related companies was used as a starting point.
   Then the price was adjusted by deducting:
   - additions usually made for profit and general expenses;
   - transport, insurance and associated costs incurred within the customs territory of the Union when the goods were transported to the agriculture farms;
   - customs duties and other charges payable in the customs territory of the Union by reason of the import or sale of the goods.

   The adjustment to the selling price results from the provisions of Article 142(5) UCC IA. These provisions refer to the deductive method and are not applicable under the fall-back method per se. However, in the examined case the price for the waste from fertilisers to a large extent is determined in a way a unit price for the customs valuation purposes is established in the framework of the deductive method. Therefore, when the price for the waste from fertiliser is determined, the legal principle in terms of the adjustments to the unit price applicable under the deductive method is to be applied mutatis mutandis.

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10. By using the above-described methodology the customs authorities of the MS established the customs value of the waste from fertilisers to be 55.25 EUR per tonne.

Note: This case study supplements **Commentary No 15**

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Commentary No 16: Licence fees and royalties – outward processing procedure

I. Background

1. An EU company (Y) imports and then distributes gloves bearing a trademark of another EU company (X). X is the owner of the trademark. The gloves are produced by a company Z located outside the Union.

2. X and Y concluded a **licence agreement** according to which Y (licensee) pays to X (licensor) licence fees for the right to use the trademark, calculated as a certain percentage of the quarterly net sales of the gloves bearing the X's trademark. Y pays the licence fees regardless of whether the production of gloves takes place in or outside of the EU.

3. X decides on both the models and the materials for the gloves to be produced. Y buys from X a specific fabric, which is used for the manufacture of the gloves.

4. Furthermore, the licence agreement contains an explicit reference to the possibility for licensor X to control the manufacturing company Z. X supervises and controls closely the production activity through a supervisor who has to be consulted by Y in all the activities performed by Y pursuant to the licence agreement. The licensee Y, under penalty of termination of the licensing agreement, must follow any corrective measures requested by the X. The termination of the licence agreement may occur also in the event of not payment of licence fees.

5. According to the licence agreement, Y has the obligation to inform X if it intends to change the company involved in the manufacture of the gloves (manufacturing company Z) and the production must in any case be subject to X's directives regarding the use of the fabric and the use of the trademark.

6. The licensee Y also entered into a **production contract** with Z, the company located in the third country. The production contract between the licensee Y and the manufacturing company Z provides that all production activities and the use of trademarks will cease following the termination of the licence agreement. Y provides the fabric used for the production of the gloves to Z free of charge.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

7. The production of the licenced gloves, based on the fabric provided by X having the customs status of Union goods, takes place outside the EU under the authorisation for the outward processing procedure (Article 259 UCC).[35]

8. The manufacturer Z is paid by Y for the production of the gloves bearing the X's trademark. The invoiced amount reflects the costs of the processing operations incurred by Z (e.g. costs of sewing, threads, labour, general expenses).

9. Then the processed products – the gloves bearing the X's trademark – are imported into the customs territory of the Union.

II. Issue at stake

The question arises whether for the application of Article 86 (5) UCC the licence fees paid by Y to X for the right to use the trademark should be included in the customs value of the licenced gloves.

III. Relevant regulatory provisions

Articles 70, 71(1) (b) (i), (c) UCC
Articles 135 (1), 136 (1), (2), (4) (c) and (5) UCC IA

IV. Preliminary observations

1. In accordance with the provisions of Article 86 (5) UCC, the amount of import duty for processed products resulting from the outward processing procedure (i.e. in this case the gloves) shall be calculated on the basis of the **cost of the processing operation** undertaken outside the customs territory of the Union. "Processing operations" are defined in Article 5 (37) UCC.

2. According to Commission Guidance concerning the application of the outward processing procedure and the calculation of the amount of import duty under that procedure[36], **the cost of the processing operation undertaken** outside the customs territory of the Union shall refer to the **customs value of the processed products** at the time of acceptance of the customs declaration for their release for free circulation minus the **statistical value of the corresponding temporary export goods** at the time when they were placed under the outward processing procedure.

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35 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

36 *Special procedures – Title VII UCC/"Guidance for MSs and Trade"* and *Guidelines on customs debt*; UCC - Guidance documents - European Commission (europa.eu).

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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3. As the purpose of this document is to assess whether the licence fees paid by Y to X are part of the **customs value of the processed products**, the determination of the cost of the processing operation for the purpose of the calculation of the amount of import duty on those products is not addressed in this document[37].

Customs value of the processed products

4. As Article 86 (5) UCC does not point towards any particular valuation method applicable when the customs value for the processed products is to be established, then the general legal rules concerning the determination of customs value are applicable - i.e. the provisions of Title II Chapter 3 UCC (Value of goods for customs purposes) and the provisions of Title II Chapter 3 UCC IA (Value of goods for customs purposes).

5. As the Court of Justice of the European Union pointed out in its judgment in case C-116/12 "Christodoulou"[38], since under the customs provisions on the determination of the customs value, the priority is given to the transaction value method and the term "sale" for the purposes of the usage of this method should be interpreted broadly. The Court ruled that it applies to "*the determination of the customs value of goods imported on the basis of a contract which, although described as a contract of sale, in fact proves to be a working or processing contract*". This is irrespective of the use or not of the outward processing procedure to export goods and import products processed from those goods.

6. Where the goods have been supplied by the buyer free of charge to the producer in the third country and there is a price paid or to be paid by the buyer for the processing operation, the customs value of the processed products shall be determined in accordance with Article 70 (1) UCC, using the transaction value method, with the appropriate adjustments, where necessary.

7. Those adjustments shall, in such case, include the one referred to in Article 71(1) (b) (i) UCC: "*the value of materials, components, parts and similar items, incorporated in the imported goods*". The determination of that value shall be made in accordance

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37 The statistical value of exported goods is subject to the separate Union regulation, which practical application is broadly presented in the Commission *EUCDM Guidance Document* dated 6 October 2016, TAXUD A3(2016)2696117 Doc. DIH 16/003 Final EN: UCC - Guidance documents - European Commission (europa.eu).

38 Judgment of the Court (Sixth Chamber), 12 December 2013, Ioannis Christodoulou and Others v Elliniko Dimosio, Case C-116/12, paragraphs 43-51 (http://curia.europa.eu/juris/liste.jsf?num=C-116/12&language=EN). See also *the Advisory Opinion 1.1: The concept of "sale" in the Agreement* issued by the WCO Technical Committee on Customs Valuation and *the Commentary 5.1: Treatment of goods returned after temporary exportation for manufacturing, processing or repair* issued by the WCO TCCV.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

with Article 135 UCC IA, using as well Commentary No 1 in the Compendium[39], in particular its paragraphs 5 and 6.

8. In the examined case, the importer Y provides the manufacturer Z with the fabric free of charge. The fabric was purchased by Y from the licensor X. Bearing in mind the provisions of Article 135 (1) UCC IA, the value of the provided fabric equals the purchasing price paid by Y to X.

9. The issue that needs to be addressed is whether the amount of licence fees paid by Y to X should be included in the customs value of the processed products in the light of Article 71 (1) (c) UCC and its implementing provisions.

10. In the examined case Y pays the licence fees not to the manufacturer of the gloves, but to a third party – the licensor X. According to the terms of the production contract, the production of the licenced gloves will cease as the consequence of the termination of the licence agreement. The latter one may be also terminated in the event of non-payment of the licence fees. Moreover, in accordance with the licence agreement the licensor manages the control of the production of the gloves that goes beyond standard quality control.[40]

11. Based on the above-presented facts, it may be assumed that the requirements for the inclusion of the licence fees in the customs value of the imported goods stated under Article 136 (1) and (4) (c) UCC IA are fulfilled.

12. Additionally, the amount of licence fees depends on the net income from selling the licenced gloves (Article 136 (2) UCC IA) and they are paid by Y, whether or not the production of the gloves takes place in the EU or in a third country.

13. The fact that X is located in the EU is an irrelevant factor for the treatment of the licence fees for the customs valuation purposes (Article 136 (5) UCC IA).

14. To sum up, the customs value for the processed products is to be determined under the transaction value method as defined in Article 70 (1) UCC together with Article 71 UCC.

V. Conclusions

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39 Compendium of Customs Valuation Texts; UCC - Guidance documents - European Commission (europa.eu)

40 See also *the Commentary 25.1: Third party royalties and licence fees,* issued by the WCO Technical Committee on Customs Valuation.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

1. Taking into account the above-cited judgment issued in case C-116/12 “Christodoulou”, the production contract concluded between Y and Z may be considered as a sale contract for the purposes of the determination of the customs value for the processed products (the gloves bearing the X’s trademark).

2. Consequently, the customs value for the gloves bearing the X’s trademark is to be determined on the basis of the transaction value method as defined in Article 70 UCC together with Article 71 UCC. In the examined case, the customs value based on the transaction value method should be formed by the following elements:
   a) the cost of the processing operation undertaken outside the customs territory of the Union (the costs are reflected in the invoice issued by Z to Y);
   b) the purchasing price for the fabric used to produce the licenced gloves paid by Y to X;
   c) the licence fees paid by Y to X for the right to use the trademark;
   d) the customs value for the gloves should also reflect the costs of their transportation and insurance, as well as loading and handling charges associated with the their transportation up to the place where they were brought into the customs territory of the Union (Article 71 (1) (e) UCC).

3. The conclusion presented in paragraphs 1 and 2 above should be taken into account for the calculation of the amount of import duty under the provisions of Article 86 (5) UCC.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Commentary No 17: Apportionment of licence fees under Article 136(3) UCC IA

I. *Background*

1. Company A buys from Company L and imports goods into the Union (imported goods). With these goods and other components, Company A manufactures in the Union a different product (finished product), which Company A sells in the Union. The main and key component of the finished product is the imported goods.
2. Under a licence agreement, Company A is required to pay Company L a licence fee for the right to use Company L's patents in the manufacturing of the finished product and its components. The licence agreement provides that Company A is obliged to pay the licence fee to purchase the imported goods.
3. According to the licence agreement, the licence fees to be paid are 5% of the total sales of the finished product during the reference period defined in the agreement.
4. The data relevant for this case is reproduced below:

DATA USED FOR THE CALCULATION PURPOSES			
	YEAR 1	**YEAR 2**	**YEAR 3**
Price paid for the imported goods	**450.000**	**540.000**	**725.000**
Price/Cost of other components plus manufacturing cost after importation	150.000	180.000	175.000
Total production costs of the finished products	600.000	720.000	900.000
Total sales of the finished products	**1.000.000**	**1.200.000**	**1.500.000**
Licence fees paid (5% of the total sales of the finished product)	**50.000**	**60.000**	**75.000**
Total sales margin of Company A related to the finished product	**400.000**	**480.000**	**600.000**
	(1.000.000-600.000)	(1.200.000-720.000)	(1.500.000-900.000)
Sales margin of Company A related to the imported goods	**300.000**	**360.000**	**483.333**
	[400.000*(450.000/600.000)]	[480.000*(540.000/720.000]	[600.000*(725.000/900.000]

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

II. Issues at stake

Is Article 136 (3) UCC IA[41] applicable?
If Article 136 (3) UCC IA is applicable, how to determine "*an appropriate adjustment"* established in Article 136 (3) UCC IA for the presented case?

III. Relevant provisions

Article 71 (1) (c) UCC [42] and its implementing provisions in UCC IA
Article 71 (2) UCC

IV. Preliminary considerations

1. The licence agreement and circumstances of the sale of the imported goods show that the licence fees are related to the imported goods, and are paid as a condition of sale of the imported goods.[43] Thus, the price actually paid or payable for the imported goods under Article 70 UCC shall be supplemented by the licence fees in accordance with Article 71(1)(c) UCC.

2. According to Article 136 (3) UCC IA: *"If royalties or licence fees relate partly to the goods being valued and partly to other ingredients or component parts added to the goods after their importation, or to post-importation activities or services, an appropriate adjustment shall be made".*

3. The licence fee is related partly to the manufacturing of the imported goods and partly to other manufacturing processes. Therefore, Article 136 (3) UCC IA is applicable.

4. As there is no legal definition of the concept of "*appropriate adjustment*", several formulas might be considered when it comes to making such adjustment in the examined case, as presented. However, the most appropriate formula should be selected based on its overall coherence, in particular taking into account the rights

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41 Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

42 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

43 In this respect, the judgement of the CJEU in Case C-76/19 (*Curtis Balkan*), paragraph 51, provided that determining the relationship between the royalties paid and the imported goods requires "to take account of all the relevant factors, in particular the relationships of law and of fact between the persons involved".

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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granted under the licence agreement[44] and the comparability of the available value data.

A) <u>Formula 1</u>: (Price paid for the imported goods before the addition for royalties/licence fees / Total production cost of the goods manufactured partly with the imported goods) * license fees paid.

In accordance with the data presented at point I, this method will provide the following results:

YEAR 1		YEAR 2		YEAR 3	
(450.000/600.000)*50.000	37.500	(540.000/720.000)*60.000	45.000	(725.000/900.000)*75.000	60.417

Comments

a) The licence agreement allows Company A to benefit from patents relating to the manufacturing of the finished products and its components. Thus, *the total production costs data* is an adequate basis for the determination of the share of the licence fee relating to the imported goods.
b) This formula is based on two concepts that are directly comparable, namely *the price paid for the imported goods* (before addition of licence fees) and *the total production costs*.
c) As the imported goods were used in *the production phase*, it is coherent to assume that the *"appropriate amount"* of licence fees to be included into the customs value for the imported goods should be based on the ratio between the price paid for the imported goods and the total production costs, and despite the fact that they are paid as a certain percentage of the total sales of the finished products.
d) Furthermore, the formula is easily applicable.

B) <u>Formula 2</u>: [(Price paid for the imported goods before the addition for licence fees + Total sales margin of Company A) / Total sales of the finished products] */license fees paid

In accordance with the data presented at point I, this method will provide the following results:

44 Commentary No 3: Incidence of royalties and licence fees in the customs value, paragraph 8, Compendium of Customs Valuation Texts, Edition 2021 (Section C). Available at: UCC - Guidance documents - European Commission (europa.eu)

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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YEAR 1		YEAR 2		YEAR 3	
[(450.000+400.000)/ 1.000.000)]*50.000	42.500	[(540.000+480.000) /1.200.000]*60.000	51.000	[(725.000+600.000) /1.500.000)]*75.000	66.250

Comments

The formula uses concepts that are not comparable – the price paid for the imported goods and the total sales margin of Company A; it assumes that the total sale margin realized on sales of the finished products is related only to the imported goods.

C) <u>Formula 3</u>: (The price paid for the imported goods before the addition for licence fees / Total sales of the finished products) * license fees paid

In accordance with the data presented at point I, this method will provide the following results:

YEAR 1		YEAR 2		YEAR 3	
(450.000/1.000.000)*50.000	22.500	(540.000/1.200.000)*60.000	27.000	(725.000/1.500.000)*75.000	36.250

Comments

The formula uses concepts that are not comparable – the price paid for the imported goods and the total sales of the finished products.

V. <u>Conclusion</u>

1. In the examined case, the Customs Expert Group – Valuation Section agreed that the calculation made in accordance with Formula 1 presented above meets the requirements for an appropriate adjustment under Article 136 (3) UCC IA. Otherwise said, Formula 1 is suitable for calculating an *"appropriate adjustment"* under Article 136 (3) UCC IA, from the coherence and practicality point of view.

2. Formulas 2 and 3 are not suitable to make an appropriate adjustment under Article 136 (3) UCC IA in the present case.

VI. <u>Additional remarks</u>

1. Article 136 (3) UCC-IA is applicable only in situations in which the royalties or licence fees relate partly to the imported goods and partly to other ingredients or component parts added to the goods after their importation (e.g. new products are manufactured from the imported goods and component parts added to the

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imported goods during the manufacturing process in the Union), or to post-importation activities or services (e.g. technical assistance in the areas of management, administration, marketing, accounting).

2. Article 136 (3) UCC-IA assumes that the conditions defined in Article 71(1)(c) UCC are met even if the royalties or licence fees are related only partly to the goods being valued.[45] However, it should be highlighted that the fact that the royalties or licence fees are only partly related to the imported goods does not influence the application of Article 71(1)(c) UCC as royalties or licence fees to be included into the customs value of the goods being valued:

   (i) are to be related to the imported goods,
   (ii) are to be paid as a condition of sale of the goods being valued, and
   (iii) are not to be reflected in the price actually paid or payable for the goods.

3. In such a case an appropriate adjustment is to be made to separate this part of the royalties or licence fees which relate only to the imported goods from the total amount of the royalties or licence fees paid by the buyer of the goods being valued.

4. There is no legal definition of the notion *appropriate adjustment* to which the provisions of Article 136 (3) UCC IA refer. However, as the provisions themselves are implementing rules for Article 71(1) (c) UCC, the provisions of Article 71 (2) UCC shall be considered as well when an appropriate adjustment is to be established in a given case.

5. According to Article 71(2) UCC "*Additions to the price actually paid or payable (…) shall be made only on the basis of objective and quantifiable data".* A contrario, if such objective and quantifiable data does not exist and in effect a correct addition to the price actually paid or payable for the goods being valued cannot be made, the transaction value method will not be applied.[46]

6. Consequently, an adjustment in accordance with Article 136 (3) UCC IA would be considered as appropriate only if based on objective and quantifiable data.

7. Additionally, it should be pointed out that the Union customs provisions use the concept of *"generally accepted accounting principles"* as defined in Article 1 (20) UCC DA.[47] It stipulates that *">>generally accepted accounting principles<< means*

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[45] The ruling of the CJEU issued in the case C-173/15 (*GE Healthcare GmbH*), par. 1 of the operative part of the ruling.

[46] See the note to Article 71 (2) UCC presented in the Compendium of Customs Valuation Texts (Section B: Interpretative Notes on Customs Valuation (WTO Valuation Agreement)), Edition 2021. Available at: UCC - Guidance documents - European Commission (europa.eu)

[47] Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code. The WTO Valuation Agreement articulates that *For the purposes of*

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the principles which are recognised or have substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared".

8. In the examined case, the data used to calculate an amount of licence fees to be included into the customs value for the imported goods comes from the importer's accounting. This data to be used for the purposes of the calculation of the licence fees relating to the goods being valued has to be prepared in a manner consistent with the financial standards applicable in the country of importation. When the data meets such accounting requirements it may be also considered as objective and quantifiable.

9. The discussed case shows that, besides the requirements for data to be *objective* and *quantifiable*, its usage shall take into account concepts that are *comparable* and *homogenous*. The relationship between the licence fees and the goods to be valued can also be determined by considering "*what in fact the licensee receives in return for the payment"*[48]. In order to have a common understanding on the proper way of making such an adjustment, *"consultation between the importer and the customs authorities is particularly desirable"*[49].

10. In summary, to include royalties into the customs value for the imported goods, to the extent that such royalties have not been already included in the price actually paid or payable for the goods, they must relate to those goods and must be paid by the buyer as a condition of sale of the goods. Those conditions must also be satisfied where the royalties are only partly related to the imported goods.

11. Once the conditions for the inclusion of royalties into the customs value are met, the next step will be to find an appropriate method for apportioning the dutiable royalties, based on the generally accepted accounting principles. The choice of method will be affected by the circumstances surrounding the sale of the goods being valued and will be done on a case-by-case basis.

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this Agreement, the customs administration of each Member shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question (see Annex I to the Agreement, General Note, *Use of Generally Accepted Accounting Principles*).

48 Commentary No 3: Incidence of royalties and licence fees in the customs value, Compendium of Customs Valuation Texts, Edition 2021 (Section C). Available at: UCC - Guidance documents - European Commission (europa.eu)

49 *Ibidem*.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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Commentary No 18: Valuation of harvest seed. Determination of the value of assists under Article 71(1)(b)(i) UCC

Background

1. A seed supplier imports **harvest seed** from a seed grower company located in a third country and declares it for release for free circulation in the customs territory of the Union.

2. The harvest seed is the result of a multiplication of **basic seed** supplied by the importer free of charge to the seed grower company in order to produce the imported goods in more favourable weather conditions. The seed grower company charges a certain fee for its service and issues an invoice in this respect to the seed supplier.

3. The production of basic seed takes place in the customs territory of the Union and comprises several phases, as follows:

a) The seed supplier develops pre-basic seed in research laboratories and fields located in the Union. The pre-basic seed is obtained through a process of **research and development (R&D)**, and through the use of licensed germplasms[50] for which the seed supplier pays **license fees** to a licensor. R&D can amount to more than 15% of the seed supplier's annual turnover.

b) The pre-basic seed is then multiplied by EU seed growers within the Union in order to obtain basic seed. The seed supplier pays fees for the service to the EU growers. The fees cover inter alia costs related to the land preparation for seed plantation, fertilization, irrigation and harvest.

Issues at stake

1. Which valuation method should be applied to determine the customs value of the harvest seed when imported into the customs territory of the Union?

2. Provided that the transaction value method is applicable in the case at hand, how should the basic seed provided for free to the seed grower be valued?

Relevant regulatory provisions

Articles 70 and 71(1)(b)(i) UCC[51]
Article 135(1) UCC IA[52]

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50 The germplasm is protected either though patents or proprietary plant variety protection certificates (COV).

51 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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Preliminary observations

Valuation method

1. The first issue to consider is the valuation method that shall be applied to determine the customs value of the harvest seed.

2. It should be recalled that the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (hereafter called the CVA) does not provide a definition for "sale". However, *Advisory Opinion 1.1 – The concept of "sale" in the Agreement*, issued by the WCO Technical Committee on Customs Valuation (hereafter called the TCCV), stipulates that *"(…) in conformity with the basic intention of the Agreement that the transaction value of imported goods should be used to the greatest extent possible for Customs valuation purposes, uniformity of interpretation and application can be achieved by taking the term "sale" in the widest sense (…)".*

3. The approach is reflected in the ruling issued by the Court of Justice of the European Union (hereafter called the CJEU) in case C/116/12 "Christodoulou". In the ruling, the Court pointed out that since under the customs provisions on the determination of the customs value the priority is given to the transaction value method, the term "sale" for the purposes of the usage of this method should be interpreted broadly. The Court ruled that it applies to *"(…) the determination of the customs value of goods imported on the basis of a contract which, although described as a contract of sale, in fact proves to be a working or processing contract".* In the light of the foregoing, one should also bear in mind that while determining the customs value under the transaction value method, Articles 70 and 71 UCC should be read together.

4. From the above, it may be concluded that where the goods have been supplied by a buyer free of charge to a producer in a third country and there is a price paid or to be paid by the buyer for the processing operation taken place in the third country, the customs value of the products resulting from the processing operation shall be determined under the transaction value method, with the appropriate adjustment, where necessary.

5. The same principles are applicable to the case at hand. The customs value of imported harvest seed shall be established under the transaction value method, taking into consideration the adjustments relevant for the case as defined under Article 71 UCC.

Categorising the assist provided by the seed supplier

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52 Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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6. Basic seed means foundation seed material (tangible), which is used in order to produce harvest seed. In case C-116/89, "BayWa AG v. Hauptzollamt Weiden", similar to the one discussed, the CJEU ruled that the basic seed should be categorised under Article 71(1)(b)(i) of the UCC, which covers "*materials, components, parts and similar items incorporated into the imported goods".*

7. By contrast to assists under Article 71(1)(b)(iv) UCC, assists categorised under Article 71(1)(b)(i) UCC need to be added to the customs value regardless of whether they are produced in the Union.

Determination of the value of the basic seed under Article 71(1)(b)(i) UCC

8. According to the facts of the case, the basic seed is developed from the pre-basic seed that is supplied to EU growers for multiplication before its export to a third country in order to produce the imported goods (harvest seed) in favourable weather conditions. The basic seed is derived as a result of R&D activities undertaken by the seed supplier, and the use of licensed germplasms for which the seed supplier pays licence fees to a licensor.

9. The R&D, undertaken by the seed supplier, is not directly provided to the seed grower company in the third country. Actually, the R&D investments enable the creation of foundation seed material in the form of pre-basic seed with genetic potential, which is made available to EU growers in order to develop the basic seed and subsequently to produce the imported harvest seed. The genetic material is passed on through the seed at each production step. Hence, the process of R&D is already concluded when the assist (the basic seed) is provided to the seed grower company in the third country in order to produce the harvest seed.

10. The determination of the value of the basic seed shall be made in accordance with Article 135(1) of the UCC IA. Under this Article, the value of an assist is either the cost of its acquisition or the cost of its production, as appropriate.

11. In order to establish the value of an assist, the value of intangible elements necessary to produce the assist should also be taken into consideration. Although, in the light of Article 71(1)(b)(iv) of the UCC the value of engineering, development, artwork, design work, and plans and sketches shall be added to the price actually paid or payable for the imported goods only if the indicated activities were taken elsewhere than in the Union and were necessary for the production of the imported goods, in *Commentary 18.1 - Relationship between Articles 8.1(b)(ii) and 8.1(b)(iv)*[53] the TCCV agrees that "*The structure of the assist provisions suggests that each category stands on its own and this provides further weight in support of the conclusion that no exclusion should be made for costs associated with elements of the type listed in Article 8.1 (b) (iv) In view of the above, the value of the elements mentioned in Article 8.1 (b) (ii) would include the value of the design work incorporated (even if that work has been undertaken in*

53 Under the Union customs legislation Article 71(1)(b)(ii) UCC is an equivalent for Articles 8.1(b)(ii) of the CVA and Article 71(1)(b)(iv) UCC is an equivalent for Article 8.1(b)(iv) of the CVA.

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the country of importation) as part of the cost of acquisition or of production"(emphasis added). In addition, the TCCV points out in its *Commentary 24.1 – Determination of the value of an assist under Article 8.1(b) of the Agreement*[54] that *"(…) where the assists are produced by the importer, or by a person related to the importer, their value would be calculated by including all elements used to produce them"*. Moreover, in the ruling issued in the case C-509/19, "BMW Bayerische Motorenwerke AG" the CJEU ruled that *"(…)Article 71(1)(b)(i) of the Customs Code, which covers 'materials, components, parts and similar items incorporated into the imported goods' cannot be interpreted as excluding intangible assets"*(paragraph 19 of the ruling).

12. The same approach should be applicable to assists under Article 71(1)(b)(i) UCC. It means that in the case in hand, the value of the R&D used in order to produce the basic seed in the customs territory of the Union should be reflected in the value of the assist and, consequently, in the value of the imported harvest seed.

13. However, one should remember that for the purposes of calculating the value of the assist, only the costs of R&D that can be linked to the production and sale of the harvest seed shall be taken into account. In other words, only the costs of product-related R&D of the pre-basic seed should form part of the value of this assist for the purposes of the determination of the customs value of the harvest seed.

14. Licence fees paid by the seed supplier to the licensor for the right to use the licensed germplasm in the process of production of pre-basic seed shall form part of the value of the assist (basic seed). Having the right to utilise the licensed germplasm was essential for the creation of the assist. Without paying the licence fees, the seed supplier would not have access to the protected germplasm that is necessary for the production of the pre-basic seed and then, consequently, the basic seed.[55]

15. It should be highlighted that the discussed licence fees form part of the value of the assist rather than the imported goods, and thus they are not considered under Article 71(1)(c) UCC.

16. The fees paid by the seed supplier to EU growers for the multiplication of the pre-basic seed in the customs territory of the Union, as well as any other costs directly related to the production of the basic seed in the customs territory of the Union, should be reflected in the value of the assist.

17. In the examined case, the data used to calculate the value of the assist to be reflected in the customs value of the imported harvest seed comes from the importer's accounting, bank transfers or any other documentation on payments for assists. In accordance with one of the general rules governing the determination of the customs value, expressed in Article 71(2) UCC, *"Additions to the price actually paid or payable, pursuant to paragraph 1, shall be made only on*

54 Under the Union customs legislation Article 71(1)(b) UCC is an equivalent of Article 8.1(b) of the CVA.

55 See also the CJEU's ruling issued in the case BayWa AG (C-116/89), paragraphs 15-18.

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the basis of objective and quantifiable data". The data to be used for the customs valuation purposes has to be prepared in a manner consistent with the financial standards applicable in the country of importation based on generally accepted accounting principles as defined in Article 1(20) UCC DA.[56]

Conclusion

1. Taking into account the above-cited judgment issued in case C-116/12 "Christodoulou", the production contract concluded between the seed supplier in the Union (importer) and the seed grower in a third country (exporter) may be considered as a sale contract for the purposes of the determination of the customs value for the harvest seed.
2. For the above reason, the customs value of the harvest seed shall be determined under the transaction value method as defined in Article 70 UCC together with Article 71 UCC. In the examined case, the customs value based on the transaction value method should be formed by the following elements:

a) the cost of the multiplication of basic seed to obtain harvest seed undertaken outside the customs territory of the Union (the costs are reflected in the invoice issued by the seed grower to the seed supplier);
b) the value of the basic seed under Article 71(1)(b)(i) UCC (comprised by product-related R&D; licence fees; fees for the multiplication of the pre-basic seed and other costs directly linked to the production of the basic seed in the customs territory of the Union);
c) the cost of transportation and insurance of the harvest seed, as well as loading and handling charges associated with its transportation up to the place where it was brought into the customs territory of the Union (Article 71(1)(e) UCC).

56 Article 1 (20) UCC DA stipulates: *"'generally accepted accounting principles' means the principles which are recognised or have substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared";* Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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Commentary No 19: Buying commissions

I. BACKGROUND

1. Company X purchases goods from sellers in third countries and imports them into the Union. The value of such goods is determined under the transaction value method (Article 70 UCC[57]).

2. In the context of those importations, X pays commissions to Y based in a third country under the terms of a Buying Agency Agreement. Y is a subsidiary of X. These commissions are invoiced by Y separately from the price for the imported goods (invoiced by the producers/sellers).

3. Under the Buying Agency Agreement, X entrusts Y with its representation in a broad range of activities for which the commissions are paid, namely:

a. finding producers;
b. assisting in the negotiation of production agreements with non-EU producers;
c. providing samples to X;
d. placing orders on behalf of X on the terms requested by X;
e. inspecting materials, components and goods, both during and on completion of manufacture, to ensure compliance with the terms of supply and standards of manufacture and, when appropriate, rejecting those goods that do not conform to such terms and standards.
f. managing moulds, tooling and instrumentation;
g. arranging and paying for the transport of the goods to the Union.

II. ISSUE AT STAKE

Can the commissions paid by X to Y for the services listed under point I. 3 be considered as buying commissions under Article 71(1)(a)(i) UCC and consequently not be included in the customs value?

III. RELEVANT REGULATORY PROVISIONS

Articles 5(41), 70, 71(1) and (2) UCC

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57 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

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IV. GENERAL OBSERVATIONS

1. Article 71(1)(a)(i) UCC provides that commissions and brokerage other than "buying commissions" should be included in the customs value for goods being valued if they are incurred by the buyer and not already included in the price paid or payable for those goods.

2. Article 72(e) UCC specifies buying commissions among the elements not to be included into the customs value.

3. Based on the wording of the two Articles, one may conclude that non-inclusion of buying commissions in the customs value of the goods being valued is an exception to the general rule that commissions and brokerage are to be reflected in the customs value.

4. The nature of the payment described as a buying commission should be established to decide whether this is the *bona fide* buying commission. Should this be the case, an amount representing the buying commission will not be added to the price actually paid or payable for the imported goods under Article 71(1)(a)(i) UCC, or – in cases in which it is already part of the price actually paid or payable for the imported goods –it will be excluded from the customs value under Article 72 (e) UCC.

5. Article 5(41) UCC defines "buying commission" as "a fee paid by an importer to an agent for representing him or her in the purchase of goods being valued". This is in line with the provisions of Interpretative Note to Article 8 of the WTO Customs Valuation Agreement.

6. Explanatory Note 2.1 - Commissions and brokerage in the context of Article 8 of the Agreement adopted by the WCO Technical Committee for Customs Valuation ("the Technical Committee") describes commissions and brokerage as a whole (including buying and selling commissions) as "payments made to intermediaries for their participation in the conclusion of a contract of sale".

7. One important consideration in assessing if commissions are not included in the customs value as buying commissions within the meaning of Article 5 (41) UCC is whether they are payments for activities linked to the purchase of the goods. Explanatory Note 2.1 explains the concept of "buying agent" and sets out the scope of activities undertaken by buying agents: "A buying agent is a person who acts for the account of a buyer, rendering him services in connection with finding suppliers, informing the seller of the desires of the importer, collecting samples, inspecting goods and, in some cases, arranging the insurance, transport, storage and delivery of the goods". Nevertheless, this is not an exhaustive list. Commentary 17.1 –

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Buying commission adopted by the Technical Committee notes that these are the services that "would normally be carried out by a buying agent".

8. The buying agent must follow the instructions given by the buyer (principal), since the risks arising from those instructions are borne by the buyer. The agent bears no economic risk in the transaction, has no proprietary interest in the goods, or has no control over the transaction or the price paid by the buyer.

9. The scope of activities performed by the buying agent would normally be set out in the terms of the agency contract between the buyer and the agent. It might also be detailed in other commercial documents (such as purchase orders, letters of credit or correspondence, etc.). Nevertheless, the scope of activities performed by the agent is not necessarily apparent from the commercial documentation available to the customs authorities. In cases where the contract does not reflect the scope of activities of the buying agent, Commentary 17.1 provides that it is essential to establish, among others, the compatibility of fees charged in relation to services rendered. Explanatory Note 2.1 clarifies customs administrations can take "whatever reasonable measures they consider necessary to ascertain the existence and precise nature of the services in question".

10. Only *bona fide* buying commissions are not included in the customs value. Therefore, the burden of proof of the existence of *genuine* buying commission rests with buyers (importers).

11. In some instances, only part of the payment described as a buying commission will be considered as *bona fide* buying commission and therefore not be included in the customs value under the transaction value method. In this respect, Commentary 17.1 provides that if the total fee cannot be considered a buying commission "the identifiable portion of the fee that relates to the buying agency services may be considered as a buying commission".

12. The general rule expressed in Article 71 (2) UCC stipulating that any adjustments to the price actually paid or payable for the goods being valued shall be made only on the basis of the objective and quantifiable data is applicable also with respect to buying commissions regardless of whether the payments are considered under Article 71(1)(a)(i) or Article 72 (e) UCC.[58]

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[58] Commentary No 5: Assessment of certain elements to be included in or excluded from the customs value of imported goods of the EU Compendium, paragraph 2, UCC - Guidance documents (europa.eu)

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V. CONCLUSIONS

1. In the present case, X instructs Y to perform a wide range of services on its account by means of a Buying Agency Agreement.

2. As the payments for the services performed by Y are invoiced separately by Y, they are to be considered under Article 71(1)(a)(i) UCC.

Buying commission

3. The range of tasks performed by Y under the Buying Agency Agreement concluded between Y and X is broad. Therefore, it is justified to examine whether each of the tasks carried out by Y falls into the scope of tasks for which a remuneration paid by X may be considered as buying commissions under Article 71(1)(a)(i) UCC in conjunction with Article 5(41) UCC.

4. The naming of the agreement as the Buying Agency Agreement should not influence a conclusion as regards classifying the remunerations for particular tasks covered by the agreement as *bona fide* buying commissions or other costs/payments defined by the Union customs legislation under Articles 70 (2) and 71 UCC. In other words, the factual nature of the payments made by X to Y matter when the customs value is to be determined.

5. In this context, it may be concluded that the commissions paid by X to Y for finding producers, providing samples to X, and placing orders on behalf of X on the terms requested by X would not be added to the price actually paid or payable for the goods being valued as buying commissions under Article 71(1)(a)(i) UCC.

6. In the examined case, the buyer purchases the imported goods directly from its producers. Therefore, “assisting in the negotiation of production agreements with non-EU producers” may be seen as the participation in the negotiation of the purchase agreements falling within the scope of the activities remunerated with buying commissions that should not be added to the price paid or payable for the imported goods.

Price actually paid or payable

7. On the other hand, the commissions paid by X to Y for “inspecting materials, components and goods, both during and on completion of manufacture, to ensure compliance with the terms of supply and standards of manufacture and, when appropriate, rejecting those goods that do not conform to such terms and standards” would not be considered as *bona fide* buying commissions as they are paid not for representing X in the purchase of goods being valued, but rather for

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activities that sellers are obliged to perform in order to meet contractual arrangements with respect to the quality, safety and standardisation of the manufactured goods. Therefore, the payments should be treated as part of the price actually paid or payable for the imported goods under Article 70 (2) UCC in conjunction with Article 129 (1)(b) UCC IA[59].

8. Nevertheless, it should also be kept in mind that remunerations for carrying out standard inspections of the manufactured goods before they are ready to be transported to the customs territory of the Union may be seen as *bona fide* buying commissions when such tasks are entrusted to an agent by a buyer of the goods being valued. Such standard inspections involve a visual check of the goods or the way the goods are packed for transportation.

Assists

9. In the examined case, another category of the activities that X assigned to Y is "managing moulds, tooling and instrumentation". Article 71(1)(b) UCC stipulates that the value, apportioned as appropriate, of specific goods and services (assists) supplied directly or indirectly by the buyer free of charge or at reduced cost for the use in connection with the production and sale for export of the imported goods should be added to the price actually paid or payable to the extent that such value has not been included already in the price for the goods.

10. Tools, dies, moulds and similar items used in the production of the imported goods are specified among such assists of which the values should be reflected in the customs value of the imported goods.

11. The character of the indicated activities, performed by Y, allows for analysing the payments for them under Article 71(1)(b)(ii) UCC. If all the legal conditions specified in that Article are met, the commissions paid by X to Y for the tasks would not be considered as buying commissions, but as the assists that fall under the scope of Article 71(1)(b)(ii) UCC.

Transportation costs

[59] Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code. In accordance with Article 129 (1)(b) UCC IA: "The price actually paid or payable within the meaning of Article 70(1) and (2) of the Code shall include all payments made or to be made as a condition of sale of the imported goods by the buyer to any of the following persons:(…)(b) a third party for the benefit of the seller; (…)".

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12. Taking into consideration the nature of the remunerations for the activity "arranging and paying for the transport of the goods to the EU", they should be analysed under Article 71(1)(e) UCC. It provides that the cost of transport and associated charges up to the place where goods are brought into the customs territory of the Union shall be added to the price actually paid or payable for the imported goods. In *The Shirtmakers* (C-59/16[60]), the Court of Justice of the European Union provided that a supplement charged to the buyer consisting of the "costs incurred by that agent in organising the transport of goods to the customs territory of the European Union as well as its profit margin" needed to be regarded as costs of transport. Thus, the commissions paid by X to Y for both the price of the transport and the cost of arranging the transport would need to be included in the customs value under Article 71(1)(e) UCC.

Relationship between the buyer and its agent

13. In principle, the relationship between X and Y would not condition the categorisation of Company Y as buying agent. However, in cases like the present one where the buyer and the agent are related, particular attention should be paid to whether the parties established the commissions at arm's length principle.

Separation of bona fide buying commissions from the remunerations paid by X to Y

14. As described above, Y performed tasks for which remunerations paid to him by X should be considered as payments forming part of the transaction value under Article 70 (2) and relevant provisions of Article 71(1) UCC. Therefore, it would be necessary to assess from the available commercial documentation (e.g., the Buying Agency Agreement, invoices for the goods or transport services) and from the circumstances of the implementation of the Buying Agency Agreement by its parties if it is possible to identify a portion of the remunerations that relates to the buying agency services. Such assessment should be made on the basis of objective and quantifiable data in accordance with Article 71 (2) UCC. This would be without prejudice of customs authorities' controls of the declared amounts in line with the terms of EU Commentary No 5 Assessment of certain elements to be included in or excluded from the customs value of imported goods.[61]

15. If clearly identified, the portion of the commissions found to relate to the buying agency services will not be included in the customs value as buying commissions

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60 CJEU ruling in the case C-59/16, ECLI:EU:C:2017:362.

61 Commentary No 5: Assessment of certain elements to be included in or excluded from the customs value of imported goods of the EU Compendium, UCC - Guidance documents (europa.eu)

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under Article 71(1)(a)(i) UCC. If there is no objective and quantifiable data allowing the importer to separate the bona fide buying commission from the full amount described as the buying commission (the amount is invoiced separately from the price for the imported goods), the transaction value method will not be applicable. Consequently, one of the secondary valuation methods will be applicable, as provided in Article 74 UCC.

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Commentary Nº 20: Implications of the EU-ETS scheme for Customs Valuation

I. BACKGROUND

1. From 2024, the EU's Emissions Trading System (EU ETS) was extended to cover CO2 emissions from all large ships (of 5 000 gross tonnage and above) entering EU ports, regardless of the flag they flew. Maritime transport companies now need to purchase emission allowances to be able to move within the EU or between the EU and a third country.

2. The system covers 50% of emissions from voyages starting or ending outside of the EU (allowing the third country to decide on appropriate action for the remaining share of emissions) and 100% of emissions that occur between two EU ports and when ships move between EU ports.

3. According to recital 34 of Directive 2023/959/EC amending Directive 2003/87/EC, establishing a system for greenhouse gas emission allowance trading within the Union and Decision 2015/1814, concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system, in the event that a shipping company fails to comply with those requirements and any enforcement measures taken by the administering authority in respect of a shipping company have failed to ensure compliance, Member States should act in solidarity. As a last resort measure, Member States, except for the Member State whose flag the ship is flying, should be able to refuse entry to the ships under the responsibility of the shipping company concerned, and the Member State whose flag the ship is flying should be able to detain that ship. The transport of the goods from and to the Union’s customs territory is therefore legally impossible if the appropriate EU ETS allowances are not purchased and surrendered by the shipping company.

II. ISSUE AT STAKE

The aim of the present instrument is to determine where exactly that surcharge is incurred and whether the calculated surcharge is to be added in whole or in part to the price paid or payable in accordance with Article 71(1)(e)(i) UCC.

III. RELEVANT REGULATORY PROVISIONS

Article 71(1)(e)(i) UCC.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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IV. CONCLUSION

Two cases from the Court of Justice of the European Union (CJEU) can be taken into consideration to reply to the issue at stake:

- Case C-11/89 (06.06.1990 - Unifert) ([62]), where the CJEU states that "the term cost of transport must be interpreted as including all the costs, whether they are main or incidental costs, incurred in connection with moving the goods to the Community".

- Case C-59/16 (11.05.2017 - The Shirtmakers) ([63]), where the CJEU states that the notion of "costs of transport" should be interpreted broadly. According to the Court, "the term 'cost of transport' within the meaning of article 32(1)(e)(i) of the Customs Code ([64]) is that they are connected with the movement of goods to the customs territory of the European Union, irrespective of whether those costs are inherent in or necessary for the actual transport of the goods".

In the case at stake, the EU ETS is specific to maritime transport. The EU ETS allowances are purchased and surrendered by the maritime company, in order for the company to be legally able to ship the goods to and from the Union's customs territory. In this regard, an increase in the shipper's pricing policy to take this obligation into account is foreseeable.

Hence, the EU ETS allowances imposed on maritime transporters can be considered as connected with the movement of goods to the Union's customs territory in the meaning of The Shirtmakers' case law. Therefore, they should be included in the customs value of the goods under Article 71(1)(e)(i) UCC.

It is also reminded that for the purposes of the determination of customs value, only EU ETS purchased to transport shipments from third countries to the customs territory of the Union, up to the place where goods are brought into the customs territory of the Union, should be included into the customs value under Article 71(1)(e)(i) UCC.

([62]) Judgment of 6 June 1990, Unifert, C-11/89, ECLI:EU:C:1990:237, paragraph 30

([63]) Judgment of 11 May 2017, The Shirtmakers BV, C-59/16, ECLI:EU:C:2017:362, paragraph 25

([64]) This disposition of the CCC is the equivalent of Article 71(1)(e)(i) UCC

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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SECTION D: CONCLUSIONS OF THE CUSTOMS CODE COMMITTEE AND THE CUSTOMS EXPERT GROUP

(VALUATION SECTIONS)

Note: The instruments of this section do not constitute legally binding acts and are of an explanatory nature. The purpose is to ensure a common understanding for both customs authorities and economic operators and to provide tools to facilitate the correct and harmonised application by Member States.

Legal provisions of customs legislation take precedence over the content of these instruments and should always be consulted. The authentic texts of the EU legal provisions are those published in the Official Journal of the European Union.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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Conclusion No 1: Deleted

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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Conclusion No 2: Deleted

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 3 : Engineering, development, artwork and design work undertaken in the Union

Facts

Cars manufactured in a third country by firm X in a multinational group are sold to firm Y in the Union, belonging to the same group. The engineering, development and design work has been undertaken in the Union by Y who has also provided all plans necessary for the production of the cars. The costs of this operation have been charged to X, who includes them in the invoice price of the cars when sold. This price is not influenced by the relationship between the two firms.

Y considers the prices invoiced by X can be accepted as the basis for valuation, subject to deduction, by virtue of Article 71(1)(b)(iv) of the Code, in respect of the research and development costs for work undertaken in the Union, when these costs are included in the price actually paid or payable but can be separately distinguished.

Opinion of the Committee

Article 71 of the Code deals only with additions to the price actually paid or payable for the imported goods. Items which should not be included in the customs value are described in Article 72 of the Code. In the case illustrated above, the customs value is to be determined by reference to the transaction value under Article 70 of the Code, and under the current international and EU provisions no deduction is provided for.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 4: Charges for work undertaken after importation

Facts

Firm X in a third country sells slide films to firm Y in the Union. When the goods are entered for free circulation, Y submits to Customs two invoices, of which one indicates the price of the films and the other indicates the costs for developing and framing them. The two invoiced amounts are paid to X, but the development and framing work is only performed after the films have been exposed by the final purchaser. This work is performed by firm Z on the basis of a special agreement with X.

At the time of entry to free circulation it is not known in which country the development and framing work will take place, as that depends on which of Z's developing departments the final purchaser chooses to send the film to.

Opinion of the Committee

According to Article 72(b) of the Code, the customs value shall not include charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation.

The developing and framing costs described above are to be considered as charges covered by the above-mentioned Article. Consequently, the customs value is to be determined on the basis of the price actually paid or payable for the unexposed films, without including the developing and framing costs.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 5: Imports by branches

Facts

Goods manufactured by firm X in a third country are imported into the Union through its branch, X-Europe, which does not have a legal personality distinct from that of the parent company.

X-Europe's activities consist in obtaining orders from unrelated buyers, clearing the imported goods through Customs, invoicing the goods to the customers and managing a small stock resulting from any surplus.

For accounting purposes, X invoices the goods to its branch on the basis of the transfer price which represents the production cost. The goods are sold to the European customers either before or after entry to free circulation. The prices invoiced by X-Europe to its customers are different from those invoiced to it by X because they include the commercial mark-up, the customs duties and other costs incurred, such as transport costs and associated costs.

Opinion of the Committee

As a sale necessarily implies a transaction between two distinct persons, the delivery to X-Europe only constitutes a transfer of goods between two sections of the same legal entity.

Consequently, where the goods are sold to unrelated buyers before entry to free circulation the customs value must be based on the prices actually paid or payable by those buyers, in accordance with Article 70 of the Code, to the exclusion of customs duties, intra-EU transport costs and associated costs.

However, as the goods imported by X-Europe for stock are not the subject of a sale, Article 70 is not applicable and the customs value is to be determined under the other methods of valuation in due order, in accordance with Article 74 of the Code.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 6: Splitting of transport costs for goods carried by rail

Facts

An importer buys goods in a third country and sends them by rail to the customs territory of the Union. At the time of entry for free circulation, the importer presents the consignment note along with the invoice for the goods. In accordance with the international conventions on railway transport, the transport costs in this consignment note are split into two amounts, of which the first covers the transport from the place of departure to the "tariff connecting point" and the second covers the transport from that point to the place of destination.

In this particular case, the "tariff connecting point" corresponds to the place where the land-frontier of the Union customs territory is crossed and it does not coincide with the place where the customs office of first entry is situated. In the declaration of particulars relating to customs value, the importer declares the transport costs to the "tariff connecting point".

Opinion of the Committee

With a view to simplification and in accordance with commercial practice, the splitting of transport costs shown in the consignment note can be accepted for the purposes of determining customs value. Thus the transport costs in respect of the carriage between the "tariff connecting point" and the place where the customs office of entry in the Union is situated may be disregarded.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 7: Air transport costs relating to non-commercial importations

Facts

An individual buys a musical instrument in a third country and has it sent by air to the Union. On the grounds that the importation is for non-commercial purposes, he requests that the transport costs should not be added to the price actually paid for the imported goods.

Opinion of the Committee

For the purpose of determining customs value, the EU provisions on transport costs make no general distinction between operations of a commercial nature and those of a non-commercial nature.

In the case at hand, Article 71(1)(e) of the Code is to be applied and the air transport costs determined in accordance with the rules and percentages laid down in Annex 23-01 to the UCC IA needs to be included in the customs value.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 8: Air freight collection charges

Facts

Firm Y in the Union buys goods from firm X established in a third country. The goods are sold under FOB delivery terms and carried to the Union by air as a "charges collect" consignment.

In support of the sales invoice, Y presents to the Customs the air waybill which shows the air freight charges expressed in the currency of the exporting country. The airline responsible for the collection of the transport costs converts that amount into the currency of the importing Member State and imposes a fee equal to 5% of the air freight charges for the collection of the charges from the consignee.

Opinion of the Committee

The 5% fee for services provided by the airline is not covered by the elements referred to in Article 71(1)(e) of the Code. Consequently, by application of the 3rd paragraph of the same Article, the fee is not to be added to the price actually paid or payable for the imported goods.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 9: Apportionment of transport costs

Facts

A shipment of perishable goods is delivered on consignment by X established in a third country to firm Y in the Union. The goods are auctioned for 15,000 U.A. to an unrelated buyer. The total transport costs by lorry amount to 11,000 U.A. These costs are considered as usual for the purpose of Article 142(5) of the UCC IA.

The distance covered within the Union constitutes only 5% of the total distance, but a note presented by the declarant attributes 80% of the total transport costs to that distance.

The customs value cannot, in the case in point, be determined under the provisions of Articles 70 UCC, as there is no relevant sale between X and Y at the material time for valuation. Information necessary for application of Articles 74(2)(a) or (b) UCC is not available.

Opinion of the Committee

In order to determine the customs value in accordance with Article 74(2)(c) UCC, the price of 15,000 U.A. for the goods must be reduced inter alia by the usual costs of transport and insurance incurred within the Union, that is, in this particular case, 5% of the 11,000 U.A. paid for the total transport. The indication on the freight note of a fictitious and unrealistic apportionment is not to be taken into consideration.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 10: Deleted

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 11: Purchase of export quotas - textile products

Facts

Textile products are sold by firm X established in a third country to firm Y in the Union. These products are manufactured in this third country, which has signed a bilateral textile agreement with the Union. The effect of the Agreement is to impose annual quotas by way of export licences on the supply of textile products to Union buyers; quota holders may, however, transfer their entitlement to a quota, in whole or in part, to other persons and receive payment from them for the right transferred.

X has exhausted his own quota and in order to export the goods either X or Y purchases the necessary quota entitlement from a third party who is unrelated to X. Where X acquired the entitlement he bills Y with the amount paid and shows this separately; where Y buys it he places it without charge at X's disposal.

Question

Does the payment made for the quota form part of the price actually paid or payable as referred to in Article 70 of the Code?

Opinion of the Committee

The quotas, being transferable, have in themselves a value independent of the value of the textiles to which they relate; and, in the present case, Y bears the additional cost incurred in acquiring the quota entitlement, either by purchasing himself or by reimbursing X for doing so. In these circumstances such additional duly proven costs cannot be regarded as forming part of the price actually paid or payable for the goods concerned. The type (own or third party quota) and the amount of related payments need to be demonstrated on request.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 12: Customs value of samples carried by air

Facts

Commercial samples carried by air are imported into the Union by Y. Y pays for the products at a unit price of 5 U.A. FOB. The transport costs to the place of introduction to the customs territory of the Union are 50 U.A. per sample. At the time of importation Y asks the Customs to take into consideration the theoretical costs for sea freight instead of the transport costs actually incurred.

Opinion of the Committee

As Article 71(1)(e) of the Code does not provide that notional transport costs should be taken into consideration, the customs value must be determined by adding to the price of 5 U.A. the transport costs of 50 U.A. per sample actually incurred.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 13: Tool costs

Facts

Company X, established in a third country, manufactures and sells cassette radios to Company Y, established in the territory of the Union. Company Y, which is not related to the seller, enters the radios for free circulation.

To improve the appearance of these sets, which are standard production items, the manufacturer uses special tools designed by the buyer but produced in the third country by Company X. These tools are not intended to be imported into the territory of the Union.

On importation of one consignment of sets, the importer attaches two invoices to the customs entry :

- the purchase invoice for the consignment;

- the invoice representing the total fabrication costs of the tool.

The declared customs value is the total amount of the two invoices, the importer having chosen to allocate the tool costs to a single consignment..

Opinion of the Committee

In the circumstances outlined, as the value of the tool has not been included in the price paid or payable for the imported goods, it needs to be added to that price in accordance with Article 71(1)(b)(ii) of the Code as having been supplied directly or indirectly by the buyer free of charge for use in connection with the production and sale for export of the imported goods (i.e. the position is no different from that of purchase of the tool from another seller). The allocation of the total cost of the tool to the first shipment of goods is possible.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 14: Imports through contract agents

Facts

Buyer Y, who is established in the customs territory of the Union, imports large quantities of various goods from different manufacturers/suppliers in the Far East. For the purposes of market research, investigation and representation in the Far East, buyer Y uses the services of agent X, who, among other things, acts on behalf of buyer Y where the purchase and delivery of the goods to be valued are concerned. In return for his services, agent X receives from buyer a buying commission. The amount and manner of payment of the buying commission and the agent's responsibilities are laid down in an "agent's agreement" concluded between X and Y. Under the agreement:

(a) Agent X receives orders from buyer Y specifying the description of the goods, their price, the deadline for delivery and the delivery terms, along with any other documentation; in addition, the buyer often specifies a particular manufacturer/supplier;

(b) He passes on these orders, sometimes in his own name, to the manufacturer/supplier and sends buyer Y an acknowledgement of the orders, in some cases by forwarding the manufacturers/supplier's stamped confirmation;

(c) As a rule, the goods are dispatched by the manufacturer/supplier to the port in the exporting country, where the documents are handed over to agent X;

(d) Agent X invoices buyer Y showing the price paid to the manufacturer/supplier for the goods, with his agreed commission separately distinguished.

When the goods are declared for free circulation, buyer Y declares that price for the goods for customs valuation purposes and presents the invoice issued by agent X. The consideration paid by buyer Y to agent X as a buying commission is not declared as part of the customs value.

Buyer Y is willing and ready, at the request of the customs authorities, to furnish evidence in the form of the agent's contract, his order forms, acknowledgements of orders, his correspondence with agent X, his payment records and other supporting documents that the customs value declaration has been made in due and proper form. In appropriate circumstances, buyer Y is also able to produce, at the request of the customs authorities, the invoices of the manufacturers/suppliers and the correspondence between the latter and agent X.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Opinion of the Committee

Where the price paid to the manufacturer/supplier is the basis for the transaction value under Article 70 of the Code, the declarant, pursuant to Article 145 of the UCC IA, is normally required to present the customs authorities with the invoice issued by the manufacturer/supplier.

However, in the light of the above-mentioned facts, the customs authorities may accept the invoice (net of buying commission) issued by agent X, subject to the possibility of check.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 15: Quota charges claimed in respect of certificates of authenticity

Facts

Meat of a specified quality is sold by firm X, a slaughterhouse established in a third country, to firm Y in the Union. The meat is imported under a bilateral agreement between the Union and the third country which provides for the importation free of import levy of a fixed quota of such meat. The quota is administrated by way of the exporting country issuing certificates of authenticity (and the Union issuing import licences). Certificates of authenticity are issued to slaughterhouses in proportion to the quantities of meat sold under the quota scheme in the previous year. X makes no payment for obtaining such certificates. The certificates cannot be transferred separately to another slaughterhouse. They can be allocated only to specific consignments of meat intended for export to the Union. X charges a price for the meat. A separate amount is charged for the certificate. Both these amounts accrue directly or indirectly to X.

Question

Does the transaction value for the meat include the charge established for the certificate of authenticity?

Opinion of the Committee

The certificate of authenticity, not being transferable, cannot be disassociated from the meat accompanying it and likewise it has in itself no value independent of the value of the meat; also the amount invoiced for the certificate accrues directly or indirectly to X. The certificate cannot be traded separately and in the present case the buyer is not reimbursing X for expenditure in acquiring the certificate. In fact, the amount charged for the certificate is pure profit for X.

For these reasons the amount invoiced for the certificate must be regarded as part of the total price paid or payable for the imported goods and is to be included in the customs value of those goods under Article 70 UCC.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 16: Valuation under the deductive method of goods sold through a branch office

Facts

Firm X established in a third country has a branch B in a Member State through which it sells plastic stationery accessories to unrelated buyers in the Union.

B has no separate legal identity but is trading exactly as if it were a separate company. It has its own budget, maintains separate accounts and is responsible for developing business by its own marketing and sales force.

B does not buy the goods but on receiving them from X, B enters them into free circulation and stores them at its premises.

A customs value for identical or similar goods sold for export to the Community cannot be established.

B claims that the customs value should be determined under Article 74(2)(c) of the Code and that, in particular, its actual profit and general expenses may be deducted from the selling price duly established.

Opinion of the Committee

Insofar as the customs value cannot be determined under Articles 70 or 74(2)(a) and (b) of the Code, it would be appropriate to value the goods under the provisions of Article 74(2)(c). In the light of the above-mentioned facts, B sells the imported goods for X within the Union. Accordingly, under the provisions of Article 74(2)(c) the deduction of an amount representative of the profit and general expenses of B in respect of the sale of these goods can be permitted, provided that these are consistent with the figures usual in sales in the Union of goods of the same class or kind.

Consequently, the customs value should be based on the unit price determined under the provisions of Article 74(2)(c), subject to the deductions provided for in Article 142(5) of the UCC IA.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 17: Precedence under the deductive method

Facts

Goods produced in a third country were imported into the Union on consignment by firm X.

As the goods were not the subject of a sale at the time they were entered for free circulation, their customs value could not be determined under Article 70 of the Code. Also, information was not available at that time to establish a customs value under Article 74(2)(a) to (c) of the Code; but firm X, nevertheless, indicated then that he wished in due course to avail himself of Article 74(2)(c) in establishing the customs value of the goods. In the circumstances it was necessary to delay the final determination of the customs value.

The goods were sold within a week after importation. Following the sale and for the purpose of finally determining their customs value, firm X declares a customs value based on the unit price of similar imported goods sold in the Union since the time his goods were imported.

Question

Does firm X, for the purposes of applying Article 74(2)(c), have a choice between the unit price at which the goods imported are sold and the unit price at which similar imported goods are sold ?

Opinion of the Committee

In this case, the unit price at which the goods being valued are sold in the Union is known at or about the time of their importation, as well as the unit price at which identical or similar imported goods are so sold. Given the hierarchical nature of the valuation system, the unit price of the goods being valued takes precedence over the unit price of identical or similar imported goods for the purpose of finally determining the customs value under Article 74(2)(c).

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 18: Demurrage charges

Facts

Importer Y in the Union has incurred demurrage charges in respect of goods which he declares for entry for free circulation. The charges have been incurred because of delays both in loading the goods in the country of exportation and in unloading them in the customs territory of the Union.

Questions

Should such charges be included in the customs value of the goods? If so, should they be included irrespective of where they are incurred?

Opinion of the Committee

As demurrage charges are payable to a transport company in respect of the use of the means of transport, they are to be considered as part of the costs of transport for the purposes of Article 71(1)(e) of the Code.

Application of that provision is limited to costs incurred before arrival of the goods at the place of introduction into the customs territory of the Union. Consequently, demurrage charges related to delays occurring before that arrival are to be included in the customs value of the goods. On the other hand, demurrage charges related to delays occurring after that arrival are not to be included in the customs value of the goods, providing the conditions laid down in Article 72(a) of the Code are met.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 19: Deleted

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 20: Deleted

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 21: Test fees

Facts

Importer X exports silicon die to related company Y in country A for assembly into semi-conductor devices under Outward Processing Relief procedure. The silicon die is sold by company X to company Y under a sell and buy back agreement. After processing, company Y invoices and charges company X for the costs incurred in processing plus the costs of the silicon die processed. Company X then arranges for the processed goods to be tested by related company Z in country B. After testing has been completed, company Z charges company X for the costs incurred. The tested goods which meet the required standard are then imported into the EU by company X. The unsatisfactory goods are scrapped in country B.

The importer has stated that the manufacture of semi-conductor devices is a multi-process affair and that it is commonplace in the trade for the processes to be carried out separately and at different locations, sometimes by related companies and sometimes by unrelated companies. Further, at each stage in the process of manufacture, repeated testing is normal. In this case, the silicon dies are electronically tested by the die fabricator prior to shipment to country A and the processed goods are tested visually by the assembler in country A. In country B, the processed goods are visually tested again and electronically tested using high value equipment.

Questions

Is the testing fee for the testing in country B includible in the customs value because the testing is an integral part of the processing?

Alternatively, is the testing fee for the testing in country B excludible from the customs value because the testing is an activity incurred by the buyer on his own account after purchase of the goods but before importation?

Opinion of the Committee

The testing operation is part of the process necessary to produce goods of the type in question. This testing is essential to ensure that the goods are functional and meet the specifications applicable. Thus, the goods to be valued are the tested goods, and the customs value is to be determined under Article 70 of the Code on the basis of the charge made for testing plus an addition under Article 71(1)(b)(i) for the cost of material supplied including the cost of processing and an addition under Article 71(1)(e) for costs of delivery to the customs territory of the EU.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 22: Deleted

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 23: Deleted

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 24: Deleted

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 25: Deleted

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 26: Software and related technology: treatment under Article 71 (1)(b) Union Customs Code (UCC)

Subject:

This issue concerns the customs valuation treatment of software/technology, which is made available, free of charge, to the producer, by the buyer of the imported goods, for use in connection with the production and sale of the imported goods.

A. Definition of the case and question raised:

In the cases to be considered, the software/technology is developed/produced in the Union and made available to the producer of the imported goods. The software/technology is supplied mostly via Internet or on data storage media.

These software/technologies contained in the imported goods are necessary either for the operability of the goods or to improve their operation.

Frequently, goods are already equipped in the production process with software/technologies (e.g. in the area of the automobile or automobile ancillary industry), which are only released and made available at the customer's request at a later stage using a coding procedure (e.g. preinstalled navigation equipment, a day headlight, outdoors temperature gauge or higher engine performance in a car).

B. Application of Article 71(1)(b) of the Code

The software/technology represents without doubt an intangible assist which must be taken into account if the goods are to be valued under the transaction value method. A basic question is whether the software/technology used in the production of the imported goods should be treated under Article 71(1)(b)(i) or (iv) UCC.

> Article 71(1)(b)(i): covers materials, components, parts and similar items incorporated in the imported goods.
>
> Article 71(1)(b)(iv): covers engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Union and necessary for the production of the imported goods.

If the software/technology falls under letter (i), the value of such software is part of the customs value, since there is no exemption in the case of its production in the Union. On the other hand, if the software/technology falls under letter (iv), the value of the software developed in the EU is not included in the customs value.

The opinion of the Advocate General in the Compaq case C-306-04 is useful to consider in this context. The Advocate General made a distinction between:

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1. "Intangible components" installed in the imported goods which are not strictly necessary for the production of the goods but are a constituent part of the end product, enhance its capabilities, or even add a new functionality and thereby contributes significantly to the value of the imported goods (Article 71(1)(b)(i) UCC),
and
2. "Intellectual assists" (patents, designs, models etc.) which are necessary for the production process of the goods (Article 71(1)(b)(iv) UCC).

C. Conclusion:

1) Intangible components which are installed in the imported goods for their operability, (are not necessary for the production of the imported goods. These intangible components are, however, an integral part of the final goods, since they are connected to or part of them, make their operability possible or improve them. Furthermore, they add a new functional character and thereby contribute significantly to the value of the imported goods.

Such intangible assists fall under Article 71(1)(b)(i) UCC.

2) On the other hand, there are intangible assists (e.g. also software/technologies), which are made available by the buyer for purposes of the production of the imported goods. In other words, they are a necessary part of the production process of the goods. Examples include the know-how of production (patented or not patented) or design.

Such intangible assists fall under Article 71(1)(b)(iv) CC.

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Conclusion No 27: treatment for customs valuation purposes of fees related to Entry Summary Declarations

1. Background:

In accordance with the provisions of Articles 127-130 UCC, before goods are brought into the territory of the UE, pre-arrival information must be submitted to the customs authorities in the form of an entry summary declaration (ENS).

Such declaration, requested mainly for safety and security purposes, is made electronically by the carrier and lodged at the first customs office of entry of the goods into the customs territory of the Union. The regulatory provisions provide for the particulars to be included in the ENS, as well as for the time limits for its submission, varying according to the type and means of transport used.

The question raised on the issue refers to the charges introduced by freight forwarders – and borne by the importers – to comply with the new provisions and in particulars **whether such fees are to be considered as part of the customs value of the goods.**

Finally, it must be noted that the point is very significant as, according to the latest available statistics, about 10 million ENS have been lodged throughout the EU in the first quarter 2011.

2. Comments and considerations:

1. According to Article 71(1)(e) of the UCC, in determining the customs value, there shall be added to the price actually paid or payable for the imported goods, inter alia:

i) the cost of transport and insurance of the imported goods, and

ii) loading and handling charges associated with the transport of the imported goods.

Both costs of transport and loading charges are to be taken into account, only for the part of such costs incurred up to the introduction of the goods into the customs territory of the Union.

2. Concerning the latter aspect, as the ENS is to be lodged before the arrival to the customs office of entry in the Union, the requirement is met and the costs are to be considered as incurred before the goods are brought to the territory of the Union.

3. It is therefore necessary to focus the analysis on the nature of these costs, that is whether they should be considered as "transport costs" or "loading and handling charges associated with the transport of the goods".

4. Costs related to the ENS cannot be considered as transport (and/or insurance) costs, in the normal usage of such terms, as they refer to an obligation, for the carrier, to provide a set of data for risk analysis purposes to the EU customs authorities. In some cases, moreover (i.e. for containerised cargo in deep sea maritime traffic), the ENS is to

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be submitted even before the goods are loaded for departure. Furthermore, if the ENS is not lodged within the set time limits, it can be submitted even after the goods are presented to customs by the person who brought the goods, or assumed responsibility for the carriage of the goods (of course in such case penalties will be applied).

5. For the same reasons, neither these fees can be considered as ancillary costs relating to loading and handling charges.

3. Conclusion:

As a consequence, and having regard to the provisions of the third paragraph of Article 71 of the Code, **charges and fees relating to the pre-arrival entry summary declaration are not part of the customs value.**

If, however, the transport charges include such fees but the amount of such fees is not specified or distinguished, then they can only be taken as part of the transport costs.

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Conclusion No 28: Production Inputs under points (ii) and (iv) of Article 71(1)(b) of the Union Customs Code

1. General:

This documents concerns the issue of the application of Article 71(1)(b) in relation to the supply of designs and related data for the purposes of production of textiles.

One question is whether the outputs of CAD (computer-aided design) programs used in the textile industry and supplied free of charge by the buyer of the imported goods to the manufacturer for use in connection with the production and sale of the imported goods should be taken into account in the customs value of the goods.

In the cases in question, CAD programs are used to produce cutting-position images in the EU, which are then sent to manufacturers in third countries. This is done by e-mail.

Questions:

Are the cutting-position images to be seen as:

"means of production" assists under Article 71(1)(b)(ii) of the UCC,

or

"intellectual assists" and designs under Article 71(1)(b)(iv) of the UCC.

A schematic description of the case is provided in Annex 1.

2. Description of the case

A buyer of goods imported into the EU uses a CAD (computer-aided design) program to design clothing (textiles). These computer programs are used to create cutting-position images for the manufacture of the textiles in third countries. The images are provided free of charge by the buyer of the textiles to the manufacturer in the third country and sent by electronic means (e-mail).

The file containing the images is opened by the manufacturer on a PC and then the images are printed on paper using a plotter[i6566]. The paper web with the image is then laid directly on the layers of fabric by the manufacturer and the fabric is then cut. No other operations are carried out, using the images, by the manufacturer.

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65 (NB: If the cutting-position images were created directly on paper by the buyer and then supplied to the manufacturer/vendor, the result would be clear. They would be regarded as assists within the meaning of Article 71(1)(b)(ii) and their value would be added to the customs value).

66 A plotter is a machine which produces designs, using a computer program.

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It is unclear whether the images sent by e-mail are “means of production” assists under Article 71(1)(b)(ii) of the UCC, or “intellectual” assists under Article 71(1)(b)(iv) of the UCC.

3. Case assessment

Legal base

Article 70(1) of the UCC stipulates that the customs value of imported goods is the transaction value, that is the price actually paid or payable for the goods when sold for export to the customs territory of the Community adjusted, where necessary, in accordance with Article 71 of the UCC. In the case in question, the relevant provisions on adjustment are found in Article 71(1)(b)(ii) or (iv) of the Code.

When establishing the customs value under Article 70 of the UCC, the price actually paid or payable for the imported goods is to include the value, apportioned as appropriate, of:

- the tools, dies, moulds and similar items used in the production of the imported goods (Article 71(1)(b)(ii) of the UCC);

and

- the engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Community (Article 71(1)(b)(iv) of the UCC).

The value of such goods/services is to be added when they are supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that their value has not been included in the price actually paid or payable.

Customs valuation analysis

An input to the production process which incorporates or supplies a service, and is not a die, mould or similar item, would not in principle constitute an assist within the meaning of Article 71(1)(b)(ii).

However, such an input to the production process may constitute an “intellectual” assist within the meaning of Article 71(1)(b)(iv).

In the case in question, the file with the cutting-position image is opened and the image is printed on a paper plane using a plotter. The manufacturer of the imported goods does not need to provide any further intellectual input. The images sent electronically can be used directly for the production of the imported goods. In this case, the image is used for cutting the pieces of cloth.

These images (patterns) could therefore be considered as assists under Article 71(1)(b)(ii) of the Code.

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4. Comments

General

The assists described under Article 71(1)(b) of the Code are distinctive categories of assists. In general, the four categories of assists are relatively well described and capable of being distinguished, one from the other. However, while the 1st, 2nd and 3rd categories of assists are relatively well defined, the 4th category of assist is relatively undefined and vague.

The problem with this 4th category is that there is no link with any production process in relation to the finished goods. The only condition to be met is that such an assist is "necessary for the production of the imported goods."

Therefore, while this assist is described in terms of designs, drawings, plans, or artwork, etc., there are no requirements or conditions as to how it is applied or used. However, the use of artwork, designs, engineering, etc. normally requires intermediate technologies and various means of copying, or transformation, in order to contribute to the production of goods.

Specific Case

In this case, the resources provided to the manufacturer consist of an electronic file, incorporating detailed instructions for creating cutting-position images, as part of the process for the manufacture of clothing (textiles).

While it is possible to make, by analogy, a link between this input and the physical functions performed by the tools indicated under the 2nd category of assist, it is also possible to consider that this input provides services (so-called “intellectual assists”) indicated under the 4th category of Assist (Article 71(b)(iv)).

The potential overlap between the various categories of assists is more and more evident due to the use of new technologies, which allow designs to be used directly in the production process.

5. Conclusion

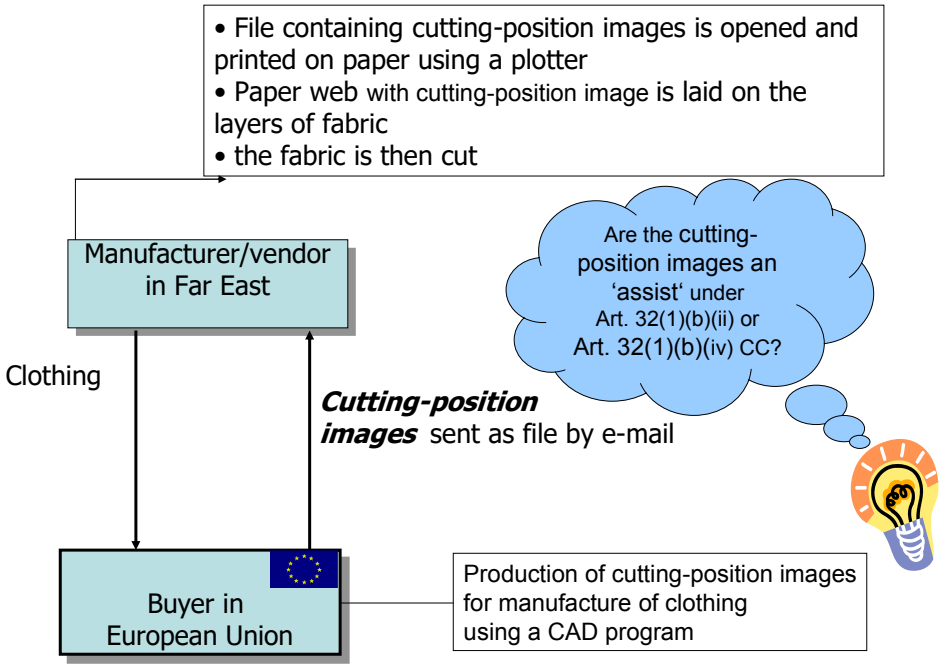
The inputs in question are essential to the production of the goods. These inputs determine the size and shape of the finished goods. These inputs also determine the design of the finished goods. These inputs are integrated into the production process, and are used to determine the physical properties of the finished goods.

The predominant characteristic of the product and service supplied seems to more related to the criteria and functions as specified in Article 71(1) (b)(ii) of the Code.

Consequently, on balance, it is appropriate to classify these inputs under Article 71(1)(b)(ii) of the Code.

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ANNEX 1



Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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Conclusion No 29: Currency conversion. Price invoiced in foreign currencies with pre-fixed exchange rate

Parties to a sale contract may agree in advance on a pre-fixed exchange rate for the conversion into a national currency of a price expressed in a foreign currency for the purposes of payment of the price of the goods. The issue is therefore to determine whether such pre-fixed exchange rate - and the resulting amount in national currency - is acceptable for the determination of the customs value.

Legal provisions

- Article 70 UCC – Transaction value method

- Article 53(1)(a) and Article 146 UCC IA - Currency conversion for valuation purposes

Guidance

- CCC – VAL – Commentary No 4

- WCO TCCV – Advisory Opinion No 20.1

Consideration and conclusions

The calculation of the customs value, and the amount of customs duties and VAT, is made in the currency of the country where the goods are put into free circulation.

Consequently, for the determination of ad valorem duties, where the price paid or payable, as well as any other elements of the value, is expressed in a foreign currency, this amount must be converted into national currency.

The question to be answered is the following: is such conversion necessary where the sales contract provides for a fixed exchange rate?

Where a fixed rate of exchange for the currency of the Member State where the valuation is made has been agreed in advance by a contract between the parties concerned, for settling a price expressed in a foreign currency, that price is considered to be invoiced in the currency of the Member State. The amount to be taken into consideration for the purpose of determining the customs value is arrived at by converting the foreign currency at the fixed rate agreed, provided that the settlement is actually based on that rate.

What is relevant is the currency in which such price is to be actually settled (i.e., paid).

Thus, when the price settlement is made in the currency of the country of import, no conversion would be needed. In the opposite case – price settlement in another currency – the rules on currency conversion laid down in the legislation in force will apply. Then, no account will be taken of any pre-fixed exchange rate.

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This conclusion is also in line with WCO TCCV Advisory Opinion No 20.1.

The same conclusion is to be applied – mutatis mutandis - where the invoice indicates the price expressed in a “virtual” currency (e.g. the so called bitcoins) and at the same time provides for a conversion into a national currency. In such cases, the customs value is to be based on the currency of settlement.

Therefore, if the invoice, and the contract, establishes that the price settlement will be made in a national currency, that amount (in national currency) will indicate the price paid or payable for the goods.

If, on the contrary, the price settlement is made or is to be made in virtual currency, then a currency conversion cannot take place, as provided for under the rules in force. This will have implications for acceptance of the price. The lack of an acceptable price indication will also have implications for the application of the transaction method.

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Conclusion No 30: Application of Articles 71(1)(b) and 71(1)(c) of the Union Customs Code

A. Issue

1. Customs are dealing more and more often with examining matters on which a decision needs to be made as to whether Article 71(1)(b) or Article 71(1)(c) of the Union Customs Code should be applied for the customs valuation of certain operations.

2. This demarcation issue always arises when a royalty or a part of a royalty is paid to a licensor to take account of manufacturing know-how and the licensor of this manufacturing know-how makes it available to the production companies linked to him *free of charge* for the manufacture of the imported product.

B. General example and background (see graphical representation in annex)

3. A multi-national, K, develops its products in different locations with different research and development companies (R&D companies) across the world.

4. The R&D projects are coordinated by an affiliate, S, which is based in a Member State of the European Union. S has signed contracts with all R&D companies in the group, according to which the individual companies are charged by S with carrying out specific R&D projects. These R&D companies charge for the development on a cost plus basis (i.e. development costs plus an appropriate supplement) with S. S pays and acquires the rights to the know-how developed.

5. S makes this know-how available to the production companies, including D in a MS, for the manufacture of products. S signed licensing agreements with the production companies, which stipulate that they pay royalties to S for using the know-how.
   (The amount paid is e.g. 2.5% of the net revenue from the sale of finished products to clients that are not part of the group. D partially finishes the products that are subject to licensing agreements in its own plants.)

Specific case

6. D in EU obtains and imports products (goods that are subject to licensing agreements) from other companies in the group, including from company C in China. C is the seller of the imported goods and D is the buyer.

7. C receives the know-how necessary to manufacture the imported products from D. (In fact, the company S is the entity that provides the know-how to Company C.)

8. For this know-how, D pays royalties to S. These royalties are calculated on the basis of 2.5% of the net sales revenue for this know-how.

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C. Questions to consider

9. Which legal provisions apply to consideration of this specific case?

10. To what extent are the royalties D pays to S to be included in the customs value of the imported products that are subject to licensing agreements?

D. Law applicable and application of the listed provisions

11. If Article 71(1)(c) of the Union Customs Code applies to this case, this leads to the full amount of the royalties payable for the goods imported being included in the customs value, since the manufacturing know-how is already complete when the imported goods are manufactured abroad and is therefore embodied in the imported goods.

12. On the other hand, the manufacturing know-how was made available free of charge to the foreign production company, C, supplied directly by buyer D, or rather (an alternative description) indirectly by S, for the manufacture of the imported goods.

13. This manufacturing know-how is therefore an element (and a supply) that falls within the scope of the provision of Article 71(1)(b)(iv) UCC. The value of which should only be included in the customs value of the imported goods manufactured using this know-how ***if it was developed outside the Union***.

14. With this approach, the royalties paid for the assists (see ECJ judgment of 7 March 1991, C-116/89) would have to be considered for apportionment (i.e., to be split into one part that is used to refinance the development costs incurred outside the Union and another part to refinance the development work inside the Union.

15. It would be possible in practice to make such a split if S provided the necessary documentation e.g. showing the percentage share of the development costs charged by the development locations to S over a particular period of time (e.g. 1 year) and how they compare (e.g. development costs incurred by foreign locations compared with those incurred by EU locations).

E. Legal issues

16. The first question to be considered is whether Article 71(1)(c) UCC has priority over Article 71(1)(b), as *lex specialis*.

17. A second legal issue is, what are the determining factors to identify the possibility that *lex specialis* clauses apply to and amongst these rules.

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E. Existing guidance

WCO Advisory Opinions

18. WCO Advisory Opinions 4.8 and 4.13, in addition to examining whether royalties paid in accordance with Article 8(1)(c) of the WTO Agreement (Article 71(1)(c) UCC) are part of the customs value look at whether they can also be considered as an assist under Article 8(1)(b) of the same WTO Agreement (Article 71(1)(b) UCC).

19. These questions are not explicitly resolved in these WCO Advisory Opinions. According to the WCO Technical Committee's arguments and the structure of these expert reports, checks of this kind are necessary and could lead to the inclusion of the royalties in the customs value under Article 8(1)(b) of the WTO Valuation Agreement.

20. Also, evident in the WCO Advisory Opinions 4.8 and 4.13 , is that the approach was to first check whether the royalties should be included in accordance with Article 8(1)(c) of the WTO Agreement.

21. Only after that step is performed, this approach looks at including the payments under Article 8(1)(b) of the WTO Valuation Agreement and then only because these amounts could not be included in the customs value under Article 8(1)(c).

Note: both of these WCO Advisory Opinions did not carry out a comprehensive examination of the issue. Both Advisory Opinions state that:

> "whether the supply of the art and design work/labels relating to a trademark would qualify as dutiable under Article 8.1(b) is a separate consideration"

WCO Case Studies

22. Two case studies by the WCO Technical Committee suggest that Article 71(1)(b) UCC should be given priority over Article 71(1)(c) UCC.

23. Case study 8.1 is a case in which a clothing importer (ICO) makes paper templates of designs received from a licensor (LCO) under a licensing agreement available free of charge to his foreign manufacturer (XCO) for producing the clothing.

24. In return for the paper templates and designs, the licensing agreement stipulates that ICO has to pay LCO royalties of 10% of ICO's gross sale price when selling on the imported clothing. In this case the Committee considers that the customs authority must determine the exact nature of the payment described as a royalty in order to be able to decide whether this constitutes part of the customs value of the imported clothing or not.

25. According to the WCO Technical Committee, if the facts show that the payment

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described as a royalty concerns elements (assists) of Article 8(1)(b) of the WTO Valuation Agreement, then such Article is applicable. Failing this, the customs authorities should examine whether the payment meets the requirements of Article 8(1)(c).

26. The WCO Technical Committee reaches the same conclusion in case study 8.2, which deals with the customs valuation treatment of royalties for using music videos that were made available free of charge by the buyer of the imported goods, using a master tape provided to a manufacturer.

27. Should we choose to follow the opinion of the WCO Technical Committee on Customs Valuation in these two case studies, Article 71(1)(b) UCC would be given priority over Article 71(1)(c) UCC.

This case illustrates that the International Guidance (from the Technical Committee on Customs Valuation) is not fully aligned, and may even be inconsistent.

G. Application of EU rules

28. Article 71(1)(b) of the Union Customs Code is relevant if manufacturing know-how needed for the manufacture of the imported goods is provided under a licensing agreement and is made available free of charge to the manufacturer of the imported goods by the licensee or indirectly by the licensor.

29. Consequently, Article 71(1)(c) of the Union Customs Code would only need to be checked for parts of the royalty that do not concern a production factor (e.g. royalties for using trade mark rights, distribution know-how, utilisation know-how, maintenance and repair know-how, etc.).

H. ECJ jurisprudence

30. The ECJ judgment in case C-116/89 supports the approach described in WCO case studies 8.1 and 8.2. In this judgment the ECJ stated that the applicant's arguments, which relied on the interpretation of Article 8(1)(c) of the Valuation Regulations in force at the time (Council Regulation (EEC) No 1224/80), no longer needed to be considered because the royalties had already been added to the price actually paid or to the price to be paid for the imported seeds in accordance with Article 8(1)(b)(i) of the same Regulation as they concerned the basic seeds provided to the supplier[67].

31. In conclusion, this demarcation question is a fundamental customs valuation problem to which there is not yet a clear solution either in the existing guidance

67 Article 8 of Regulation No 1224/80 was afterwards reproduced without changes in Article 32 of the Customs Code and finally in Article 71 UCC

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or legal acquis (i.e., documents of the EU, the WCO customs valuation committee or in case-law).

J. **Outline conclusions**

32. The existing advice (conclusions and guidelines concluded in the Customs Code Committee, as well as the WCO Technical committee, and in case-law) does not provide definitive or consistent indications to address cases in general.

33. It is not possible to set out an interpretative approach based on a priority rule approach within Article 71 UCC, or indeed to specify a *lex specialis* in this regard.

34. However, this example is important. It illustrates that there is a dynamic between the customs valuation of final goods, and the valuation of inputs (assists) to the production of final goods.

35. Furthermore, this case illustrates that a choice must be made between the valuation treatment **of assists as assists** *per se*, regardless of how the cost/payment of assists is computed, structured and classified, and the valuation treatment of *assists as royalties*, because the means of compensation (payment) of these assists **take the form of royalties**.

However, Article 71 (1) (b) UCC covers “assists” and is a rule which deals with circumstances where the buyer provides inputs to the production etc. of the goods, and value of the inputs must be included in the customs value.

This is a starting point to consider that any assist as a production factor, of material or even immaterial nature, has to be considered under Article 71(1)(b) UCC. Whenever, therefore, this occurs, the provisions on assists will apply.

36. Further, while the rule does not specify the nature (type) of payments used to value the assists, the relevant Interpretative Notes refer to various ways (purchase price, cost of production, etc).

    In this respect, royalties and licence fees are a suitable means of payment for an assist listed in Article 71(1)(b).

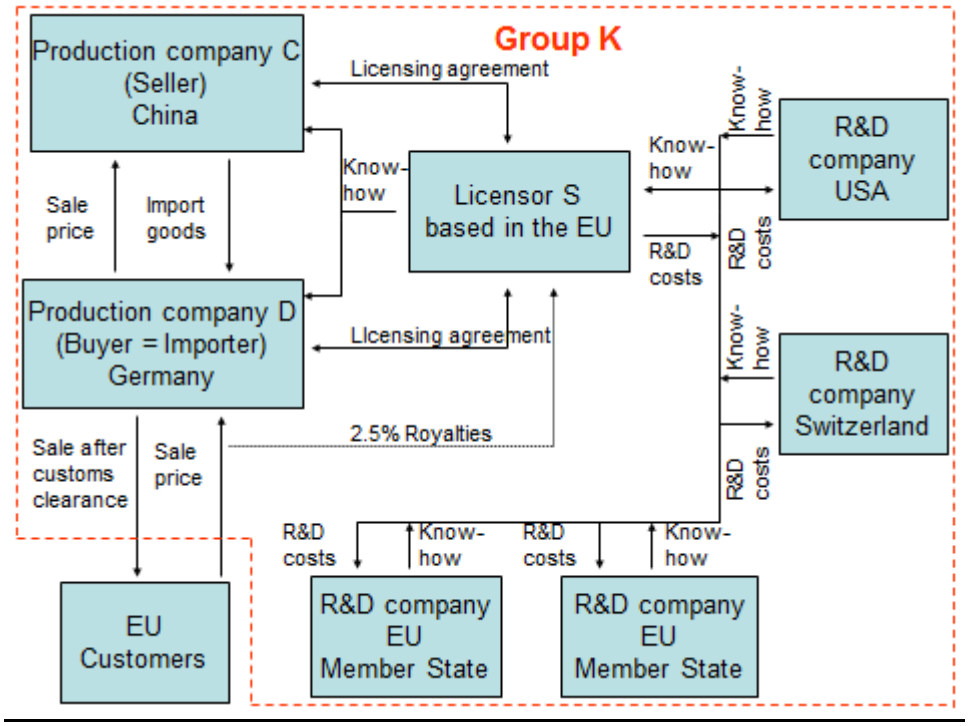
37. In such cases, the usage of one or another method to compensate (pay) the owner (and supplier) of the assist should not lead to a switch in the legal rule to be applied. Similarly, the characteristics (*nature)* of an assist should not lead to a switch in the legal rule to be applied.

38. In the specific case described in this document (see paragraph 6 and 7 above), since it appears that the assist under consideration indeed constitutes a factor of production of the imported goods, a customs value can be determined by application of Article 71(1)(b).

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39. It must be stressed that the conclusions reached above are directly affecting the presented set of facts. Though the same conclusions might have general application, each case must nonetheless be examined in its own individual terms, with respect to the relevant facts reported and documents produced.

ANNEX



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Conclusion No 31: Valuation of perishable fruits and vegetables – sales on consignment

I. Regulatory background

A. Valuation of fruit and vegetables

1. The valuation of fruit and vegetables not subject to the entry price mechanism (i.e., goods not listed in Annex XVI to Regulation (EC) 543/2011, or goods listed in that Annex but imported outside the periods covered by this Regulation), follows the common valuation rules and principles (Articles 69-76 UCC):

2. In practice, given the nature of the goods being valued, the declarant shall use the **transaction value** method or, for imports on consignment, the **deductive method**.

B. Valuation of fruit and vegetables which are subject to the entry price mechanism

3. For fruits and vegetables and for the periods of application laid down in Annex XVI to Regulation (EU) No 543/2011, it is also appropriate to apply the common valuation rules, provided for in Articles 69-76 UCC and Articles 127-146 UCC IA).

4. Thus, the entry price is equal to the customs value, determined through the normal use of the following valuation methods:

   * Transaction value in accordance with Article 70 UCC;
   * In the absence or in the event of rejection of the transaction value: secondary methods in accordance with Article 74 UCC :
     - Transaction value of identical goods;
     - Transaction value of similar goods;
     - 'General' deductive method in accordance with Article 74(2)(c) UCC;
     - Computed value method;
     - Fall-back method.
   * goods imported on consignment: the deductive method (Standard Import Value - SIV) is compulsory.

5. In practice, given the nature of the goods being valued, the declarant shall either use the transaction value method or, for imports on consignment, the SIV.

C. Additional Guidance

6. Advisory Opinion 1.1 of WCO TCCV refers to goods imported on consignment, which corresponds to the situation in which the goods are sent to the importing country with the intention to sell them there at the best

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price for the account of the supplier. At the time of import no sale has taken place.

7. The consignee of the goods usually acts as a sales agent (as defined in the explanatory note 2.1 of WCO TCCV). Sales agents act on behalf of the seller, collect orders and, sometimes, store the goods and take care of their delivery. They participate in the conclusion of the sales contract and are remunerated by a fee, usually expressed as a percentage of the price of the goods.

II. Situation 1

A. Presentation of the trade scheme and issues raised

8. A fruit and vegetables supplier “F”, established outside the European Union, sends goods to an importer “I”, established in that territory.

9. The two companies are in regular business association, where “I” acts as the selling agent on behalf of “F” to customers located inside and outside the European Union. Imports are made on consignment, as defined in the preceding paragraph.

10. The question arises whether “F” and “I” can adjust their contractual relationship by providing that they may choose, before release for free circulation, to enter into a sale for the goods. If this is the case, of course "I" does not act as a sales agent, but is in the position of "buyer" in a sale contract.

B. Analysis and solution

11. The determination of the customs value and the method of customs valuation, must in principle take place at the time the goods are declared for free circulation, in accordance with Article 77 UCC.

12. Thus, it is possible to apply the transaction value method, even if the sale is concluded just before the goods are declared for free circulation. That approach is often illustrated by the example where the seller of goods does not yet know, at the time the goods are sent, the buyer with whom he will conclude the sale used to assess the value of the goods. (This is also stated in in example 4 of the TCCV Advisory Opinion 14.)

13. This approach must, however, be applied with more caution when the parties to the sale are already in a business association which includes the sending of goods on consignment and where the importer usually carries on an activity of sales agent on behalf of the supplier.

14. The valuation method applied is directly linked to the underlying commercial framework:

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- If, on the date of release for free circulation, the goods were sold for export to the customs territory of the European Union, it is appropriate to apply the transaction value method;
- If, on the date of release for free circulation, such sale has not been established, then the goods are imported **on consignment**; consequently, the transaction value method is not applicable, and the customs value should be determined in accordance with the secondary methods.
- In practice, given the particular nature of the goods in question (perishable fruits and vegetables) the value will be determined under the deductive method.
- This application takes the form of the SIV for goods subject to the entry price mechanism. For other fruit and vegetables, it will take the form of the 'general' deductive method in accordance with Article 74(2)(c) UCC or of the Unit Prices methodology, where appropriate.

15. There is a clear distinction between the two methods of customs valuation – transaction value and deductive method-[68], each applying in a specified and distinct commercial framework, not least because the role and status of the importer - is radically different in these two situations.

16. Indeed, if the importer purchases the goods in order to resell them after release, he acts in his own name and on his own account and, as a result of his position as the owner of the goods; as a party of a sale contract, he takes a commercial and financial risk (loss or profit on sale, loss of goods in the course of transport under the Incoterm agreed).

17. On the other hand, where the importer receives the goods under the **on consignment** arrangement, he generally acts as a selling agent, acts in his own name but on behalf of the supplier. Insofar as he never acquires the ownership of the goods, he bears no risk as owner, and receives remuneration for his service.

18. In principle, parties are fully free to choose any form of legal and licit trade pattern to regulate their business. Consequently, in the framework of a regular business relationship between two companies, an importer may legally enter into contracts and therefore process certain flows under the **on consignment,** system and other flows under the outright sale. At the same time, such contractual arrangements should be capable of being distinguished, both as such and, with respect to the goods covered by such contracts.

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68 For reasons of simplification, in the case of use of the transaction value method, it is assumed that the requirements laid down in Article 70 (3) UCC for the application of this method are fulfilled.

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19. On the other hand, it appears difficult to consider that the commercial choices (outright sale or *on consignment*) for each consignment may come at the last moment, immediately before release for free circulation.

20. Because of its impact on the role of the importer, such choice should fall within a commercial context resulting from negotiations (for which evidence can and must be provided) or a written agreement between the supplier and the importer, which needs to occur prior to the material time of import.

21. Therefore, while it is possible to consider that certain flows will be imported as an outright sale concluded between "F" and "I", it is reasonable to consider that the flows treated under the *on consignment* system and those of the outright sale must be differentiated according to specific, objective and solid criteria. These criteria may, in specific cases, be linked to the variety of fruit and vegetables imported or their packaging.

22. Similarly, in the interests of legal certainty, it may be advisable for the operators to contractually agree on the criteria to segregate the two types of transactions.

III. Situation 2

A. Presentation of the trade scheme and problems

23. A fruit and vegetables supplier "F", established outside the customs territory of the European Union, sends goods to an importer "I", situated in that territory.

24. The two companies are in regular business association, where "I" acts as the selling agent on behalf of "F" to customers "C" located inside and outside the European Union..

25. Customers "C" are found by I prior to import. There are three types of customers and commercial (contractual) arrangements:

    - Those with whom a framework agreement has been concluded with or without estimated trade volume over a certain period;
    - Those with whom a framework agreement has been concluded with or without estimated trade volume over a certain period, but with a unit price defined in advance by variety/category/commercial quality over a given period.
    - Those with whom no agreement has been concluded. However, it may happen that "I" has regular relations with customers in this category.

26. These framework agreements do not imply any obligation to buy goods during the period that they cover.

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27. As regards imports, three situations may arise:

    Situation No. 1: “C” orders to “I” a certain quantity of a product for a given price, then “I” forwards the order to “F”. “F” then sends the goods to “I”, who receives the goods, verifies, prepares and delivers them to “C”;

    Situation No. 2: “F” sends goods to “I”. However, during transport, “C” orders to “I” a given quantity of the product for a given price, then “I” forwards the order to “F”. “I” receives the goods, verifies, prepares and delivers the requested quantity to “C”;

    Situation No. 3: “F” sends goods to “I”. The latter receives the goods and either places them in temporary storage or directly declares them for free circulation. Where the goods are in temporary storage, “I” may declare them for free-circulation either in the absence of any order or following an order of “C” for a certain quantity and price. “I” will then verify the goods, prepares them and delivers to “C” the ordered quantity.

28. The question arises as to the valuation method considered by “I” under each of these three situations.

B. Analysis and solutions

29. Firstly, it is possible to consider that prior to orders for goods, there is no sale of the goods. Indeed, such framework agreements, concerning only a projected quantity of goods to be imported during a specified period, would not involve a sale contract, whose execution would be staggered.

1. Case 1

30. In that case, there is a sale concluded before the departure of the goods from the country of export between “C” and “F”, via the intermediary “I”. Goods are not imported on consignment.

31. This sale is concluded before the goods are released for free circulation, and the price actually paid or payable by C can serve as a basis to implement the transaction value method.

2. Case 2

32. In such a situation, it appears that the goods are sent to “I” in order to market them in the customs territory of the Union on behalf of “F”. However, goods are sold by “I” on behalf of “F” during their transport.

33. A sale is concluded before the goods are declared for free circulation, and therefore the goods cannot be considered as imported **on consignment**,

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although selling agent “I” merely managed to sell the goods on behalf of “F” before arriving at its premises.

34. Consequently, the valuation of the goods must be carried out on the basis of the transaction value method.

35. Similarly, this analysis implies that proof of the conclusion of a contract of sale during transport may be adduced by any appropriate means, to the satisfaction of the customs authorities. In this respect, it must be stressed that in accordance with Article 145 UCC IA the invoice is required as a supporting document.

3. Case 3

36. In such a situation, it appears that the goods are sent to “I” in order to market them in the customs territory of the Union on behalf of “F”. The goods are released for free circulation before being sold by “I” on behalf of “F”.

37. In the absence of a sale at the time of release for free circulation, it appears clearly that the goods are imported in consignment. Therefore, they should be assessed using the SIV in force at the date of release for free circulation where they are subject to the entry price mechanism. Otherwise, they will be assessed either under the deductive method of Article 74(2)(c) of the UCC or under Unit prices.

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Conclusion No 32: Treatment of transport costs in specific cases (Assessment of so-called "kickback incentives")

Background

The term "kickback incentive" has been defined as a payment made to a recipient as compensation or reward for providing favourable treatment to another party. It is often considered as an unethical or even illegal practice.[69]

In the context under examination here, freight agents in third countries offer, to the exporters, cargo space at reduced or even negative prices.

This happens mainly at level of the Less than Container Load (LCL) containers.

Note:	LCL is a shipment that is not large enough to fill a standard cargo container. This means that more and different loads are transported (stowed) in one and the same container.

These cases mostly concern loads that have been bought based on the delivery condition[70] CIF or CFR (the so-called prepaid freight).

Furthermore, to compensate for its reduced gain on the freight charges, due to the offer of cargo space at lower rates, the third country agent charges extra costs to the agent dealing with the container in the EU. Such costs are billed separately, and may be described under several terms, like for instance (non-exhaustive list):

> *China Import (Service) Fee, THC surcharge, ISPS surcharge, Eco tax, Surcharge, Transfer fees, Incentive Refund, LCL Services Charge, Handling Fee, Refund Delivery Order, Agency, Discharging, Refund or Far East Import Surcharge etc.*

These costs will be paid to the third country agent, as a so called Kickback Incentive, Rebate or Refund.

69 *www.investopedia.com/terms/k/kickback.asp*

70 (INCOTERM)

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Example

(in USD per cubic meter (cbm))

Payments

The third country agent has to pay to the shipping company	60
Profit for third country agent (hypothetical)	10

Real costs of freight	70

But, in cases of Less Than Container load, the third country agent offers to the exporter/seller a freight price of 20 under CIF terms of delivery.

Therefore, the third country agent has a “loss” of USD 50.

To compensate for the “discount” granted (here in this example, USD 50), the third country agent instructs the agent in the EU, to charge a corresponding extra fee to the importer. The EU agent charges these extra fees to the forwarder, who in turn passes on the costs to the ultimate importer.

Finally, the payments are returned to the third country agent.

Analysis

Audits carried out by some EU customs administrations showed that these extra costs are not included in the customs value, when the imported goods are declared for free circulation. Often the declarant does not even know the amount of the “kickback payments”.

At the end, the extra costs will be charged to the ultimate importer and paid back to the agent in the third country. As indicated above, these extra costs and amounts (called: 'Kickback Incentive', or 'Rebate', or 'Refund') constitute the compensation for the discounts granted on the freight charges given by the third country agent.

Therefore, the importer eventually pays, separately from the price of the goods, also an extra amount of freight costs (of in this example USD 50) differently defined (because of the CIF clause, USD 20 is already included in the price).

Although it is a CIF shipment, still an amount of USD 50 per cbm (in this example) is charged. Shall these payments be included in the customs value?

Conclusion

Inclusion of transport costs into the customs value applies regardless of the agreed delivery terms, which are the subject of an internal contractual arrangement between buyer and seller.

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Therefore, the main analysis to be carried out is whether these costs are directly linked to the transport of the goods and meant to cover no other service that the transport of goods into the EU customs territory. Also, it has to be considered whether these costs actually occurred before the entry of the goods in the EU customs territory.

Should both these conditions be met, then these costs must be included in the customs value of the imported goods, under Article 71, paragraph 1, letter e) of the Union Customs Code.

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Conclusion No 33: Treatment of certain costs for weighing of containers

Background

1. Due to the security regulations by the IMO (International Maritime Organization), all containers need to be weighted in the port of exportation to get permission to be loaded on to the ship.

2. The shipper is responsible for providing the verified gross mass by stating it in the shipping document, and the captain is responsible for the verification of the gross mass stated in the transport document.

3. In practice, the same equipment that is used for loading the goods (containers) onto ships may also be equipped to carry out the weighting of the containers.

Issue at stake

4. This new weighting requirement generates an additional cost. This cost may be borne by the exporter, or passed on to the importer. Also, depending on the terms of delivery (Incoterm), the cost may be directly incurred by the importer.

5. The issue is whether such cost is to be included in the customs value of the imported goods.

Relevant Regulatory provisions

6. According to Article 71 of the UCC, *In determining the customs value under Article 70, the price actually paid or payable for the imported goods shall be supplemented by:*

   (e) the following costs up to the place where goods are brought into the customs territory of the Union:

   (i) the cost of transport and insurance of the imported goods; and

   (ii) loading and handling charges associated with the transport of the imported goods

Observations and conclusions

7. Under Article 70(2) UCC, the price paid or payable includes all payments made or to be made as a condition of sale of the imported goods.
8. In the case at hand, these costs may appear as related to, or as a condition of, transport of the goods.

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9. Therefore, the question must be addressed having regard to Article 71(e) UCC. EU rules do not provide a definition of transport costs (or of loading or handling charges).

10. Neither the WCO TCCV nor the Customs Code Committee has adopted general instruments on transport costs that are relevant here.

11. On the other hand, the ECJ, in its ruling on Case C-11/89, has stated that… *the term 'cost of transport' must be interpreted as including all the costs, whether they are main or incidental costs, incurred in connection with moving the goods to the customs territory of the (Union)…*

12. This general approach seems to be applicable to the case at hand. Indeed, the weighing obligation (and related costs) constitutes an essential step of the whole transport operation, which could not take place if the containers were not weighed.

13. It seems therefore reasonable to consider that the cost of operations such as weighting, linked to the loading of the goods, and the containers loaded on vessels, should be considered as related to the transport of the goods, and therefore included in customs value in accordance with Article 71 (1) (e)(ii) of the UCC.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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Conclusion No 34: Treatment of storage costs

Background

1. It is the usual commercial practice that certain goods, already sold, could be stored for an "intermediate period" before being cleared. In certain cases, goods are stored for some time before being loaded, since during this period they must undergo some treatments to make loading operations possible.

2. The most common practice is to temporarily store them in a terminal waiting for the loading procedures which precede the shipment. During this period the goods *could also undergo necessary treatments* in order to make possible the loading operations (e. g. fluidizing by heating and pumping of semiliquid materials such as molasses and palm oil).

Issue at stake

3. Must the costs of the intermediate storage of goods (and of intermediate treatments such as heat treatment) in the country of export, or even in other third country ports (in the case of transshipment) be included in the value of goods?

Considerations

4. Apart from the case of intermediate storage costs which are already included in the transaction value of the imported goods, when the costs for those (intermediate) operations in a wider sense (storage and handling) are in any way borne by the buyer and need to be evaluated by the Customs at the moment of clearance?

WCO Guidance

5. Commentary No. 7.1 of WCO Technical Committee for Customs Valuation offers a view on the matter because it refers to *storage costs*, not considering therefore the constellation of *other intermediate costs such as loading costs* and explicitly excluding any other cost related to i*ntermediate treatments*.

6. Paragraph 5 of this Commentary concludes that *storage* costs related to the transportation of the goods can be considered as *costs related to the transportation*. Such costs are therefore covered by Article 8.2 (b) of the WTO Agreement. (In the EU legislation, Article 71 paragraph 1, letter e) point ii) of the Union Customs Code).

7. However, in some cases it can be difficult or even impossible (e. g. even during post-clearance audit) to determine whether the storage of the goods (and possible intermediate treatments in storage) *is related to their transportation*.

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Observations and proposed approach

8. In this respect, it is useful to consider whether there is *a legal and practical basis* to *apply a practical reference time threshold* in order to distinguish between a) *storage within a prescribed period of time* (to be considered as directly associated to transport, and b) *storage in excess of a prescribed period of time.* In the latter case a detailed examination of the reasons and circumstances of the storage (of the goods) would be necessary in order to determine whether the storage (and possible intermediate treatments in storage) is still associated with the transport.

9. However, in strictly legal terms, such an approach would need a regulatory (legal) basis. Further, a fixed time threshold would be extremely difficult to establish, as the "normal" storage time may significantly vary (due to the nature of the goods, preliminary treatments needed etc.)

10. A possible approach would then consist in determining whether this **intermediate storage,** and the related treatment, is functional and indispensable for the transportation of goods. In other words, if the transport cannot take place where the goods are not the subject of specific treatments, then the costs of these treatments (and of the storage necessary for performing them) should be considered as directly related to the transport of the goods (or assimilated to loading charges) and therefore included in customs value in accordance with Article 71 (1) (e)(ii) of the UCC).

It is evident that such analysis must be carried out for individual situations on a case-by-case basis.

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Conclusion No 35: Goods purchased in internet auctions (penny auctions)

Description of a Penny Auction

All auction items on the Penny Auction website have a starting bid of $ 0.01, after which the bidders can increase the bid by $ 0.01 per bid.

To be able to bid in the auction, bidders must have acquired the right to bid. This right is purchased from the auction house at a price shifting between approx. $ 0.30 and $ 1 per bid-entitlement (this price is set as a function of the purchased entitlements to bid). Therefore, to place a bid that increases the bidding price by $ 0.01 the bidder actually pays at least $ 0.31.

At the end of the auction period, the highest offer entitles the buyer to purchase the item at the highest reached bidding price.

Therefore, assuming that a certain item is sold after 500 bids, and that the final bid is of $ 5, the total revenue for the auction house will be $ 5 (level of the final bid) plus at least $ 0.30 (price per bid to purchase entitlements to bid)* 500 (the total number of bids), i.e. a total of at least $ 155.

However, the highest bidder (the winner of the auction) only pays $ 5 (level of the final bid) plus $ 0.30 for each bid that he has submitted. The highest bidder's purchase price (the 'winning bid') can thus be as low as $ 5.30, if he only submits one bid before winning the auction.

On some of the websites the 'winning bid' can be converted into subsequent trading rights either on the relevant website or on other affiliated network websites.

This kind of trade means that the buyer can acquire a product at a fraction of the product's normal retail value. Nevertheless, the 'winning bid' is equal to the price actually paid by the buyer to the seller for the goods.

In term of shipping/delivery, there are no restrictions about the place where the good purchased in the auction can be shipped to – i.e. they can be delivered by the auction house outside the country were the auction took place.

Issue at stake

Would a person purchasing a product on a Penny Auction be able to apply the transaction value method under Article 70 of the UCC, when he subsequently imports the product into the customs territory of the Union?

Relevant Regulatory provisions:

Article 70 (1) UCC. "*The primary basis for the customs value of goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the customs territory of the Union, adjusted, where necessary.*"

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Article 71 (1) UCC*. "In determining the customs value under Article 70, the price actually paid or payable for the imported goods shall be supplemented by: …*

(e) the following costs up to the place where goods are brought into the customs territory of the Union:

(i) the cost of transport and insurance of the imported goods; and

(ii) loading and handling charges associated with the transport of the imported goods."

Article 128 (1) UCC IA: "*The transaction value of the goods sold for export to the customs territory of the Union shall be determined at the time of acceptance of the customs declaration on the basis of the sale occurring immediately before the goods were brought into that customs territory*."

Observations and proposed approach

The issue is to be solved in the light of the provisions of Article 128 (1) UCC IA, stipulating that the relevant sale for the application of the transaction value method is the one occurring immediately before the goods are brought into the EU customs territory.

In the case at hand, the main elements to be considered are:

- the price actually paid or payable for the goods, determined based on the 'winning bid' – i.e. the sum of bidding rights used and the final bid

- the auction house will deliver the goods to EU territory at the request of the buyer

Therefore, the transaction value method would be applicable at the time of import into the Union, supplemented as necessary with the transport and insurance costs provided under Art 71(1)(e) UCC.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 36: Emission premium for excess CO2 emissions

I. Background

1. A manufacturer of motor vehicles in a 3rd country (**X**) will be subject from year 2020 to emission premium for excess CO_2 emissions (i.e. "excess emission premium") under Regulation (EC) No 443/2009 (CO_2 from cars) and Regulation (EU) No 510/2011 (CO_2 from vans), for its motor vehicles exported to the Union. The motor vehicles are imported into the Union by a distributor (**Y**).

2. The manufacturer X intends to include from 2020 the excess emission premium in the individual invoices issued to the distributor Y for each of the motor vehicles imported into the Union.

3. The manufacturer includes the excess emission premium in individual invoices issued to the distributor Y based on estimations (the exact excess emission premium to be paid in 2020 will be known in 2021).

II. Issue at stake

How the customs value should be calculated in the case that the excess emission premium is included in the individual invoices for each motor vehicle sold by X to Y and imported into the Union?

III. Relevant regulatory provisions

Regulation (EC) No 443/2009[71], Regulation (EC) No 510/2011[72]

From January 1, 2020, a new regulation will be applicable - the Regulation (EU) 2019/631[73]. The regulation will replace the abovementioned two legal acts. Under this

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71 Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO_2 emissions from light-duty vehicles (Text with EEA relevance), OJ L 140, 5.6.2009, p. 1–15.

72 Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO_2 emissions from light-duty vehicles Text with EEA relevance, OJ L 145, 31.5.2011, p. 1–18

73 Regulation (EU) 2019/631 of the European Parliament and the Council of 17 April 2019 setting CO_2 emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011, OJ L 111, 25.4.2019, p. 13–53.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

new regulation, the provisions on the calculation of the excess emission premium fully reflect the corresponding provisions concerning the premium in the Regulation (EC) No 443/2009 and Regulation (EC) No 510/2011.

Articles 70, 71 (3), 72(f) UCC[74] and relevant implementing provisions UCC IA[75]

IV. Preliminary observations

1. Each year, the Commission monitors, verifies and confirms the performance of light-duty vehicle manufacturers in reducing their CO_2 emissions and meeting their targets under Regulation (EC) No 443/2009 (CO_2 from cars) and Regulation (EU) No 510/2011 (CO_2 from vans). The values are determined on the basis of annual car registrations in the previous calendar year. The data is delivered by the Member States and manufacturers have the option to verify them and then notify the Commission of any errors.

2. Where it is confirmed that – in the previous calendar year – a manufacturer's average specific CO_2 emissions exceeded its specific emissions target, the Commission will impose an excess emission premium on the manufacturer. The premium is calculated based on the CO_2 emissions exceedance and the number of registration of the manufacturer in the calendar year concerned. The recovery of the premium is performed by the Commission and not by customs authorities, and the amounts collected are considered as revenue for the general budget of the EU.

3. The entity responsible for paying the excess emission premium is the manufacturer. If the manufacturer is not based in the EU, it has to appoint an EU representative based in a Member State, which shall be responsible for all aspects of the type approval as well as for paying any excess emission premium.

4. The excess emission premium is calculated on the basis of the CO_2 emissions of vehicles registered in the EU, Iceland and Norway in the previous calendar year. The excess emission premium is payable as lump sum related to the total fleet of registered vehicles from a manufacturer, and as such is not directly related to

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74 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1–101.

75 Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

individual vehicles. In addition, it is neither applied when the individual vehicles are released for free circulation into the customs territory of the Union nor at the moment of the registration of these vehicles in the EU.

5. In the light of the foregoing, it should be examined whether the excess emission premium may influence the customs value based on the transaction value method – i.e. may this premium be seen as a dutiable element for the customs valuation purposes? If this is not the case, then the premium would fall into the scope of Article 72 (f) of the UCC and may be considered as "other charges payable in the Union by reason of the import or sale of the goods"), which are not included in the customs value for the imported goods?

V. Conclusion

1. The excess emission premium is a consequence of the Union policy in terms of the reduction of CO2 emissions from light-duty vehicles and vans. The fundamental aims of the Regulation (EC) No 443/2009 and Regulation 510/2011 (CO_2 from vans) is to reduce CO_2 emissions and promote the development of technologies intended to reduce radically CO_2 emissions from road vehicles. The objectives are different from an objective of the provisions dedicated to the determination of customs value, i.e. establishing a fair, uniform and neutral system of customs valuation of goods for the application of the Common Customs Tariff and non-tariff measures (art. 69 UCC)[76].

2. The EU legislation governing the excess emission premium establishes that **the determining factor triggering legal consequences is the registration of a new motor vehicle in a Member State (as well as in Iceland and Norway);** the introduction into the customs territory of the EU or the release of a new motor vehicle for free circulation are not addressed in this legislation[77]. Therefore, the excess emission premium does not come under the scope of the provisions of Article 72 (f) of the UCC, which refers to "import duties or other charges payable in the Union by reason of the import or sale of the goods".

3. On the other hand, the excess emission premium is paid by a manufacturer (or on behalf of a manufacturer) in order to meet the EU legal requirements. It is paid

[76] See also the ruling of the ECJ issued in the case 7/83 (Ospig Textilgesellschaft KG V. Ahlers).

[77] Further consideration on the registration of cars in the EU and the connection with the customs duties on imports or a charge having equivalent effect could be found in several ECJ cases (e.g. C-313/05 Brzeziński, etc.)

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

regardless whether a motor vehicle has been produced inside the Union or outside, in a third country.

4. According to Article 71 (3) of the UCC “No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article”. The excess emission premium does not fall within the scope of any additions to the price actually paid or payable defined in Article 71 of the UCC.

5. Furthermore, the excess emission premium does not relate to a specific sale. The source of a legal obligation for the payment of the premium is the registration of a motor vehicle in the Union, Iceland or Norway in the previous calendar year and not a sale for export to the customs territory of the Union. In other words, the excess emission premium is external from the price for the goods itself. Therefore, the premium does not constitute a part of the price actually paid or payable as defined in art. 70 (2) UCC.

6. For the above-presented arguments, the excess emission premium is irrelevant for the customs valuation purposes and it should not be included into the customs value for imported motor vehicles, if the premium is clearly identifiable and presented separately from a price for the goods in an invoice used to determine the customs value under the transaction value method.[78]

7. However, if the excess emission premium is already reflected in the price of the imported motor vehicles, there is no legal basis for excluding it from the customs value, as the premium is not covered, as it was already highlighted, by any of the costs listed in art. 72 UCC, particular, it cannot be seen as import duties or other charges payable in the Union by reason of import or sale of the goods (art. 72 (f) UCC).

[78] See also the ruling of the ECJ issued in the case C-219/88 (Malt GmbH).

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 37: Treatment of payment for activating an additional software function of goods after release for free circulation

I. Background

1. A manufacturer (X) situated in a third country sells motor vehicles (cars) to his distribution company (Y) in the Union. The companies are related in the meaning of the Union customs provisions on the determination of the customs value, but the relationship has not influenced the price of the goods.

2. The cars, intended for the European Union market, are equipped, at the process of production, with pre-installed multiple software functions, such as rain sensor, seat heating, driver drowsiness detection, digital radio, navigation system for the European region or blind spot assistant. Only cars' software functions allowing to comply with the Union regulations on safety of motor vehicles are activated at the time the cars are brought into the customs territory of the Union. The price of the cars agreed upon between X and Y includes the value of the equipment for all software functions as well as the value of the activation of options allowing to comply with the said Union regulations. However, there are certain functions that are sold as extra options at the request of final buyers and thus activated only in exchange of supplementary payments from the buyers. The value of their activation is not reflected in the price of the cars agreed upon between X and Y.

3. An EU client (Z) has ordered from Y a specific model of a motor vehicle equipped, as extra options, with rain sensor and seat heating system.

4. Following the order of Z, the motor vehicle with the two functions already activated is subject matter of a sales contract between the seller/manufacturer X and the buyer/distributor Y. The sales contract is concluded before the importation of the motor vehicle into the customs territory of the Union has taken place. All other possible functions, potentially available for final buyers of this model of motor vehicles, are not activated.

5. Y declares the car for release for free circulation into the customs territory of the Union.

6. After releasing the car for free circulation the distributor Y resells it to Z.

7. At a later point in time, Z decides to activate another function (i.e. digital radio). In order to do this he buys from Y (or X) a software key, which is subject to the payment of a certain fee and is provided to him by e-mail. The software key can also be provided on a piece of paper or a USB device. The activation of the function can be done either by Z himself or by an authorized repair shop by entering the software key either in the computer of the car or online.

II. Issue at stake

Does the payment for the activation of an extra software function (digital radio) made by Z to Y (or X) form a part of the customs value for the imported motor vehicle?

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

III. Relevant regulatory provisions

Article 70 UCC[79]

Articles 128, 129 (1) UCC IA[80]

IV. Preliminary observations

8. In the examined case, a sales contract concluded between X and Y constitutes the sale for export to the customs territory of the Union. The sale meets requirements to be used for the customs valuation purposes in accordance with Article 70 (1) UCC and Article 128 (1) UCC IA.

9. According to the presented facts, the car additionally equipped with rain sensor and seat heating, ordered by the final buyer Z, is introduced into the customs territory of the Union and declared for release for free circulation into the territory by Y. Therefore, the price actually paid or payable by Y to X, which refers to the imported car with the indicated additional functionalities, at the time, shall be used in order to determine the customs value under the transaction value method as defined in Article 70 UCC.

10. The purchase of an additional function of the car (digital radio) by Z is a consequence of a separate sales contract agreed upon between Z and Y (or X) after the car is already released for free circulation.

11. The two sales contracts shall be seen as independent of each other. Therefore, the payment made by Z to Y (or X) for the access to the extra software function will not form part of the customs value of the imported car.

V. Conclusion

1. In the examined case, the customs value of the imported motor vehicle with two extra functions (i.e. rain sensor and seat heating) activated is determined based on the sales contract concluded between X and Y, which is a relevant sale for the customs valuation purposes. The price actually paid or payable by Y to X for the car with these two extra functions at the time of acceptance of the customs declaration will be used to determine the customs value of the car under the transaction value method.

2. The activation of an additional function (i.e. digital radio) at the request of Z is not a subject matter of the sales contract between X and Y. The additional function is made available after release the car for free circulation and under a

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79 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1–101.

80 Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

separate sales contract agreed upon between Z and Y (or X), independent from the one concluded between X and Y.

3. The activation fee paid by Z to Y (or X) is not linked to the car's price paid by Y to X neither directly nor indirectly. Therefore, the fee paid by Z to Y (or X) for the activation of the additional function will not be taken into account for the customs valuation purposes.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Conclusion No 38: Valuation treatment of prototype cars and development service carried out by a producer while manufacturing mass-produced cars

I. Background

1. An EU car company is going to import a new car model from a third country. Cars will be produced and sold for export to the Union by a manufacturer from a third country. The cars' mass production will start in 2025 and only from 2025 onwards, the mass-produced cars will be released for free circulation into the customs territory of the Union.

2. In the meantime, prototype cars are being developed in order to make different checks and tests before mass-production starts. The prototypes will then be destroyed.

3. Most of the prototype cars are being imported under temporary admission procedure.

   However, in some instances, the prototype cars are placed under the release for free circulation procedure. In such a case, the importer provides the customs authorities with a pro-forma invoice related to the goods. No payments for the prototype cars are being made by the importer at that time.

4. There are two possible scenarios regarding payments of those prototypes:

a) Cost of the prototype cars will be invoiced by the manufacturer in a separate invoice.

   In other words, there will be an invoice for the purchased mass-produced cars and another one for the imported prototype cars.

b) The manufacturer will issue an invoice for the mass-produced cars, which will be imported into the Union from 2025 onwards, with a price which includes the cost of the prototypes, separately from the rest of the price. The costs of the prototypes that correspond to each imported car will be indicated in the invoice.

   The costs of prototypes are composed of:
   - 60% costs for the production of the prototypes (material used and manufacturing costs);
   - 40% costs for development services carried out by the manufacturer to follow the instructions and reach the standards specified by the EU buyer/importer while manufacturing mass-produced cars.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

II. Issue at stake

How those prototype cars and prototype costs should be treated for the customs valuation purposes?

III. Relevant regulatory provisions

Article 70 (1) and (2) UCC

Articles 166 and 167 UCC (simplified declarations)

Secondary valuation methods

IV. Conclusion

There are three separate issues to be considered when the case is examined.

First issue

The valuation treatment of prototype cars imported into the Union to make different checks and tests before mass-production of cars starts. In cases in which the prototype cars are released for free circulation, their customs value must be established.

2. Since at the time of placing the prototype cars under the release for free circulation procedure, they are not subject of sale for export to the customs territory of the Union, as confirmed by a pro-forma invoice related to those goods, the customs value of the prototype cars cannot be declared under the transaction value method at that time.

3. In such a case, the importer either may declare the customs value of the goods under one of the secondary valuation methods or may postpone a final determination of the customs value of the goods by applying the Union provisions on simplified customs declaration as referred to in Articles 166 and 167 of the UCC. When the importer possesses a commercial invoice related to the prototype cars, a complementary declaration shall be provided.

4. If the costs of prototype cars only reflect the costs of their production, i.e. material and manufacturing costs, then those costs cannot be considered as being related to the mass-produced cars. Therefore, they should not be included into the customs value of the mass-produced cars.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Second issue

The valuation treatment of costs of development services carried out by a manufacturer in order to implement the instructions and reach the standards specified by the EU buyer/importer while manufacturing mass-produced cars.

5. The described services performed by the manufacturer are related directly to the production of the cars. The tasks are executed to meet conditions imposed by the buyer of those goods in terms of their standardisation.

6. The manufacturer charges the buyer of the cars for the services.

7. Assuming that all conditions for the application of the transaction value method are fulfilled, payments made by the buyer to the manufacturer for those services should be included into the customs value of the mass-produced cars, determined on that method, if not already reflected in the price for the goods. The payments should be treated as part of the price actually paid or payable for the imported goods under Article 70 (2) of the UCC.

Third issue

A way of presenting information relevant for the customs valuation purposes on invoices presented by the importer. Please see information provided under point I.4 of the document.

Ad. I. 4 a) – Separate invoice concerning prototypes

8. There will be two separate invoices concerning the prototype cars and the mass-produced cars accordingly.

9. However, there is no information available as to whether the price indicated on the invoice for prototypes only reflects the production costs of the prototypes or does it also cover the costs of development services performed to follow the instructions and reach the standards specified by the EU buyer/importer while manufacturing mass-produced cars. Alternatively, there is no information available as to whether the price indicated on the invoice for mass-produced cars also reflects the costs of development services performed to follow the instructions and reach the standards specified by the EU buyer/importer while manufacturing mass-produced cars.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Ad. I. 4 b) - Separate costs of prototypes presenting in invoice for mass-produced cars

10. There will be an invoice concerning the mass-produced cars, with a price broken down to show the costs of the prototypes, separately from the rest of the price. In such invoices the costs of the prototypes will correspond to each imported car.

11. Based on the provided percentage breakdown of the total cost of the prototypes, one may assume that only 40% of the costs should be reflected in the customs value of the mass-produced cars provided that this part of the costs has not been already included in the price for the goods.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

SECTION E: JUDGEMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

Note: This section includes a summary of judgements of the Court of Justice of the European Union, relevant for the application of the legislation on customs valuation. The authentic texts are those given in the reports of cases before the Court of Justice of the European Union.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case 7/83 - Ospig Textilgesellschaft KG W. Ahlers v. Hauptzollamt Bremen-Ost

Title : Valuation of goods for customs purposes - inclusion of quota charges.

Language : German

Question : Are costs which are incurred in the acquisition of free quotas (export quotas) and charged separately by an exporter in Hong Kong to a German customer (known as quota costs) to be included in the customs value of goods (the transaction referred to in Article 3 of Regulation (EEC) No 1224/80 on the valuation of goods for customs purposes) ?

Ruling : Quota charges relating to the acquisition of export quotas do not form part of the value for customs purposes of goods imported into the Community for the purposes of the provisions of Council Regulation (EEC) No 1224/80 of 28 May 1980, on the valuation of goods for customs purposes, as amended by Council Regulation (EEC) No 3193/80 of 8 December 1980.

References for further information :

OJ No C 35, 8.2.1983, p. 3

OJ No C 79, 20.3.1984, p. 4

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case 290/84 - Hauptzollamt Schweinfurt v. Mainfrucht Obstverwertung GmbH

Title : Valuation for customs purposes - Transport costs

Language : German

Questions :

1. (a) Where a purchaser in a Member State of the European Community pays to a foreign supplier, on the basis of an itemised invoice, an amount in respect of "freight costs within the Community" along with the price of the goods, does the transaction value referred to in Article 3 (1) of Council Regulation (EEC) No 1224/80 include both amounts?

   (b) If so, must that amount be adjusted pursuant to Article 15 of Regulation (EEC) No 1224/80 in order to be taken as the customs value of the goods?

2. If those questions are answered in the affirmative :

   (a) Is Article 15(2)(a) of Regulation (EEC) No 1224/80 applicable where the person concerned declares transport costs covering transport within the Community alone?

   (b) If question (a) is answered in the affirmative:

   In the case of through transport as referred to in Article 15 (2)(a) of Regulation (EEC) No 1224/80, is the deduction, in assessing the customs value of goods, of transport costs calculated to have been incurred within the Community conditional upon the person concerned having provided a separate figure for the total cost of through transport in accordance with Article 15(1) of the Regulation?

   If so, is that condition met where the person concerned gives separate figures for those transport costs, or must he provide proof of the actual costs incurred for the through transport, by presenting verifiable documentary evidence?

   If such proof is necessary, what requirements must it satisfy? May customs authorities waive such proofs where the person concerned is unable to provide it by reason of the conduct of his supplier?

Ruling : Where a domestic buyer has paid the foreign seller, in addition to the price of the goods, a special amount in respect of 'intra-Community transport costs' on the basis of a separate invoice, the transaction value within the meaning of Article 3 (1) of Regulation No 1224/80 includes only the first of those amounts, but the competent customs authorities may, if the circumstances warrant it, check the invoice relating to the costs in question in order to verify that they are not fictitious.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

References for further information :

OJ No C 29, 31.1.1985, p. 3

OJ No C 347, 31.12.1985, p. 22

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case 65/85 - Hauptzollamt Hamburg - Ericus v. Van Houten International GmbH

Title : Valuation of goods for customs purposes - Weighing costs

Language : German

Question : Should Article 3(1) and (3) of the version of Council Regulation (EEC) No 1224/80 applying prior to 1 January 1981 be interpreted as meaning that in the case of so-called ANKUNFTKONTRAKTEN (arrival contracts) the costs of establishing the weight on arrival also forms part of the transaction value if, according to the contract of sale, those costs are to be borne by the buyer ?

Ruling : Article 3(1) and (3) of Council Regulation (EEC) No 1224/80 of 29 May 1980 is to be interpreted as excluding from the transaction value weighing costs payable by the purchaser at the destination of the goods in the case of what is known as an arrival contract.

References for further information :

OJ No C 99, 19.4.1985, p. 7

OJ No C 45, 27.2.1986, p. 4

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-183/85 - Hauptzollamt Itzehoe v. H.J. Repenning GmbH.

Title : Valuation of goods for customs purposes

Language : German

Question : Does the transaction value, as referred to in Article 3(1) of Regulation (EEC) No 1224/80, include the full amount of the price actually paid even where the goods, bought free of defects, had deteriorated and thus diminished in value before the relevant valuation date, in circumstances giving rise to the indemnification of the buyer under this transport insurance but not to the refund of the purchase price by the seller ?

Ruling : Article 3(1) of Council Regulation (EEC) No 1224/80 must be interpreted as meaning that where goods bought free of defects are damaged before being released for free circulation the price actually paid or payable, on which the transaction value is based, must be reduced in proportion to the damage suffered.

References for further information :

OJ No C 166, 5.7.1985, p. 11

OJ No C 196, 5.8.1986, p. 4

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case 357/87 - Firma Albert Schmid v. Hauptzollamt Stuttgard-West

Title : Duty to be levied on imported packings

Language : German

Questions:

1. How is the final sentence of Section I, C.2 of Part I of the Annex to Article 1 of Council Regulation (EEC) No 950/68 of 22 June 1968 on the Common Customs Tariff (Official Journal, English Special Edition 1968 (I), p. 275) to be interpreted : does the expression 'packing' (meaning any external or internal containers, holders, wrappings or supports other than transport devices (e.g. transport containers), tarpaulins, tackle or ancillary transport equipment) include beer barrels, beer bottles and plastic crates for beer bottles where such containers are to be returned to the seller of the beer in another country ?

2. If the first question is answered in the affirmative : how is Section II, D.1(a) of Part I of the Annex to Article 1 of the aforementioned Regulation (which provides that packings are covered by the customs duty for the goods contained therein) to be interpreted : is duty on packings which are themselves dutiable paid with the duty on the goods in such a way that the duty on the goods also discharges the duty on the packings, or are the packings chargeable on the basis of their own customs value but at the rate applicable to the goods ?

Ruling :

1. The final sentence of Section I, C 2 of Part I of the Annex to Article 1 of Regulation (EEC) No 950/68 of the Council of 22 June 1968 on the Common Customs Tariff must be interpreted as meaning that the expression “packing” includes beer-barrels, beer-bottles and plastic crates for beer-bottles even where such containers are to be returned to the seller of the beer in another country.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

2. Section II, D 1 (a) of Part I of the Annex to Article 1 of the aforementioned regulation must be interpreted as meaning that the packings must be chargeable to duty at the rate applicable to the goods contained therein. However, where the packings are not included in the price payable for the goods but are to be returned to the seller in another country, and the buyer is required to pay the seller financial compensation in respect of packings that are not returned, such compensation constitutes a cost within the meaning of Article 8(1)(a) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes.

References for further information :

OJ No C 349, 24.12.1987, p. 4

OJ No C 284, 8.11.1988, p. 10

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-219/88 - Malt GmbH v. Hauptzollamt Düsseldorf

Title : Certificates of authenticity

Language : German

Questions :

1. Must Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal of the European Communities No L 134, 31.5.1980, p. 1), and in particular Article 3(1) and (3) (a), be interpreted as meaning that in assessing the value of Argentinian beef which entered into free circulating without payment of a levy in 1981 in the framework of a Community tariff quota the amounts paid to the seller in addition to the price of the goods for the certificates of authenticity needed for recourse to the quota rules must be included in the price actually paid or payable (the transaction value) ?

2. If the answer to Question 1 is yes:

   Must the above mentioned Regulation, in particular Article 3 (4) (b), be interpreted as meaning that the amounts paid for the certificates must for purposes of customs valuation be treated as taxes payable in the Community by reason of the importation?

3. If the answer to Question 2 is yes:

   Must the above mentioned Regulation, in particular Article 3 (4), be interpreted as meaning that the requirement that such charges must be distinguished from the price actually paid or payable for the imported goods is satisfied even if the invoice states the total amount paid for the goods and for the certificates (No 1) but makes clear the amounts paid for the certificates?

Ruling :

1. Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, in particular Article 3(1) and (3) thereof, is to be interpreted as meaning that, in assessing the value of imported Argentinian beef for the purposes of Council Regulation (EEC) No 217/81 of 20 January 1981, opening a Community tariff quota for high-quality, fresh, chilled or frozen beef and veal falling within subheading 02.01 A II (a) and 02.01 A II (b) of the Common Customs Tariff, the amounts paid to the seller in addition to the price of the goods for the certificates of authenticity needed for recourse to the quota rules must be regarded as an integral part of the value for customs purposes.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

2. Article 3(4) of Regulation No 1224/80 is to be interpreted as meaning that the amounts paid for certificates of authenticity must not be regarded as taxes paid in the Community by reason of the importation.

References for further information :

OJ No C 223, 27.8.1988, p. 5

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-11/89 - Unifert Handels GmbH, Warendorf v. Hauptzollamt Münster

Title : Customs value of goods - Transaction value - Demurrage charges

Language : German

Questions :

1.(a) Can the transaction value within the meaning of Article 3 (1) of Regulation No. 1224/80 also be the price stipulated in a contract of sale between persons resident in the Community ?

(b) If question 1 (a) is answered in the affirmative, may the person concerned determine the price to be taken as the basis for customs valuation purposes if prices stipulated in other contracts of sale fulfil the requirements of Article 3 (1) of Regulation No. 1224/80 ? Is the person concerned bound by his choice once exercised ?

(c) If question 1 (a) is answered in the affirmative, does this price also include a so-called buying commission ?

2. Are demurrage charges (compensation for delays in loading) transport costs within the meaning of Article 8 (1) (e) of Council Regulation No. 1224/80 ?

3. Is the full price paid or payable the transaction value within the meaning of Article 3 of Regulation No. 1224/80 if before the material time short shipments are found which are within an agreed weight discrepancy allowance and do not lead to a reduction of the purchase price ?".

Rulings :

1. The price stipulated in a contract of sale between persons established in the Community may be regarded as the transaction value within the meaning of Article 3 (1) of Council Regulation (EEC) No. 1224/80 of 28 May 1980 on the valuation of goods for customs purposes.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

2. Where, in successive sales of goods, more than one price actually paid or payable fulfils the requirements laid down in Article 3(1) of Regulation No 1224/80, any of those prices may be chosen by the importer for the purposes of determining the transaction value. If the importer has referred to one of those prices in the customs value declaration, he may not correct the declaration after the goods have been released for free circulation, in accordance with Article 8 (1) of Council Directive 79/695/EEC of 24 July 1979 on the harmonisation of procedures for the release of goods for free circulation.

3. A payment made by the buyer to the seller, invoiced separately and described as a "buying commission", forms part of the price actually paid or payable for the imported goods within the meaning of Article 3 (1) of Regulation No. 1224/80.

4. Demurrage charges (compensation payable for keeping vessels in port) form part of the cost of transport within the meaning of Article 8 (1) (e) of Council Regulation No. 1224/80.

5. Article 3 (1) of Regulation No. 1224/80 must be interpreted as meaning that the price actually paid or payable should not be reduced proportionately where there is a discrepancy between the quantity of goods unloaded and the quantity purchased which does not exceed the weight discrepancy allowance agreed upon between parties and does not lead to a reduction of the purchase price.

References for further information

OJ No C 43, 22.2.1989

OJ No L 134, 31.5.1980, p. 1

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-17/89 - Hauptzollamt Frankfurt am Main-Ost v. Deutsche Olivetti GmbH

Title : Transport costs, container transport

Language : German

Questions : According to what criteria are transport costs which, under Article 8 (1) (e) (i) of Council Regulation (EEC) No. 1224/80, are to be added to the price actually paid or payable for goods within the meaning of Article 3 to be determined if under fob terms of delivery an importer has paid a single all-inclusive price for transport of the goods beyond the place of introduction into the Community to a point inside the Community? If the goods are imported in a container, is it material whether or not the goods were carried in the same container during the entire journey?

Rulings :

1. Container transport cannot be considered to be a "means of transport" within the meaning of Article 15(2)(a) of Council Regulation (EEC) No. 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal 1980, L 134, p. 1).

2. Where an importer has paid an all-inclusive price to have goods transported to a point beyond the place of introduction into the customs territory of the Community, and the goods have been carried using several different means of transport, the cost of transport referred to in Article 8(1)(e)(i) of the aforementioned regulation must be calculated either by deducting the cost of transport within the customs territory of the Community, determined on the basis of the rates normally applied, from the price actually paid or payable, or by determining the cost of transport to the place of introduction of the goods into the customs territory of the Community directly on the basis of the rates normally applied. It is for the national authorities to choose the criterion which is more likely to avoid arbitrary and fictious values.

References for further information

OJ No. C 45, 24.2.1989

OJ No L 134, 31.5.1980, p. 1

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-79/89 - Brown Boveri & Cie AG v. Hauptzollamt Mannheim

Title : Software (distinguishing assembly charges) (before 1 May 1985)

Language : German

1. Was Article 3 of Regulation (EEC) No 1224/80 to be interpreted in 1982 as meaning that the transaction value of imported carrier media with software recorded on them in respect of which the supplier had provided the declarant with an invoice containing only a total price was the entire invoice price, or was the transaction value only that part of the invoice price which corresponded to the carrier medium ? Did it make any difference if the declarant distinguished between the price of the carrier medium and the price of the software at the material time or later?

2. Are charges for assembly to be regarded as having been "distinguished" within the meaning of Article 3(4) of Regulation (EEC) No 1224/80 only when the distinction has been brought to the customs authorities' attention at the material time?

Rulings :

1. In 1982, Article 3 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes was to be interpreted as meaning that the transaction value of carrier media containing at the time of importation recorded software in respect of which the supplier had invoiced a comprehensive price to the declarant had to be the invoiced price.

2. In order to be excluded from the customs value in accordance with Article 3 (4) (a) of Regulation No 1224/80, assembly costs must be distinguished in the declaration of the customs value from the price actually paid or payable for the goods. Pursuant to Article 8 of Council Directive 79/695/EEC of 24 July 1979 on the harmonisation of procedures for the release of goods for free circulation, that declaration cannot be corrected after the material time for valuation for customs purposes, which is to say, after the goods have been released for free circulation.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-116/89 - BayWa AG v. Hauptzollamt Weiden

Title : The valuation of goods for customs purposes - Harvest Seed - Licence fee

Language : German

Questions : In the case of a sale of harvest seed for the production of which basic seed supplied by the buyer was used, should there be added to the price paid or payable, for the purpose of determining the customs value, licence fees which the buyer has to pay in respect of the harvest seed to the breeder of the basic seed, even where the breeder's service has been performed within the Community?

Ruling : In the case of a sale of harvest seed produced from basic seed supplied by the buyer, there should be added to the price paid or payable, for the purposes of determining the customs value in accordance with Article 8(1) (b) (i) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, licence fees which the buyer has to pay to the breeder of the basic seed in respect of the propagation of that seed, even where the breeder's service has been performed within the customs territory of the Community.

Reference for further information :

OJ No C 122, 17.5.1989

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-299/90 - Hauptzollamt Karlsruhe v. Gebr. Hepp. GmbH & Co KG

Title : Customs value - Buying commission

Language : German

Questions :

1. In the event that a buying agent, acting in his own name but on behalf of another is involved, which contract must be regarded as the "sale" within the meaning of Article 3 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes?

2. If the answer to Question 1 is that both the contract between manufacturer and agent and the contract between agent and importer meet the criteria of Article 3 of Regulation No 1224/80, and the importer has specified the price in his contract with the agent as the basis for determining the value of goods for customs purposes, must the buying commission be added to the price paid ?

3. If the answer to Question 1 is that only one sale, namely that between manufacturer and importer, has occurred, must the buying commission be included in the customs value when the importer, under the heading "Verkäufer" ("Seller") in the customs value declaration, has given the agent and his invoice price (without the commission)?

4. If the answer to Question 1 is that, although the contract between manufacturer and agent is a sale, the contract between agent and importer is not, how is the customs value to be determined under Community law when the importer has stated the customs value in the manner described in Question 3?

Rulings :

1. The transaction between the manufacturer or supplier of goods, on the one hand, and the importer, on the other, is the transaction to be taken into account in the determination of the customs value in accordance with Article 3(1) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, if a buying agent has acted in his own name and has in fact represented the importer by acting on his behalf.

2. The price in the transaction between the manufacturer or supplier, on the one hand, and the importer, on the other, constitutes the customs value for the purposes of Article 3(1) of Regulation (EEC) No 1224/80. The buying commission is not to be included in that value even when the importer has described the buying agent as the seller and has declared the price of the goods as invoiced by that agent.

Reference for further information:

OJ No C 274, 31.10.1990

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-16/91 - Wacker Werke GmbH & Co. KG v. Hauptzollamt München-West

Title : Outward processing - Total or partial relief from import duties - Determination of the value of the compensating products and of the temporary export goods

Language : German

Questions :

1. Must Article 13(1) of Council Regulation No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system (OJ 1986 L 212, p. 1) be interpreted as meaning that for the calculation of import duty the customs value of the compensating products and of the temporary export goods must in principle be based on their transaction value in accordance with Article 3(1) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (OJ 1980 L 134, p. 1), as last amended by Council Regulation (EEC) No 1055/85 of 23 April 1985 (OJ 1985 L 112, p. 50)?

2. If the answer to the first question is in the negative, must the first alternative provided for in the second subparagraph of Article 13(2) of Regulation No 2473/86 be interpreted as meaning that the customs value of the compensating products is to be determined in accordance with this provision even where the holder of the outward processing authorisation has temporarily exported goods neither free of charge nor at reduced cost within the meaning of Article 8(1)(b)(i) of Regulation No 1224/80?

3. If the answer to the second question is in the affirmative, must Article 8(1)(b)(i) of Regulation No 1224/80 be interpreted as meaning that in order to determine the value of the products mentioned in that provision which have been manufactured by the holder of the outward processing authorisation himself only manufacturing costs are to be taken into account and that the transaction value is to be adjusted for the general expenses and profit margin included in the selling price of those products ?

   If so, in order to determine the value of the compensating products, is their transaction value also to be adjusted for cost components forming part of the value of the temporary export goods to the extent that they are included in the transaction value of the compensating products?

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Ruling :

Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system is to be interpreted as meaning that, in calculating the total or partial relief from import duty for which it provides, the calculation of import duty on the compensating products must in principle be based on the transaction value of those products, while the value of the temporary export goods must be calculated using one of the two methods set out in the second subparagraph of Article 12(2) of that regulation. If the value of the compensating products has been determined without any adjustment for the purposes of Article 8(1)(b)(i) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, the value of the temporary export goods corresponds to the difference between the customs value of the compensating products and the processing costs determined by reasonable means, such as taking account of the transaction value of the goods in question.

References for further information :

OJ No C 43, 19.2.1991

OJ No L 212, 2.8.1986, p. 1

OJ No L 134, 31.5.1980, p. 1

OJ No L 112, 25.4.1985, p. 50

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-21/91 - Firma Wünsche Handelsgesellschaft International (GmbH & Co.) v. Hauptzollamt Hamburg-Jonas

Title : Financing costs

Language : German

Questions :

1. Must Article 3 of Regulation (EEC) No 1495/80 be interpreted as meaning that there is a "financing arrangement relating to the purchase of the imported goods" if the seller allows the buyer time for payment for which a purchase price increased by interest is agreed?

2. In that respect is Article 3(2) of Regulation (EEC) No 1495/80 as amended by Regulation (EEC) No 220/85 to be interpreted in the same manner as Article 3(c) of Regulation (EEC) No 1495/80 in its original version?

Rulings :

1. The expression 'financing arrangement' used in Article 3(2) of Commission Regulation (EEC) No 1495/80 of 11 June 1980 implementing certain provisions of Articles 1, 3 and 8 of Council Regulation (EEC) No 1224/80 on the valuation of goods for customs purposes, as amended by Commission Regulation (EEC) No 220/85 of 29 January 1985 is to be interpreted in the same manner as the expression 'financing arrangement' in the original version of Article 3(c) of Regulation No 1495/80.

2. Article 3 of Commission Regulation (EEC) No 1495/80 of 11 June 1980 implementing certain provisions of Articles 1, 3 and 8 of Council Regulation (EEC) No 1224/80 on the valuation of goods for customs purpose is to be interpreted as meaning that the words 'interest payable under a financing arrangement' refer also to the interest payable as a result of time allowed by the seller and accepted by the buyer for payment for imported goods.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-59/92 - Hauptzollamt Hamburg-St. Annen v. Ebbe Sönnichsen GmbH

Title : Loss of quality - relevant time to be taken into account

Language : German

Questions :

1. Does the second sentence of Article 4 of Commission Regulation No 1495/80 (OJ 1980 L 154, p. 14) as amended by Commission Regulation No 1580/81 (OJ 1981 L 154, p. 36) apply also where goods purchased already contain defects reducing their value (inherent defects) before the transfer to the buyer of the risk of possible damage (passing of risk)?

2. If not: Is Article 3(1) of Council Regulation No 1224/80 of 28 May 1980 (OJ 1980 L 134, p. 1) to be interpreted as meaning that the transaction value is to be determined simply on the basis of agreement or a new purchase price taking account of the inherent defect found, or is the deciding factor the fact that the agreement altering the original purchase price has in fact also been implemented?

Ruling :

The second sentence of Article 4 of Commission Regulation (EEC) No 1495/80 of 11 June 1980, on measures for the implementation of Articles 1, 3 and 8 of Council Regulation (EEC) No 1224/80 on the valuation of goods for customs purposes, as amended by Commission Regulation (EEC) No 1580/81 of 12 June 1981, is to be interpreted as meaning that in event of a deterioration of goods which reduces their customs value no differentiation is to be made according to whether it occurred before or after the risk passed to the buyer.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-29/93 - KG in Firma OSPIG Textil-Gesllschaft W. Ahlers GmbH & Co v. Hauptzollamt Bremen-Freihafen

Title : Quota costs

Language : German

Question :

Do quota charges arising from the acquisition of export quotas also not constitute part of the customs value of goods imported into the Community within the meaning of the provisions of Council Regulation (EEC) No 1224/80 of 28 May 1980 (OJ 1980 L 134, p. 1) in cases where export licences cannot be the subject of lawful trade in the relevant country of export (in this case, Taiwan) ?

Rulings :

Quota charges incurred in the acquisition of export quotas do not form an integral part of the value for customs purposes of goods imported into the Community pursuant to Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes and it is for that reason not necessary to determine whether export licences may be the subject of lawful trade in the country of export in question.

References for further information :

OJ No C 75, 17.3.1993

OJ No L 134, 31.5.1980, p. 1

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-340/93 - Klaus Thierschmidt GmbH v. Hauptzollamt Essen

Title : Quota costs

Language : German

Questions :

1. Are payments by the buyer to the seller for export licences allocated to the seller (export quotas) part of the customs value ?

2. Must quota charges be "distinguished" ?

3. Are quota charges which have been incurred on the basis of the Community rules in Regulation (EEC) No 4134/86 to be treated in the same way as quota charges arising under Regulation (EEC) No 4136/86?

Rulings :

1. Quota charges paid by the buyer to the seller in respect of own quotas issued to the latter free of charge are included in the customs value of goods;

2. Quota charges not included in the customs value of goods do not need to be indicated separately in the declaration of customs value;

3. As regards the customs value of imports from Taiwan subject to Council Regulation (EEC) No 4134/86 of 22 December 1986 on the arrangements for imports of certain textile products originating in Taiwan, third-party quota charges must be treated in the same way as quota charges relating to imports subject to Council Regulation (EEC) No 4136/86 of 22 December 1986 on common rules for imports of certain textile products originating in third countries.

References for further information:

OJ No C 215, 10.8.1993

OJ No L 134, 31.5.1980, p. 1

OJ No L 333, 11.12.1980, p. 1

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-93/96 - Indústria e Comércio Têxtil SA (ICT) v Fazenda Pública.

Title : Reference for a preliminary ruling: Supremo Tribunal Administrativo - Portugal. Anti-dumping duty - Council Regulation (EEC) No 738/92 - Free-at-frontier price - Increase in the event of deferred payment.

Language : Portuguese

Questions :

1. Is the increase (of 1% for each month that elapses without payment being made, following the 30th day after the arrival of the goods in the customs territory of the Community) provided for in Article 1(3) of Council Regulation (EEC) No 738/92 of 23 March 1992 applicable to the free-at-Community-frontier price whenever it is agreed that the price is payable on a date falling after that 30th day?

2. If the answer to the foregoing question cannot be unconditionally affirmative, as a result of the need for a distinction to be drawn, is the said increase applicable in circumstances like those of this case (see the facts proved) where the price of the imported goods, agreed as payable in 90 days, was about 2.3% (in one case) and 2.5% (in another case) greater than the price payable CAD (cash against documents)?

3. If the foregoing question is answered in the affirmative, must that increase be applied to the price corresponding to payment CAD or to the price agreed as payable in 90 days?

Rulings :

In answer to the questions referred to it by the Supremo Tribunal Administrativo by judgment of 14 February 1996, hereby rules: The increase provided for in Article 1(3) of Council Regulation (EEC) No 738/92 of 23 March 1992 imposing a definitive anti-dumping duty on imports of cotton yarn originating in Brazil and Turkey must be applied whenever it is agreed that imported goods are to be paid for more than 30 days after their arrival in the customs territory of the Community, even where the difference between the price for deferred payment and that for payment CAD is greater, in percentage terms, than the increase to be applied. That increase must be based on the price actually paid or payable for the goods when they are sold for export to the customs territory of the Community, excluding charges for interest as consideration for the deferred payment terms granted, provided that those terms are the subject of a `financing arrangement' within the meaning of Article 3(2) of Commission Regulation (EEC) No 1495/80 of 11 June 1980 implementing certain provisions of Articles 1, 3 and 8 of Council Regulation (EEC) No 1224/80 on the valuation of goods for customs purposes, as amended by Commission Regulation (EEC) No 220/85 of 29 January 1985, and that the level of charges reflects current prevailing rates.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-142/96 - Hauptzollamt München v Wacker Werke GmbH -

Title : Reference for a preliminary ruling: Bundesfinanzhof - Germany. Outward processing relief - Total or partial relief from import duties - Determination of value of compensating products and temporary export goods - Reasonable means of determining value.

Language : German

Questions :

1. Is the second alternative provided for in the second subparagraph of Article 13(2) of Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements ... (OJ 1986 L 212, p. 1) to be interpreted as meaning that a method of determining processing costs is reasonable only if the resulting value of the temporarily exported goods corresponds approximately to the purchase price paid by the holder of an outward processing authorization or to the production costs?

2. If the answer to the first question is in the negative, in determining the processing costs can reference be made to the purchase price for the inputs inclusive of uplifts paid by the processor to the holder of an outward processing authorization, and does that apply equally where there is a tariff anomaly resulting in a higher rate of duty for the unprocessed goods than for the compensating products?'

Ruling :

The second subparagraph of Article 13(2) of Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system is not to be interpreted as meaning that a method of determining processing costs may be considered reasonable only if the resulting value of the temporary export goods corresponds approximately to the purchase price paid by the person entitled to outward processing relief or to the manufacturing costs. Reference to the transaction value of the temporary export goods is a reasonable means within the meaning of that provision. Moreover, in determining the processing costs, reference may be made to the purchase price, inclusive of uplifts, of the temporary export goods even if this results in a higher rate of duty for the unprocessed goods than for the compensating products.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-15/99 - Hans Sommer GmbH & Co. KG v Hauptzollamt Bremen.

Title : Reference for a preliminary ruling: Finanzgericht Bremen - Germany. Common Customs Tariff - Customs value - Cost of analysing goods - Post-clearance recovery of import duties - Remission of import duties.

Language : German

Questions :

1. Does the transaction value, within the meaning of Article 3(1) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (OJ 1980 L 134, p. 1) as amended by Council Regulation (EEC) No 3193/80 of 8 December 1980 (OJ 1980 L 333, p. 1), of consignments of honey imported from 1989 to 1991 from the USSR include the "expenses" (Spesen) or the "costs of completing the transaction" (Abwicklungskosten), which the German importer invoices to the buyer on the basis of separate contractual agreements, if the importer is obliged to take samples after importation in order to establish the quality of the honey in accordance with the applicable German regulations and to supply the chemical results of those analyses?

2. If Question 1 is answered in the affirmative: Is Commission Decision C(95) 2325 of 28 September 1995 null and void?

3. If Question 2 is answered in the affirmative: Must the authorities refrain from post-clearance recovery of duty pursuant to Article 5(2) of Regulation (EEC) No 1697/79 if, at a previous on-the-spot inspection of importations, they raised no objection to the exclusion of flat-rate expenses from the customs value of similar transactions and it does not appear that the trader could have been in doubt about the correctness of the result of the inspection?

4. If Question 3 is answered in the negative: Do the circumstances described in Question 3 amount to a special situation within the meaning of Article 13 of Regulation No 1430/79 justifying the remission of duties?

Ruling :

1. The costs of analyses designed to establish the conformity of imported goods with the national legislation of the importing Member State, which the importer invoices to the buyer in addition to the price of the goods, must be regarded as an integral part of their `transaction value' within the meaning of Article 3(1) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, as amended by Council Regulation (EEC) No 3193/80 of 8 December 1980.

2. The customs authorities of a Member State must refrain from post-clearance recovery of duty pursuant to Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

which have not been required of the person liable for payment of goods entered for a customs procedure involving the obligation to pay such duties, if, at a previous on-the-spot inspection of importations, they raised no objection to the non-inclusion of flat-rate expenses in the customs value of similar transactions and it does not appear that the trader, who had complied with all of the provisions laid down by the rules in force as far as his customs declaration is concerned, could have been in doubt about the correctness of the results of the inspection.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-379/00 - Overland Footwear Ltd v Commissioners of Customs & Excise.

Title: Customs Code - Customs value of imported goods - Price of goods and buying commission - Reimbursement of duty payable on full amount.

Language: English

Questions:

1. Could the bona fide buying commission be dutiable as part of the price actually paid or payable for the goods under Article 29 of the Customs Code?

2. If the answer to the first question is negative, could the bona fide buying commission be deductible from the declared transaction value bearing in mind the provisions of Articles 32(3) and 33 of the Customs Code?

3. In such circumstances are the customs authorities obliged under the Customs Code, and in particular Article 78(3) thereof, to accept the amendment to the price paid or payable for the imported goods and thereby reduced customs value?

4. Is the importer therefore entitled under the Customs Code, and in particular Article 236 thereof, to a refund of the duty paid on the buying commission?

Rulings:

1. Articles 29, 32 and 33 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be construed as meaning that a buying commission which is included in the customs value declared and is not shown separately from the selling price of the goods in the import declaration must be considered to be part of the transaction value within the meaning of Article 29 of that regulation and is, therefore, dutiable.

2. In a situation where the customs authorities have agreed to undertake a revision of an import declaration and have adopted a decision `regularising the situation' within the meaning of Article 78(3) of Regulation No 2913/92 taking account of the fact that the declaration was incomplete as a result of an inadvertent error by the declarant, those authorities may not go back on that decision.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-422/00 - Capespan International plc v Commissioners of Customs & Excise.

Title: Community Customs Code – Fruit and vegetables – Calculation of customs value.

Language: English

Questions:

1. For products listed in the Annex to Commission Regulation (EC) No 3223/94, as replaced by Commission Regulation (EC) No 1890/96, and entered into the European Community from 18 March 1997 but before 18 July 1998, being the date upon which Commission Regulation (EC) No 1498/98 ... amending Article 5 of Regulation No 3223/94 is expressed to have entered into force, is the customs value of such products to be determined in accordance with

   (a) the rules set out in Chapter 3 of Title II (namely Articles 28 to 36) to Council Regulation (EEC) No. 2913/92 ... and the rules set out in Title V (namely Articles 141 to 181a) to Commission Regulation (EEC) No. 2454/93 ...; or

   (b) Article 5 of Regulation 3223/94?

2. If the customs value is not to be determined in accordance with either of the above, what is the correct basis for the determination of the customs value of such products?

3. Is Regulation No 1498/98, amending with effect from 18 July 1998 Article 5 of Regulation No 3223/94 valid?

4. If Regulation No 1498/98 is not valid, how is the customs value of products of the type identified in question (i), which are entered into the European Community from 18 July 1998, to be determined?

5. Whether or not Regulation No 1498/98 is valid, does Regulation No 3223/94 preclude the giving of a provisional indication of customs value in accordance with Article 254 of the Implementing Regulation?

Rulings:

1. The customs value of fruit and vegetables coming within the scope of Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables must, in respect of the period between 18 March 1997 and 17 July 1998 inclusive, be determined in accordance with the rules for calculating entry price provided for in Article 5 of that regulation.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

2. Consideration of the third question referred has disclosed no factor capable of affecting the validity of Commission Regulation (EC) No 1498/98 of 14 July 1998 amending Regulation No 3223/94.

3. On a proper construction of Article 5 of Regulation No 3223/94, an importer who is not in a position to make a definitive declaration of customs value at the time of customs clearance of fruit and vegetables coming under the scope of that regulation may give a provisional indication of that value under Article 254 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code only where the value of the abovementioned products is determined according to the method provided for in Article 5(1)(b) of Regulation No 3223/94.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-468/03 - Overland Footwear Ltd v Commissioners of Customs & Excise

Title: Common customs tariff – Import customs duties – Declared customs value including a buying commission – Payment of customs duty on full amount declared – Revision of the customs declaration – Conditions – Refund of customs duties paid on the buying commission.

Language: English

Questions:

1. Could the bona fide buying commission be dutiable as part of the price actually paid or payable for the goods under Article 29 of the Customs Code?

2. If the answer to the first question is negative, could the bona fide buying commission be deductible from the declared transaction value bearing in mind the provisions of Articles 32(3) and 33 of the Customs Code?

3. In such circumstances are the customs authorities obliged under the Customs Code, and in particular Article 78(3) thereof, to accept the amendment to the price paid or payable for the imported goods and thereby reduced customs value?

4. Is the importer therefore entitled under the Customs Code, and in particular

Rulings:

1. Articles 29, 32 and 33 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that a buying commission included in the declared customs value and not distinguished from the sale price of the goods in the customs declaration is to be regarded as forming part of the transaction value within the meaning of Article 29 of the Code and therefore dutiable.

2. On a proper interpretation of Articles 78 and 236 of Regulation No 2913/92:

- after the release of the imported goods, the customs authorities, presented with an application from the declarant seeking revision of his customs declaration in relation to those goods, are required, subject to the possibility of a subsequent court action, either to reject the application by a reasoned decision or to carry out the revision applied for;

- where they find, at the conclusion of that revision, that the declared customs value erroneously included a buying commission, they are required to regularise the situation by reimbursing the import duties applied to that commission.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-306/04 – Compaq Computer International Corporation vs. Inspecteur der Belastingdienst – Douanedistrict Arnhem

Title: Community Customs Cod – Customs value – Laptop computers equipped with operating systems software

Language: Dutch

Questions: Where computers equipped with operating systems by the seller are imported, must the value of the software made available to the seller by the buyer free of charge be added to the transaction value of the computers pursuant to Article 32(1)(b) of the Community Customs Code where the value of the software is not included in the transaction value?

Ruling:

In order to determine the customs value of imports of computers equipped by the seller with software for one or more operating systems made available by the buyer to the seller free of charge, in accordance with Article 32(1)(b) or (c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, the value of the software must be added to the transaction value of the computers if the value of the software has not been included in the price actually paid or payable for those computers.

The same is true when the national authorities accept as the transaction value, in accordance with Community law, the price of a sale other than that made by the Community purchaser. In such cases, 'buyer' for the purposes of Article 32(1)(b) or (c) of the Customs Code must be understood to mean the buyer who concluded that other sale.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C- 491/04 - Dollond & Aitchison Ltd v Commissioners of Customs & Excise

Title: Community Customs Code – Customs value – Customs import duties – Delivery of goods by a company established in Jersey and supplies of services effected in the United Kingdom

Language: English

Questions:

1. Is that part of the payment which is made by a customer to [DALD] for the supply of specified services by [D & A] or by its franchisees to be included in the total payment for the specified goods so as to be part of the price paid or payable for the specified goods within the meaning of Article 29 of [the Customs Code] in circumstances where the customer is a private consumer and importer on whose behalf [DALD] accounts for VAT on importation?

The specified goods are:

(i) contact lenses

(ii) cleaning solutions

(iii) soaking cases.

The specified services are:

(iv) a contact lens examination

(v) a contact lens consultation

(vi) any on-going aftercare required by a customer.

2. If the answer to [Question] 1 above is No, may the amount of the payment for the specified goods nonetheless be calculated under Article 29 or is it necessary to make such calculation under Article 30 of [the Customs Code]?

3. In view of the fact that the Channel Islands are part of the customs territory of the Community but are not part of the VAT territory for the purposes of the [Sixth Directive], does any of the guidance set out in Case C-349/96 *Card Protection Plan* v *Commissioners of Customs and Excise* [[1999] ECR I-973] apply for the purposes of determining which part or parts of the transaction comprising the provision of specified services and specified goods fall to be valued for the purposes of applying the [Common] Customs Tariff of the European Communities?

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Rulings:

1. Article 29 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that, in circumstances such as those of the main proceedings, payment for the supply of specified services, such as examination, consultation or aftercare required in connection with contact lenses, and for specified goods, consisting of those lenses, the cleaning solutions and the soaking cases, constitutes as a whole the 'transaction value' within the meaning of Article 29 of the Customs Code and is, therefore, dutiable.

2. The principles laid down in the *CCP* judgment (Case C-349/96) of 25 February 1999 cannot be used directly to determine the elements of the transaction to be taken into account for the purposes of applying Article 29 of the Customs Code.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C- 263/06 - Carboni e derivati Srl v Ministero dell'Economia e delle Finanze, Riunione Adriatica di Sicurta Spa

Title: Common commercial policy – Protection against dumping – Anti-dumping duty – Hematite pig iron originating in Russia – Decision No 67/94/ECSC – Determination of customs value for purposes of the application of a variable anti-dumping duty – Transaction value – Successive sales at different prices – Whether the customs authority may take into consideration the price indicated in a sale of goods effected prior to that on the basis of which the customs declaration was made)

Language: English

Questions:

1. According to the principles of Community customs law and for the purpose of application of an anti-dumping duty such as that laid down by Commission Decision No 67/94, the customs authority may refer to the price indicated in a sale of the same goods which took place prior to that on the basis of which the customs declaration was made, where the buyer is a Community subject or, in any case, the sale took place for import into the Community?

Rulings:

1. In accordance with Article 1(2) of Commission Decision No 67/94/ECSC of 12 January 1994 imposing a provisional anti-dumping duty on imports into the Community of hematite pig iron, originating in Brazil, Poland, Russia and Ukraine, the customs authorities may not determine the customs value for the purpose of applying the anti-dumping duty established by that decision on the basis of the price indicated for the goods concerned in a sale prior to that on the basis of which the customs declaration was made when the declared price corresponds to the price actually paid or payable by the importer.

If the customs authorities have reasonable doubts as to the accuracy of the declared value and their doubts are confirmed after they have asked for additional information or documents and have provided the person concerned with a reasonable opportunity to respond to the grounds for those doubts, without it being possible to determine the price actually paid or payable, they may, in accordance with Article 31 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, calculate the customs value for the purpose of applying the anti-dumping duty established by Decision No 67/94 by reference to the price agreed for the goods in question in the most recent sale prior to that on the basis of which the customs declaration was made and in regard to which the customs authorities have no objective reason to doubt its accuracy.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-256/07 Mitsui & Co. Deutschland GmbH v Hauptzollamt Düsseldorf

Title: Community Customs Code – Repayment of customs duties – Article 29(1) and (3)(a) – Value for customs purposes – Regulation (EEC) No 2454/93 – Article 145(2) and (3) – Taking into account, for customs valuation purposes, of payments made by the seller in performance of a warranty obligation provided for in the contract of sale – Temporal application – Substantive rules – Procedural rules – Retroactive application of a rule – Validity

Language: German

Questions:
(1) Do payments by the seller/manufacturer to the buyer which, as in the present case, are made in the context of a guarantee agreement and by which the buyer is reimbursed the expenditure on repairs invoiced to him by his [distributors] reduce the customs value under Article 29(1) and (3)(a) of [the Customs Code] which was declared on the basis of the price agreed between the seller/manufacturer and the buyer?

(2) Do the payments referred to in Question 1 by the seller/manufacturer to the buyer for the reimbursement of expenses incurred under a guarantee constitute an adjustment of the transaction value under Article 145(2) of [the Implementing Regulation]?

(3) Should either of the first two questions be answered in the affirmative: is Article 145(2) and (3) of [the Implementing Regulation] to be applied to imports in respect of which the customs declarations were accepted before entry into force of [Regulation No 444/2002]?

(4) Should Question 3 be answered in the affirmative: is Article 145(2) and (3) of [the Implementing Regulation] valid?

Ruling:
1. Article 29(1) and (3)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Article 145(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 444/2002 of 11 March 2002, must be interpreted as meaning that, when defects affecting goods became apparent after the goods were released for free circulation but it is demonstrated that they existed before such release, and those defects give rise, under a warranty obligation, to subsequent reimbursements by the seller/manufacturer to the buyer, reimbursements which correspond to the costs of repairs invoiced by the buyer's own distributors, such reimbursements can result in a reduction of the transaction value of the goods and, as a result, of their customs value, which was declared on the basis of the price initially agreed between the seller/manufacturer and the buyer.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

2. Article 145(2) and (3) of Regulation No 2454/93, as amended by Regulation No 444/2002, do not apply to imports in respect of which the customs declarations were accepted before 19 March 2002.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C- 354/09 Gaston Schul BV v Staatssecretaris van Financiën

Title: Community Customs Code – Article 33 – Value of goods for customs purposes – Inclusion of the customs duties – Delivery term 'Delivered Duty Paid'

Language: Dutch

Question:

In the case of subsequent entry in the accounts within the meaning of Article 220 of the Community Customs Code, must it be assumed that the condition laid down in Article 33 [of that code], under which import duties are not to be included in the customs value, is satisfied where the seller and buyer of the goods concerned have agreed on the delivery term "delivered [duty] paid" and this is stated in the customs declaration, even if in determining the transaction price they – wrongly – assumed that no customs duties would be owed upon importation of the goods into the Community and consequently no amount of customs duties was stated in the invoice or in or with the declaration?

Ruling:

The condition specified in Article 33 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, to the effect that import duties must be 'shown separately' from the price actually paid or payable for the imported goods, is satisfied in the case where the parties to the contract have agreed that those goods are to be delivered DDP ('Delivered Duty Paid') and have incorporated that information in the customs declaration but, by reason of a mistake as to the preferential origin of those goods, have failed to state the amount of the import duties.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-116/12 - Ioannis Christodoulou, Nikolaos Christodoulou, Afi N. Christodoulou AE v Elliniko Dimosio

Title: Customs value – Goods exported to a third country – Export refunds – Processing in the exporting country regarded as non-substantial – Re‑export of goods to the European Union – Determination of the customs value – Transaction value

Language: Greek

Questions:

1. Do Articles 29 and 32 of [the Customs Code] apply to the determination of the customs value of imported goods where the contract is for processing or working of materials (exported to the country of processing without being placed under the customs procedure of outward processing) which is not at the level provided for in Article 24 of that [code] or which is otherwise insufficient to permit it to be held that the origin of the goods produced is the country where that processing or working was carried out?

2. If the answer to Question 1 is in the affirmative, is a distinction to be made where the import, on the basis of invoices and other documents held to be inaccurate, appears to have taken place under a contract of sale, but it is proven that the contract was for non-substantial processing of materials originating in the country of import in return for a specific fee, which can be determined, and that the declared customs value does not correspond to the real price payable or paid?

3. If the answer to Question 2 is in the negative, is a distinction to be made where there is also evidence of a practice that constitutes abuse of Community rules with the aim of enabling the interested party to derive an advantage?

4. If it is held that Articles 29 and 32 of [the Customs Code] can be applied to a case such as that described in Question 2, even when the objective circumstances and subjective factor of Question 3 coincide, what is considered to be the value of the component (in the present case sugar) which was incorporated into the imported goods and supplied at no cost to the importer, where the component in question, which could not be subject to a customs procedure of outward processing in accordance with Article 146(1) of the said Regulation, was not produced by him, but was acquired by him at the export price (which was lower than the price that applied on the internal market, since the product is subject to the refund system)?

Ruling:

1. Articles 29 and 32 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as applying to the determination of the customs value of goods imported on the basis of a contract which, although described as a contract of sale, in fact proves to be a working

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

or processing contract. For the purposes of that determination, it is immaterial whether the working or processing operations satisfy the conditions laid down in Article 24 of that regulation, so that the goods concerned may be regarded as originating in the country where those operations took place.

2. Articles 29 and 32 of Regulation N 2913/92, as amended by Regulation No 82/97, must be interpreted as meaning that, when the customs value is determined, account must be taken of the value of the export refund which a product has benefited from and which was obtained by putting into effect a practice involving the application of provisions of European Union law with the aim of wrongfully securing an advantage.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-430/14 - Valsts ieņēmumu dienests versus Artūrs Stretinskis,

Title: Community Customs Code — Article 29(1)(d) — Determination of the customs value — Regulation (EEC) No 2454/93 — Article 143(1)(h) — Definition of 'related persons' for the purposes of determining the customs value — Kinship relationship between the buyer, a natural person, and the director of the company which sold the goods

Language: Latvian

Questions:

(1) Must Article 143(1)(h) of Regulation No 2454/93 be interpreted as referring not only to situations in which the parties to the transaction are exclusively natural persons, but also to situations in which there is a family or kinship relationship between a director of one of the parties (a legal person) and the other party to the transaction (a natural person) or a director of that party (in the case of a legal person)?

(2) If the answer is affirmative, must the judicial body hearing the matter carry out an in-depth examination of the circumstances of the case in relation to the actual influence of the natural person concerned over the legal person?

Ruling:

Article 143(1)(h) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 46/1999 of 8 January 1999, must be interpreted as meaning that a buyer, who is a natural person, and a seller, which is a legal person, within which a kin of that buyer actually has the power to influence the sales price of goods for the benefit of that buyer, must be regarded as being related persons within the meaning of Article 29(1)(d) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996.

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Case C-173/15 - GE Healthcare GmbH v Hauptzollamt Düsseldorf

Title: Customs Union — Community Customs Code — Article 32(1)(c) — Determination of the customs value — Royalties or licence fees in respect of the goods being valued — Meaning — Regulation (EEC) No 2454/93 — Article 160 — 'Condition of sale' of the goods being valued — Payment of royalties or licence fees to an undertaking related to both the seller and the buyer of the goods — Article 158(3) — Adjustment and apportionment measures

Language: German

Questions:

1. Can royalties or licence fees within the meaning of Article 32(1)(c) of [the Customs Code] be included in the customs value even if it is not established, either at the time at which the contract was concluded or at the relevant date as regards the incurring of the customs debt (the latter date being determined in the event of any dispute in accordance with Articles 201(2) and 214(1) of the [Customs] Code), that royalties or licence fees were owed?

2. If the reply to Question 1 is in the affirmative: can royalties or licence fees for trademarks within the meaning of Article 32(1)(c) of the [Customs] Code relate to the imported goods notwithstanding the fact that those royalties or licence fees are also paid for services and for the use of the first part of the name of the common group of undertakings?

3. If the reply to Question 2 is in the affirmative: can royalties or licence fees for trademarks within the meaning of Article 32(1)(c) of the [Customs] Code be a condition of the sale for export to the Community of the imported goods within the meaning of Article 32(5)(b) of the [Customs] Code even if they are payable, and paid, to an undertaking related to the seller and to the buyer?

4. If the reply to Question 3 is in the affirmative and the royalties or licence fees relate, as here, partly to the imported goods and partly to post-importation services: does it follow from the appropriate apportionment made only on the basis of objective and quantifiable data, in accordance with Article 158(3) of … [Regulation No 2454/93] and the interpretative note on Article 32(2) of the [Customs] Code in Annex 23 to … Regulation [No 2454/93], that only a customs value in accordance with Article 29 of the [Customs] Code may be corrected, or, if a customs value cannot be determined in accordance with Article 29 of the [Customs] Code, is the apportionment laid down in Article 158(3) of … Regulation [No 2454/93] also possible, in so far as those costs would not otherwise be taken into account, when determining a customs value to be established in accordance with Article 31 of the [Customs] Code?'

Ruling

1. Article 32(1)(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No

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1791/2006 of 20 November 2006, must be interpreted as, first, not requiring the amount of royalties or licence fees to be determined at the time when a licence agreement was concluded or when the customs debt was incurred in order for those royalties or licence fees to be regarded as related to the goods being valued and, second, allowing such royalties or licence fees to be 'related to the goods being valued' even if those royalties or licence fees relate only partly to those goods.

2. Article 32(1)(c) of Regulation No 2913/92, as amended by Regulation No 1791/2006, and Article 160 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 1875/2006 of 18 December 2006, must be interpreted as meaning that royalties or licence fees are a 'condition of sale' of the goods being valued where, within a single group of undertakings, those royalties or licence fees are required to be paid by an undertaking related to both the seller and the buyer and were paid to that same undertaking.

3. Article 32(1)(c) of Regulation No 2913/92, as amended by Regulation No 1791/2006, and Article 158(3) of Regulation No 2454/93, as amended by Regulation No 1875/2006, must be interpreted as meaning that the adjustment and apportionment measures, referred to in those provisions respectively, may be applied where the customs value of the goods at issue has been determined, not on the basis of Article 29 of Regulation No 2913/92, as amended, but on the basis of the alternative method laid down in Article 31 of that regulation.

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Case C-291/15 – Euro 2004 Hungary Kft versus Nemzeti Adó- és Vámhivatal Nyugat-dunántúli Regionális Vám- és Pénzügyőri Főigazgatósága

Title: Common Customs Tariff — Value for customs purposes — Determination of the Customs value — Transaction value — Price actually paid — Doubts based on the veracity of the declared price — Declared price lower than the price paid in respect of other transactions relating to similar goods

Language: Hungarian

Question:

Must Article 181a of Commission Regulation (EEC) No 2454/93 of 2 July 1993 be interpreted as precluding a practice of a Member State whereby the customs value is determined on the basis of the "transaction value of similar goods" if it is considered that the declared transaction value, in comparison with the statistical average of the purchase prices verified in the context of the importation of similar goods, is unreasonably low and, consequently, incorrect, despite the fact that the customs authority does not refute or call into question the authenticity of the invoice or the bank transfer certificate produced in order to establish the price actually paid for the imported goods, without the importer having submitted additional evidence to demonstrate the transaction value?

Ruling:
Article 181a of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation No 3254/94 of 19 December 1994, must be interpreted as not precluding a customs authority practice, such as that at issue in the main proceedings, whereby the customs value of imported goods is determined on the basis of the transaction value of similar goods, the method in Article 30 of Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, where the declared transaction value is considered to be unreasonably low in comparison with the statistical average of the purchase prices verified in the context of the importation of similar goods and despite the fact that the customs authority does not refute or call into question the authenticity of the invoice or the bank transfer certificate produced in order to establish the price actually paid for the imported goods, without the importer having submitted, in response to a request to that effect from the customs authority, additional evidence to demonstrate the accuracy of the declared transaction value of those goods.

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Case C-661/15 – X BV versus Staatssecretaris van Financiën

Title: Customs union — Community Customs Code — Article 29 — Import of vehicles — Determination of the customs value — Article 78 — Revision of the declaration — Article 236(2) — Repayment of import duties — Period of three years — Regulation (EEC) No 2454/93 — Article 145(2) and (3) — Risk of defects — Period of 12 months — Validity)

Language: Dutch

Questions:

(1)(a)Should Article 145(2) of the implementing regulation, read in conjunction with Article 29(1) and (3) of the Customs Code, be interpreted as meaning that the rule laid down therein also applies in a case where it is established that, at the time of acceptance of the declaration for specific goods, there was a manufacture-related risk that a component of the goods might become defective during use, and in view of this the seller, pursuant to a contractual warranty towards the buyer, grants the latter a price reduction in the form of reimbursement of the costs incurred by the buyer in modifying the goods in order to exclude that risk?

(b)In the event that the rule laid down in Article 145(2) of the implementing regulation does not apply in the case referred to above, are the provisions of Article 29(1) and (3) of the Customs Code, read in conjunction with Article 78 of the Customs Code, sufficient, without more, to reduce the declared customs value after the aforementioned price reduction has been granted?

(2)Is the condition laid down in Article 145(3) of the implementing regulation for adjustment of the customs value referred to therein, namely that the adjustment of the price actually paid or payable for the goods must have been made within a period of 12 months following the date of acceptance of the declaration for entry to free circulation, contrary to the provisions of Articles 78 and 236 of the Customs Code, read in conjunction with Article 29 of [that code]?'

Ruling:

1. Article 145(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 444/2002 of 11 March 2002, read in conjunction with Article 29(1) and (3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, must be interpreted as meaning that it applies in a case, such as that at issue in the main proceedings, where it is established that, at the time of acceptance of the declaration for entry to free circulation for specific goods, there was a manufacture-related risk that the goods might become defective in use, and in view of this the seller,

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pursuant to a contractual warranty towards the buyer, grants the latter a price reduction in the form of reimbursement of the costs incurred by the buyer in modifying the goods in order to exclude that risk.

2. Article 145(3) of Regulation No 2454/93, as amended by Regulation No 444/2002, in so far as it provides for a time limit of 12 months from acceptance of the declaration for entry to free circulation of the goods, within which an adjustment of the price actually paid or payable must be made, is invalid.

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Case C-46/16 – Valsts ieņēmumu dienests v LS Customs Services

Title: Customs union — Regulation (EEC) No 2913/92 — Community Customs Code — Non-Community goods — External Community customs transit procedure — Unlawful removal from customs supervision of goods liable to import duties — Determination of the customs value — Article 29(1) — Conditions for the application of the transaction value method — Articles 30 and 31 — Choice of the method for determining the customs value — Obligation imposed upon the customs authorities to state reasons for the chosen method)

Language: Latvian

Questions:

(1)Should Article 29(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code be interpreted as meaning that the method laid down in that article is also applicable when the import of the goods and their release for free circulation in the customs territory of the Community took place as a consequence of the fact that during the transit procedure the goods were removed from customs supervision, the goods concerned being goods liable to import duties, and the goods were not sold for export to the customs territory of the Community but for export outside the Community?

(2)Should the expression 'sequentially' used in Article 30(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, in the light of the right to good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union read together with the principle that reasons must be stated for administrative measures, be interpreted as meaning that, in order to be able to conclude that the applicable method is that set out in Article 31 of the regulation, the customs authorities are under an obligation to state in all administrative measures why in those specific circumstances the methods for determination of customs value of goods set out in Articles 29 and 30 cannot be used?

(3)Should it be deemed to be sufficient, to exclude the application of the method in Article 30(2)(a) of the Customs Code, that the customs authority declare that it does not have in its possession the appropriate information, or is the customs authority obliged to obtain information from the producer?

(4)Must the customs authority state reasons why the methods established in Article 30(2)(c) and (d) of the Customs Code are not to be used, if it determines the price of similar goods on the basis of Article 151(3) of Regulation No 2454/93?

(5)Must the decision of the customs authority contain a full statement of reasons as to what information is available in the Community, within the meaning of Article 31 of the Customs Code, or can it produce that statement of reasons subsequently, in legal proceedings, submitting more complete evidence?'

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Ruling:

1. Article 29(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council of 13 April 1999, must be interpreted as meaning that the method for determining customs value laid down by that provision is not applicable to goods that were not sold for export to the European Union.

2. Article 31 of Regulation No 2913/92, as amended by Regulation No 955/1999, read in conjunction with Article 6(3) of that regulation, as amended, must be interpreted as meaning that the customs authorities are obliged to state, in their decision fixing the amount of import duties due, the reasons leading them to set aside the methods for determining customs value set out in Articles 29 and 30 of that regulation, as amended, before they could decide to apply the method laid down in Article 31 of that regulation, as amended, and the data on the basis of which the customs value of the goods was calculated, in order to enable the person concerned to assess whether that decision is well founded and to decide in full knowledge of the circumstances whether it is worthwhile for him to bring an action against it. It is for the Member States, exercising their procedural autonomy, to regulate the consequences of a failure by the customs authorities to fulfil their obligation to state reasons and to determine whether and to what extent such a failure may be remedied in the course of legal proceedings, subject to observance of the principles of equivalence and effectiveness.

3. Article 30(2)(a) of Regulation No 2913/92, as amended by Regulation No 955/1999, must be interpreted as meaning that, before it can set aside the method for determining customs value laid down by that provision, the competent authority is not required to ask the producer to provide it with the information necessary for the application of that method. That authority is, however, required to consult all the information sources and databases available to it. It must also allow the economic operators concerned to provide it with any information which may contribute to determining the customs value of the goods pursuant to that provision.

4. Article 30(2) of Regulation No 2913/92, as amended by Regulation No 955/1999, must be interpreted as meaning that the customs authorities are not required to state reasons why the methods set out in subparagraphs (c) and (d) of that provision are not to be applied, if they determine the customs value of the goods on the basis of the transaction value of similar goods in accordance with Article 151(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 1762/95 of 19 July 1995.

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Case C- 59/16 - The Shirtmakers BV versus Staatssecretaris van Financiën

Title: Customs union — Regulation (EEC) No 2913/92 — Community Customs Code — Article 32(1)(e)(i) — Customs value — Transaction value — Determination — Concept of 'cost of transport'

Language: Dutch.

Question:

Should Article 32(1)(e)(i) of the Customs Code be interpreted as meaning that the term "cost of transport" should be understood to mean the amounts charged by the actual carriers of the imported goods, even where those carriers have not charged those amounts directly to the buyer of the imported goods but to another operator who has concluded the contracts of carriage with the actual carriers on behalf of the buyer of the imported goods, and who has charged the buyer higher amounts in connection with his efforts in arranging the transport?

Ruling:

Article 32(1)(e)(i) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that the concept of 'cost of transport', within the meaning of that provision, includes the supplement charged by the forwarding agent to the importer, corresponding to that agent's profit margin and costs, in respect of the service which it provided in organising the transport of the imported goods to the customs territory of the European Union.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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Case C-529/16 – Hamamatsu Photonics Deutschland GmbH v Hauptzollamt München

Title: Common Customs Tariff (SIC!) — Customs Code — Article 29 — Determination of the customs value — Cross-border transactions between related companies — Advance transfer pricing arrangement — Agreed transfer price composed of an amount initially invoiced and a flat-rate adjustment made after the end of the accounting period)

Questions:

1. Do the provisions of Article 28 CCC et seq. permit an agreed transfer price, which is composed of an amount initially invoiced and declared and a flat-rate adjustment made after the end of the accounting period, to form the basis for the customs value, using an allocation key, regardless of whether the subsequent debit charge or credit is made to the declarant at the end of the accounting period?

2. If so, may the customs value be reviewed and/or determined using simplified approaches where the subsequent transfer pricing adjustments (both upward and downward) can be recognised?

Ruling:

Articles 28 to 31 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as meaning that they do not permit an agreed transaction value, composed of an amount initially invoiced and declared and a flat-rate adjustment made after the end of the accounting period, to form the basis for the customs value, without it being possible to know at the end of the accounting period whether that adjustment would be made up or down.

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Case C-1/18 - Oribalt Rīga SIA versus Valsts ieņēmumu dienests

Title: Customs Union – Regulation (EEC) No 2913/92 – Article 30(2)(b) and (c) – Regulation (EEC) No 2454/93 – Article 152(1)(a) and (b) – Determination of the customs value of the goods – Definition of 'similar goods' – Medicinal products – Account taken of any factor that may have an impact on the economic value of the medicinal product concerned – Time limit of 90 days within which the imported goods must be sold in the European Union –Mandatory time limit – No account taken of trade discounts

Language: Latvian

Questions:

1. Where the imported goods are medicines, when the customs value of the imported goods is determined in accordance with Article 30(2)(b) of [the Customs Code] and Article 151(4) of [the Implementing Regulation], must it be considered that "similar goods" are those medicines whose active ingredient and the quantity thereof are the same (or similar) or, rather, in order to identify similar goods, must account be taken of market position as well, that is to say the popularity and demand, of the imported medicine in question and of its producer?
2. When the customs value of the imported goods is determined in accordance with Article 30(2)(c) of [the Customs Code], may the period of 90 days fixed in Article 152(1)(b) of [the Implementing Regulation] be applied flexibly?
3. If that period may be applied flexibly, to which data must priority be given in the present case? Should it be to data on transactions effected closer to the time when the goods to be valued were imported and involving identical or similar goods that are sold in sufficient quantities to enable the unit price to be determined or, on the contrary, to transactions less close in time but actually involving the imported goods?
4. When the customs value of the imported goods is determined in accordance with Article 30(2)(c) of [the Customs Code], should the discounts granted, which determined the price at which the goods were in fact sold, be applied?

Ruling:

1. Article 30(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as meaning that when the customs value of goods, such as the medicinal products at issue in the main proceedings, is calculated by applying the deductive method laid down in that provision, the competent national customs authority must, in order to identify 'similar goods', take into consideration any

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relevant factor, such as the respective compositions of those goods, their substitutability in the light of their effects and their commercial interchangeability, thus conducting a factual assessment which takes into account any factor that may have an impact on the real economic value of those goods, including the market position of the imported goods and of their manufacturer.

2. Article 152(1)(b) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 must be interpreted as meaning that, in order to determine the unit price of imported goods using the method laid down in Article 30(2)(c) of Regulation No 2913/92, as amended by Regulation No 82/97, the time limit of 90 days within which the imported goods must be sold in the European Union, referred to in Article 152(1)(b) of Regulation No 2454/93, is a mandatory time limit.

3. Article 30(2)(c) of Regulation No 2913/92, as amended by Regulation No 82/97, must be interpreted as meaning that reductions in the sale price of imported goods cannot be taken into account in determining the customs value of those goods pursuant to that provision.

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Case C-76/19 - Curtis Balkan EOOD versus Direktor na Teritorialna direktsiya Yugozapadna Agentsiya 'Mitnitsi'

Title: Customs Union — Community Customs Code — Article 32(1)(c) — Regulation (EEC) No 2454/93 — Article 157(2), Article 158(3), and Article 160 — Determining the customs value — Adjustment — Royalties relating to the goods being valued — Royalties constituting a 'condition of sale' of the goods being valued — Royalties paid by the buyer to its parent company for the supply of the know-how required for the manufacture of the finished products — Goods purchased from third parties, which constitute components to be incorporated in the licensed products

Language: Bulgarian

Questions:

1. Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it provides an independent basis for the adjustment of the customs value via the addition of royalties or licence fees to the price actually paid or payable for the imported goods, irrespective of the rule in Article 157 of Regulation No 2454/93?

2. Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it makes provision for two alternative scenarios for the adjustment of the customs value: firstly, the scenario in which the royalties or licence fees, such as those at issue here, relate partly to the imported goods and partly to other component parts added to the goods after their importation, and, secondly, the scenario in which the royalties or licence fees relate to post-importation activities or services?

3. Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it makes provision for three scenarios for the adjustment of the customs value: firstly, the scenario in which the royalties or licence fees relate partly to the imported goods and partly to other component parts added to the goods after their importation; secondly, the scenario in which the royalties or licence fees relate partly to the imported goods and partly to post-importation activities or services; thirdly, the scenario in which the royalties or licence fees relate partly to the imported goods and partly to other component parts added to the goods after their importation, or to post-importation activities or services?

4. Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it always allows an adjustment of the customs value if it is established that the royalties or licence fees paid relate to activities or services following the importation of the goods being valued, which, in this specific case, are services that are provided to the Bulgarian company by the American company (and are connected with

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manufacturing and management), irrespective of whether the requirements for the adjustment pursuant to Article 157 of Regulation No 2454/93 have been met?

5. Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it constitutes a special case of customs value adjustment under the arrangements and conditions of Article 157 of Regulation No 2454/93, whereby the special nature resides solely in the fact that the royalties or licence fees relate only partly to the goods being valued, meaning that they are to be apportioned appropriately?

6. Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it is also applicable if the buyer pays a fee or royalties or licence fees to a third party?

7. If both of the preceding questions are answered in the affirmative, must the court assess, for the appropriate apportionment of the royalty or licence fee pursuant to Article 158(3) of Regulation No 2454/93, whether both conditions of Article 157(2) have been met, namely that the royalty or licence fee relates, even if only partly, to the imported goods and that it constitutes a condition of sale of those goods, and, if so, does the rule under Article 160, pursuant to which the conditions of Article 157(2) are met if the seller or a person related to him requires the buyer to make that payment, have to be taken into account in that assessment?

8. Is Article 160 of Regulation No 2454/93 applicable only to the fundamental rule of Article 157 of Regulation No 2454/93 in the case where the royalties or licence fees are payable to a third party and relate wholly to the product being valued, or is it also applicable in cases in which the royalties or licence fees relate only partly to the imported goods?

9. Is Article 160 of Regulation No 2454/93 to be interpreted as meaning that the term ‘relationship’ between licensor and seller should be understood to refer to cases in which the licensor is related to the buyer, because he exerts direct control over the buyer that goes beyond quality control, or is it to be interpreted as meaning that the relationship between licensor and buyer described above is not sufficient to assume an (indirect) relationship between licensor and seller, in particular if the latter disputes the view that the prices for the buyer’s orders for the imported goods were dependent on the payment of royalties or licence fees and likewise disputes the view that the licensor was in a position to direct or restrict its actions operationally?

10. Is Article 160 of Regulation No 2454/93 to be interpreted as meaning that it allows an adjustment of the customs value only if both of the conditions set out in Article 157 of Regulation No 2454/93 are met, namely that the royalty or licence fee that is paid to a third party is related to the goods being valued and constitutes a condition of sale of those goods, and the condition that the seller or a person related to him requires the buyer to pay the royalty or licence fee is also met?

11. Is the requirement under the first indent of Article 157(2) of Regulation No 2454/93 — that the royalty or licence fee be related to the goods being valued — to be regarded as having been fulfilled in the case where there is an

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indirect connection between the royalty or licence fee and the imported goods, such as that in the present case, if the goods being valued are component parts of the licensed end product?'

Ruling:

Article 32(1)(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, read in conjunction with Article 157(2), Article 158(3) and Article 160 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, must be interpreted as meaning that a proportion of the royalties paid by a company to its parent company in consideration for the supply of know-how for the manufacture of finished products must be added to the price actually paid or payable for imported goods in circumstances where those goods are intended to be included, along with other component parts, in the composition of those finished products and are purchased by the former company from sellers separate from the parent company, where

– the royalties were not included in the price actually paid or payable for those goods;

– they relate to the imported goods, which presupposes that there is a sufficiently close link between the royalties and those goods;

– the payment of royalties is a condition of the sale of those goods, so that, had it not been for that payment, the contract of sale relating to the imported goods would not have been concluded and, consequently, they would not have been delivered; and

– it is possible to make an appropriate apportionment of the royalties based on objective and quantifiable data,

which is for the referring court to ascertain, taking into account all the relevant facts, in particular the relationships of law and of fact between the buyer, the respective sellers and the licensor.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-213/2019 – European Commission v United Kingdom of Great Britain and Northern Ireland

Title: Failure of a Member State to fulfil obligations – Article 4(3) TEU – Article 310(6) and Article 325 TFEU – Own resources – Customs duties – Value added tax (VAT) – Protection of the financial interests of the European Union – Combating fraud – Principle of effectiveness – Obligation for Member States to make own resources available to the European Commission – Financial liability of Member States in the event of losses of own resources – Imports of textiles and footwear from China – Large-scale and systematic fraud – Organised crime – Missing importers – Customs value – Undervaluation – Taxable amount for VAT purposes – Lack of systematic customs controls based on risk analysis and carried out prior to the release of the goods concerned – No systematic provision of security – Method used to estimate the amount of traditional own resources losses in respect of imports presenting a significant risk of undervaluation – Statistical method based on the average price determined at EU level – Whether permissible

Language: English

Remarks: By its judgment, the Grand Chamber of the Court of Justice upholds the Commission's action in part, ruling, in essence, that the United Kingdom failed to fulfil its obligations under EU law by failing to apply effective customs control measures or to enter in the accounts the correct amounts of customs duties and accordingly to make available to the Commission the correct amount of traditional own resources in respect of certain imports of textiles and footwear from China, and by failing to provide the Commission with all the information necessary to calculate the amounts of duty and own resources remaining due.[81]

The case concerned the recovery of traditional own resources (TOR). Although the customs value was not the main subject of the CJUE' considerations, the ruling also contains of statements on the interpretation of the Union customs legislation in the field of customs valuation:

"(373) (…) CAPs [cleaned average prices] could be used only as a risk analysis tool, that is to say, a tool for detecting on the basis of risk profiles those imports likely to be undervalued which required verification, not for determining their customs value.

(374) Consequently, in order to fulfil its obligations under Article 13(1) of Regulation No 609/2014, the United Kingdom was obliged to take the requisite measure to ensure that the amounts corresponding to the entitlements established under Article 2 of that regulation would be made available to the Commission and correct that administrative

[81] Court of Justice of the European Union, PRESS RELEASE No 42/22, Luxembourg, 8 March 2022.

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Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

error. In particular, the United Kingdom was required to re-determine the customs value by applying one of the methods prescribed for that purpose by EU customs law and, in particular, by the sequential rules of EU law on customs valuation, as laid down in Articles 70 to 74 of the Union Customs Code.

(375) In that regard, the Court has ruled that the methods of determining customs values provided for by those articles are subordinately linked, so that when a customs value cannot be determined by applying a given article, it is appropriate to refer to the article which comes immediately after it in the established order (see, to that effect, judgment of 16 June 2016, EURO 2004. Hungary, C-291/15, EU:C:2016:455, paragraph 29).

(412) (…) it is the exclusive competence and responsibility of Member States to ensure that declared customs values are established in accordance with the rules of EU law on customs valuation, as laid down in Articles 29 to 31 of the Community Customs Code or in the corresponding provisions of Articles 70 to 74 of the Union Customs Code and, in particular, in accordance with one of the sequential methods of determining customs values provided for in those articles or provisions.

(416) Since the goods concerned could no longer be recalled for the purposes of physical controls and sufficient data as to their true value was not requested from the traders concerned, nor, therefore, provided, it is now no longer possible to determine, in respect of each customs declaration at issue, the customs value of the relevant products from China on the basis of one of the methods prescribed in Articles 70 and 74 of the Union Customs Code, such as the fall-back method in Article 74(3) of that code, which consists in determining the customs value on the basis of 'data available' in accordance with the conditions laid down in Article 144 of Implementing Regulation II.

(417) In those circumstances, the United Kingdom, supported by the intervening Member States, cannot criticise the Commission for having applied the OLAF-JRC method for the purposes of calculating the losses of customs duties and, therefore, of traditional own resources resulting from the lack of adequate controls of the relevant imports, a method that is by nature essentially statistical and which is not based on one of the sequential methods prescribed in Articles 70 and 74 of the Union Customs Code for determining, in respect of each customs declaration concerned, the customs value of the goods concerned.

(441) This, it is argued, is an essentially statistical method for determining the value for customs purposes of undervalued imports that is not one of the sequential methods prescribed in Articles 70 and 74 of the Union Customs Code, such as the fall-back method provided for in Article 74(3) of that code, which consists in determining the customs value of the goods concerned on the basis of 'data available' in accordance with the conditions laid down in Article 144 of Implementing Regulation II.

(442) In that regard, while the OLAF-JRC method is indeed an essentially statistical method of estimating the amounts of own resources losses which is not intended to determine the customs value of the goods concerned in accordance with Articles 70 and 74 of the Union Customs Code, having regard to each customs declaration concerned, the Commission cannot be criticised for having used such a statistical method for the purpose of calculating the amounts of own resources losses in the circumstances of the case.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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(443) Accordingly, in the absence of sufficient data in relation to the quality of the goods already released for free circulation, it is now no longer possible, owing to those failures to act, to determine the value of those goods on the basis of one of the evaluation methods provided for in Articles 70 and 74 of the Union Customs Code; therefore only a statistical method can be used to estimate the value of those goods.

(447) In the particular circumstances of the present case, the own resources losses arise from the United Kingdom customs authorities' practice of, essentially, systematically accepting, during the infringement period, customs declarations in respect of the relevant products imported from China without verifying the values mentioned in those declarations, when those authorities knew or ought reasonably to have known that large volumes of those products were being imported fraudulently at manifestly undervalued prices. Consequently, the amounts of those losses can be determined on the basis of a method such as the OLAF-JRC method which is based on statistical data rather than on a method intended to determine the customs value of the goods concerned on the basis of direct evidence, in accordance with Articles 70 and 74 of the Union Customs Code. The latter method can no longer be applied in the absence of direct evidence of that value which has been obtained by those authorities in sufficient quantities."

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C- 509/19 - BMW Bayerische Motorenwerke AG versus Hauptzollamt München

Title: Customs Union – Union Customs Code – Regulation (EU) No 952/2013 – Article 71(1)(b) – Customs value – Imports of electronic products equipped with software

Language: German

Question:

Should the development costs for software that has been produced in the European Union, made available to the seller by the buyer free of charge and installed on the imported control unit be added to the transaction value for the imported product pursuant to Article 71(1)(b) of the Customs Code if they are not included in the price actually paid or payable for the imported product?

Ruling:

Article 71(1)(b) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code must be interpreted as allowing, for the purposes of determining the customs value of imported goods, the economic value of software designed in the European Union and made available free of charge by the buyer to the seller established in a third country to be added to the transaction value of imported goods.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-775/19 - 5th Avenue Products Trading GmbH versus Hauptzollamt Singen

Title: Customs Union – Regulation (EEC) No 2913/92 – Community Customs Code – Article 29(1) and (3)(a) – Article 32(1)(c) and (5)(b) – Regulation (EEC) No 2454/93 – Article 157(2) – Customs valuation – Transaction value of imported goods – Concept of 'condition of sale' – Payment in return for the granting of an exclusive distribution right)

Language: German

Questions:

1. Are payments which the purchaser of a product makes in addition to the purchase price, depending on his or her sales revenues, once a year for four years, in order to be able to sell the product

   – in a particular territory,

   – for the very first time,

   – exclusively and

   – permanently,

   royalties and licence fees within the meaning of Article 32(1)(c) of [the Customs Code] which are to be added to the price actually paid or payable for the imported goods under Article 32(5)(b) [of the Customs Code] in conjunction with Article 157(2) of [the Implementing Regulation]?

2. Are such payments, where appropriate, to be added to the price paid or payable for the imported goods only on a proportional basis and, if so, on the basis of which criterion?

Ruling:

Article 29(1) and (3)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that a payment made for a limited period of time by the buyer of imported goods to the seller of those goods, in return for the granting by the seller of an exclusive right to distribute those goods in a given territory, calculated on the basis of the turnover achieved in that territory, must be included in the customs value of those goods.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-75/20 - UAB „Lifosa“ v Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos

Title: Reference for a preliminary ruling – Customs union – Community Customs Code – Regulation (EEC) No 2913/92 – Article 29(1) – Article 32(1)(e)(i) – Union Customs Code – Regulation (EU) No 952/2013 – Article 70(1) – Article 71(1)(e)(i) – Determination of the customs value – Transaction value – Adjustment – Price including delivery at the border

Language: Lithuanian

Question:

Are Article 29(1) and Article 32(1)(e)(i) of [the Community Customs Code] and Article 70(1) and Article 71(1)(e)(i) of [the Union Customs Code] to be interpreted as meaning that the transaction … value must be adjusted to include all the costs actually incurred by the … producer in transporting the goods to the place where they were brought into the customs territory of the European Union … when, as in the present case, (1) under the delivery conditions … the obligation to cover those costs was borne by the … producer and (2) those costs of transport exceeded the price that was agreed upon and was actually paid … by the … importer, but (3) the price actually paid … by the … importer corresponded to the real value of the goods, even if that price was insufficient to cover all the costs of transport incurred by the … producer?

Ruling:

Article 29(1) and Article 32(1)(e)(i) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Article 70(1) and Article 71(1)(e)(i) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code must be interpreted as meaning that, for the purpose of determining the customs value of imported goods, the costs actually incurred by the producer for their transport to the place where they have been brought into the customs territory of the European Union should not be added to the transaction value of the goods when, according to the agreed delivery terms, the obligation to cover those costs lies with the producer, even though those costs exceed the price actually paid by the importer, provided that that price corresponds to the real value of the goods, a matter which is for the referring court to establish.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-599/2020 – „Baltic Master“ UAB v Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos

Title: Customs union – Community Customs Code – Regulation (EEC) No 2913/92 – Article 29 – Determination of the customs value – Transaction value – Article 29(1)(d) – Concept of ‘related persons’ – Article 31 – Account taken of information derived from a national database for the purpose of determining the customs value – Regulation (EEC) No 2454/93 – Article 143(1)(b), (e) and (f) – Situations in which persons are deemed to be related – Article 181a – Doubts based on the veracity of the price declared

Language: Lithuanian

Questions:

1. Must Article 29(1)(d) of [the Community Customs Code] and Article 143[1](b), (e) or (f) of the [Implementing Regulation] be interpreted as meaning that the buyer and the seller are deemed to be related persons in cases where, as in the present case, in the absence of documents (official data) proving business partnership or control, the circumstances surrounding the conclusion of transactions are, however, on the basis of objective evidence, characteristic, not of the performance of economic activities under normal conditions, but rather of cases in which[, first,] there are particularly close business relations based on a high level of mutual trust between the parties to the transaction, or[, second,] one party to the transaction controls the other or both parties to the transaction are controlled by a third party?

2. Must Article 31(1) of [the Community Customs Code] be interpreted as prohibiting determination of the customs value on the basis of information contained in a national database relating to one customs value of goods which have the same origin and which, although not similar, within the meaning of Article 142(1)(d) of [the Implementing Regulation], are ascribed to the same TARIC [code]?

Ruling:

1. Article 29(1)(d) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, and Article 143(1)(b), (e) and (f) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, as amended by Commission Regulation (EC) No 46/1999 of 8 January 1999, must be interpreted as meaning that:

   – the buyer and the seller may not be deemed to be legally recognised partners or to be related on account of a direct or indirect relationship

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of *de jure* control in a situation in which no document exists which makes it possible to establish such a relationship;

– the buyer and the seller may be deemed to be related on account of a direct or indirect relationship of de facto control in a situation in which the circumstances surrounding the conclusion of the transactions at issue, substantiated by objective elements, may be regarded as demonstrating not only that there is a close relationship of trust between that buyer and that seller, but that one of them is in a position to exercise constraint or direction over the other or that a third party is in a position to exercise such constraint or direction over them.

2. Article 31(1) of Regulation No 2913/92, as amended by Regulation No 82/97, must be interpreted as not prohibiting the determination of the customs value of imported goods, where it could not be determined in accordance with Articles 29 and 30 of that code, on the basis of information contained in a national database relating to a customs value of goods which have the same origin and which, although not 'similar' within the meaning of Article 142(1)(d) of Regulation No 2454/93, as amended by Regulation No 46/1999, are ascribed to the same TARIC code.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-187/2021 – FAWKES Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Title: Regulation (EEC) No 2913/92 – Community Customs Code – Article 30(2)(a) and (b) – Customs value – Determination of the transaction value of similar goods – Database set up and managed by the national customs authority – Databases set up and managed by the customs authorities of other Member States and by the services of the European Union – Identical or similar goods exported to the European Union 'at or about the same time'

Language: Hungarian

Questions:

1. Must Article 30(2)(a) and (b) of [the Customs Code] be interpreted as meaning that only the values listed in the database created from the customs clearances of the Member State's own customs authority may and must be taken into account as the customs value?

2. If the first question is answered in the negative, is it necessary, for the purposes of determining the customs value in accordance with Article 30(2)(a) and (b) of the Customs Code, to approach the customs authorities of other Member States in order to obtain the customs value of similar goods listed in their databases, and/or is it necessary to consult a [European Union] database and obtain the customs values listed in it?

3. May Article 30(2)(a) and (b) of the Customs Code be interpreted as meaning that, for the purposes of determining the customs value, account may not be taken of transaction values relating to transactions performed by the applicant for customs clearance himself, even if those values have not been challenged either by the national customs authority or by the [customs] authorities of other Member States?

4. Must the requirement of "at or about the same time", laid down in Article 30(2)(a) and (b) of the Customs Code, be interpreted as meaning that it may be limited to a period of +/- 45 days before and after customs clearance?

Ruling:

1. Article 30(2)(a) and (b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that, when determining the customs value in accordance with that provision, the customs authority of a Member State may confine itself to using information contained in the national database which it compiles and manages, without that customs authority

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being required, where the information is sufficient for that purpose, to access information held by the customs authorities of other Member States or by the EU services and institutions, without prejudice, if that is not the case, to the possibility for that customs authority to make a request to those authorities or to those services and institutions in order to obtain additional data for the purposes of that determination.

2. Article 30(2)(a) and (b) of Regulation No 2913/92 must be interpreted as meaning that the customs authority of a Member State may exclude, when determining the customs value, transaction values relating to other transactions entered into by the applicant for customs clearance, even if those values have not been challenged either by that customs authority or by the customs authorities of other Member States, provided that (i) for transaction values relating to imports into that Member State, that authority first calls them into question pursuant to Article 78(1) and (2) of Regulation No 2913/92, within the time limits imposed by Article 221 thereof and following the procedure laid down in Article 181a of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 3254/94 of 19 December 1994, and (ii) for transaction values relating to imports into other Member States, that customs authority sets out the grounds for that exclusion in accordance with Article 6(3) of Regulation No 2913/92 by reference to factors affecting their plausibility.

3. The concept of goods exported ‘at or about the same time’ as the goods being valued, referred to in Article 30(2)(a) and (b) of Regulation No 2913/92, must be interpreted as meaning that, when determining the customs value in accordance with that provision, a customs authority may confine itself to using data relating to transaction values covering a period of 90 days, including 45 days before and 45 days after the customs clearance of the goods being valued, provided that the transactions relating to exports, into the EU, of goods which are identical or similar to the goods being valued over that period enable it to determine the customs value of those goods in accordance with that provision.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

Case C-770/2021 – OGL Food v Direktor na Teritorialna direktsia 'Mitnitsa Plovdiv' pri Agentsia 'Mitnitsi'

Title: Regulation (EU) No 952/2013 – Union Customs Code – Articles 70 and 74 – Determination of the customs value – Customs value of fruit and vegetables to which an entry price applies – Regulation (EU) No 1308/2013 – Article 181 – Delegated Regulation (EU) 2017/891 – Article 75(5) and (6) – Declared transaction value higher than the standard import value – Disposal of products under conditions confirming the correctness of the transaction value – Sale by the importer at a loss – Relationship between the importer and the exporter – Judicial review of the decision determining the customs debt

Language: Bulgarian

Questions:

1. 'In the light of Article 70(1) of [the Union Customs Code], read in conjunction with the first subparagraph of Article 75(5) and Article 75(6) of [Delegated Regulation 2017/891], must it be understood that the following are to be regarded as being relevant to the assessment of the condition in Article 70(3)(d) of the [Union] Customs Code – "the buyer and seller are not related" – for the purpose of applying the transaction value of the goods for customs purposes in connection with a specific customs declaration concerning an importation of vegetables:

   - information regarding the relationship between the parties involved in the importation of the goods and the sale of the same goods at the first level of trade in the European Union – regarding long-term and recurrent supplies of goods of the same kind, in significant quantities and of a significant value, such as would preclude the inference that the relationship was formed coincidentally in the context of the specific importation under assessment;

   - information regarding the invoices issued in respect of the supplies, the payment of the price, the recording of the invoices in the importer's accounts and VAT books, or the right of deduction exercised in respect of the specific import;

   - the fact that the declared transaction value of the specific importation under assessment is significantly higher than the standard import value determined by the Commission for the same product for the purpose of applying import duties in the vegetable sector, while the same product is sold at a loss in the European Union;

   - the fact that the importer has not produced either a commercial contract relating to the specific importation, as requested by the customs authorities, or a

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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document relating to any other legal relationship between the contracting parties?

If those circumstances are relevant, do they permit the importing trader and the exporting trader, or the importer and the buyer at the first level of trade in the EU, to be categorised as "legally recognised partners in business" or as related persons within the meaning of Article 127(1)(b) and Article 142(4)(b) of the Union Customs Code [Implementing Regulation]?

If the above circumstances are relevant but are not sufficient to regard the traders as related persons, is there an obligation to assess, for the purposes of the verification under Article 75(6) of [Delegated Regulation 2017/891], whether the relationship between the traders influenced the determination of the higher price of the product subject to the specific importation, in order to counteract the evasion of customs duties and the loss of tax revenue to the EU budget, taking into account also the subsequent sale at a loss at the first level of trade in the [European Union]?

2. Does it follow from [the first subparagraph of] Article 47 and Article 41(2)(c) of the [Charter] – interpreted in conjunction with the importer's right of appeal under Article 44(1) of [the Union Customs Code], as well as the obligation of the customs authorities to set out the reasons on which the decision is based in accordance with Article 29 of [that code], in conjunction with Article 22(7) thereof, and the circumstances of the case, and taking into account the fact that, in proceedings relating to an action brought against the decision, the court of first instance is required to examine the legality of that decision of its own motion, including in relation to aspects not raised in the action, take new evidence and appoint experts of its own motion – that:

   – the condition laid down in Article 70(3)(d) of [the Union Customs Code] – "the buyer and seller are not related or the relationship did not influence the price" – may be established for the first time in the proceedings before the court, or is the customs authority required to reach a conclusion on that matter already in the statement of reasons for the contested decision?

   – where, despite having the procedural possibility to do so, the importer has not expressly stated that it will determine the value of the imported goods using the deductive method under Article 74(2)(c) of [the Union Customs Code], it would be contrary to Article 75(5) and (6) of [Delegated Regulation 2017/891], and in particular the time limit laid down for that determination, if that value were to be determined for the first time in the proceedings relating to the action brought against the decision before the court, also with a view to taking into account the importer's objections based on the fact that the selling price of the product in the European Union is close to the declared transaction value?

3. In the light of the interpretation given in operative part 1 of the judgment of the Court of Justice of 11 March 2020, [*X (Recovery of additional import duties)*], C-160/18, EU:C:2020:190, in relation to proof of the declared transaction value under Article 70(1) of the Union Customs Code, does it follow, in the circumstances of the present case, from the fourth subparagraph of Article 75(5) of [Delegated Regulation 2017/891], according to which "the importer shall make available […] all

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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documents needed for the carrying out of the relevant customs controls in relation to the sale and disposal of each product of the lot in question", that:

- the customs authorities and, in proceedings relating to an action, the court, are required to take the fact that the imported goods – vegetables – were sold at a loss in the European Union into account as a serious indication that the declared import price was artificially inflated – also with regard to the assessment of the relationship between the persons that had an influence on the declared transaction value – in order, inter alia, to counteract evasion of customs duty and loss of tax revenue?

- the importer is required to produce a contract or other equivalent document as proof of the price payable for the product when sold for export to the customs territory of the European Union, or is it sufficient to prove payment of the declared value of the product on importation? Or

- the importer is required to submit only the documents expressly referred to in the fourth subparagraph of Article 75(5) of [Delegated Regulation 2017/891] as proof of the declared transaction value for the importation of vegetables, with the result that the circumstances surrounding the sale of the same product at a loss in the European Union are irrelevant for the assessment under Article 75(6) of that regulation as regards the non-acceptance of the transaction value and the determination of the import duty?

4. In the circumstances of the main proceedings, does it follow from Article 75(5) and (6) of [Delegated Regulation 2017/891], and from the interpretation given in the judgment of 16 June 2016, *EURO 2004. Hungary* (C-291/15, EU:C:2016:455), that the customs value in the importation of vegetables from third countries may not be determined on the basis of the declared transaction value where:

   - the transaction value declared is significantly higher than the standard import value determined by the Commission for the same product for the purpose of applying import duties in the vegetable sector;

   - the customs authority does not dispute or otherwise question the authenticity of the invoice and the proof of payment of the price of the product, presented as evidence of the import price actually paid;

   - the importer, despite being requested to do so by the customs authority, has not provided a contract or other equivalent document as proof of the price payable for the product when sold for export to the customs territory of the European Union, including additional evidence for the determination of the economic elements of the product justifying the higher value when purchased from the exporter, for an organic product or a particularly high level of quality of the specific lot of vegetables?'

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Ruling:

1. Article 75(5) and (6) of Commission Delegated Regulation (EU) 2017/891 of 13 March 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors and amending Commission Implementing Regulation (EU) No 543/2011

   must be interpreted as:

   – precluding an importer who has not chosen, within the time limits laid down by those provisions, to determine the customs value of the lot imported in accordance with Article 74(2)(c) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, but has, on the contrary, determined that value in accordance with Article 70 of that regulation, from being able validly to rely, in support of its action against a decision of the customs authorities determining the customs debt, on a calculation of the customs value carried out in accordance with Article 74(2)(c) of Regulation No 952/2013 in order to prove, by relying on Article 134(2)(b) of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation No 952/2013, that the prices referred to in Article 70 of Regulation No 952/2013 were correct;

   – precluding a judicial authority, hearing an appeal against a decision of a customs authority determining the customs debt, from being able to raise, of its own motion and for the first time in the context of a dispute before it, the question whether the importer and the exporter are related, within the meaning of Article 70(3)(d) of Regulation No 952/2013, and, if so, whether or not any relationship between them influenced the price actually paid or payable, within the meaning of that provision, where the customs control carried out by the customs authority did not relate to the existence of such a relationship, that authority having disregarded the transaction value declared for different reasons, relating to the conditions under which the lot concerned was disposed of on the EU market.

2. Article 75(5) of Delegated Regulation No 2017/891

   must be interpreted as meaning that the disposal of the lot of imported goods by means of a sale at a loss constitutes a serious indication of an artificially high declared transaction value which does not require the importer to provide the customs authorities, in order to demonstrate that that value is correct, with, in addition to the documents relating to transport, insurance, handling and storage, expressly referred to in the fourth paragraph of that provision, and the proof of payment of the declared transaction value, a contract or equivalent document stating the price at which it purchased the lot imported, where the former documents suffice to demonstrate the correctness of the declared transaction value.

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3. Article 75(5) of Delegated Regulation No 2017/891

must be interpreted as meaning that for the purposes of determining the customs value, the customs authorities must disregard the declared transaction value of a lot of imported goods where that value is significantly higher than the standard import value fixed by the European Commission, that lot has been sold at a loss in the customs territory of the European Union, and where, despite the fact that it was invited to submit any document proving that the lot had been disposed of under the conditions confirming the correctness of that value, the importer did not submit sufficient documents for that purpose, even though those authorities do not dispute the authenticity of the invoice issued by the exporter or the actual payment of that invoice by the importer.

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
Evrak sorgulaması https://odaborsaebys.tobb.org.tr/tso-kmaras-envision/Validate_Doc.aspx?eD=BSNK6MBA2&eS=3889 adresinden yapılabilir.

SECTION F: INDEX OF TEXTS OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION OF THE WCO

Note: The instruments listed in this section cannot be reproduced in this document. They have been published in the WCO Compendium on customs valuation which contains the WTO agreement and texts of the technical Committee of Customs valuation of the WCO.

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LIST OF ADVISORY OPINIONS

1.1. The concept of "sale" in the Agreement.

2.1. Acceptability of a price below prevailing market prices for identical goods.

3.1. Meaning of "are distinguished" in the Interpretative Note to Article 1 of the Agreement: duties and taxes of the country of importation.

4.1. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty that the seller requires the importer to pay to a third party (the patent holder)).

4.2. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty that the laws of the country of importation require the importer to pay to a third party (the copyright holder) when he resells the imported records.)

4.3. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty that the importer is required to pay to a third party (the patent holder), under a separate contract, for the right to use a patented process for the manufacture of certain products.)

4.4. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty that the importer is required to pay to a seller (the patent holder), as a condition of sale, for the right to incorporate or use the patented concentrate in products intended for resale.)

4.5. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty that the importer is required to pay to a trademark holder for making and selling under that trademark six types of cosmetics irrespective of whether he uses the ingredients imported from the trademark holder or not.)

4.6. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty that the importer is required to pay to a seller (the trademark holder), as a condition of sale, when he resells the imported goods (the concentrate) with the trademark.)

4.7. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty that the importer is required to pay to a seller, who has been assigned world-wide reproduction, marketing and distribution rights by a rights holder, for the marketing and distribution rights in the country of importation.)

4.8. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty that the importer is required to pay to a third party the licence holder) for the right to use the trademark.)

4.9. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty that the importer is required to pay to a seller (the trademark holder) for the right to manufacture, use and sell the "licensed preparation" in the country of importation and for the right and licence to use the trademark in

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connection with the manufacture and sale of licensed preparations in the country of importation)

4.10. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Licence fee that the importer is required to pay to a seller(the trademark holder) for the right to resell the imported garments containing trademarked material.)

4.11. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty that the importer is required to pay to a related party the trademark holder, who is also related to a seller (manufacturer), for the right to use the trademark which is affixed to the imported goods.)

4.12. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Licence fee that the importer is required to pay to a seller for the right to use the patented process, which is performed through a technology incorporated in the imported goods.)

4.13. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty that the importer is required to pay to a related party (the trademark holder) for the right to use the trademark.)

4.14. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty or licence fees that are paid to the licensor in the country of importation.)

4.15. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Royalty paid to a third party licensor)

4.16. Royalties and licence fees under Article 8.1 (c) of the Agreement.
(Tax withheld on royalty that the laws of the country of importation require)

4.17 Royalties and licence fees under Article 8.1(c) of the Agreement.
(Royalties paid under a franchise agreement)

4.18 Royalties and licence fees under Article 8.1 (c) of the Agreement (Royalty – Income tax)

4.19 Royalties and licence fees under Article 8.1 (c) of the Agreement (A single royalty paid for the right to incorporate or use the patented concentrate in products intended for resale and for use of the trademark)

5.1. Treatment of cash discount under the Agreement.
(The case that payment for the goods has been made before the time of valuation)

5.2. Treatment of cash discount under the Agreement.
(The case that payment for the goods has not yet been made at the time of valuation: the requirements of Article 1.1 (b) of the Agreement.)

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5.3. Treatment of cash discount under the Agreement.
(The case that payment for the goods has not yet been made at the time of valuation: the transaction value under Article 1 of the Agreement.)

6.1. Treatment of barter or compensation deals under the Agreement.

7.1. Acceptability of test values under Article 1.2 *(b)* (i) of the Agreement.

8.1. Treatment under the Agreement of credits in respect of earlier transactions.

9.1. Treatment of anti-dumping and countervailing duties when applying the deductive method.

10.1. Treatment of fraudulent documents.

11.1. Treatment of inadvertent errors and of incomplete documentation.

12.1. Flexible application of Article 7 of the Agreement.

12.2 Hierarchical order in applying Article 7.

12.3. Use of data from foreign sources in applying Article 7.

13.1. Scope of the word “insurance” under Article 8.2 *(c)* of the Agreement.

14.1. Meaning of the expression “sold for export to the country of importation”.

15.1. Treatment of quantity discounts.

16.1. Treatment of a situation where the sale or price is subject to some condition or consideration for which a value can be determined with respect to the goods being valued.

17.1. Scope and implication of Article 11 of the Agreement.

18.1 Implications of Article 13 of the Agreement.

19.1. Application of Article 17 of the Agreement and paragraph 6 of Annex III.

20.1. Conversion of currency in cases where the contract provides for a fixed rate of exchange.

21.1. Interpretation of the expression “partners in business” in Article 15.4 *(b)*.

22.1. Valuation of imported technical documents relating to design and development of an industrial plant.

23.1. Valuation of imported goods purchased in “flash sales”

24.1 Treatment applicable to a situation in which the price depends on the own trademark of the buyer

25.1 Valuation treatment of ancillary charges in relation to Article 1 of the Agreement

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26.1 Treatment applicable to transactions agreed in cryptocurrencies not recognised as legal tender.

27.1 Treatment applicable to non-payments by the buyer.

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1.1. Identical or similar goods for the purpose of the Agreement.

2.1. Goods subject to export subsidies or bounties.

3.1. Goods sold at dumping prices.

4.1. Price review clauses.

5.1. Goods returned after temporary exportation for manufacturing, processing or repair.

6.1. Treatment of split shipments under Article 1 of the Agreement.

7.1. Treatment of storage and related expenses under the provisions of Article 1.

8.1. Treatment of package deals.

9.1. Treatment of costs of activities taking place in the country of importation.

10.1. Adjustment for difference in commercial level and in quantity under Article 1.2 *(b)* and Articles 2 and 3 of the Agreement.

11.1. Treatment of tie-in sales.

12.1. Meaning of the term “restrictions” in Article 1.1 *(a)* (iii).

13.1. Application of the decision on the valuation of carrier media bearing software for data processing equipment.

14.1. Application of Article 1, paragraph 2.

15.1. Application of deductive value method.

16.1. Activities undertaken by the buyer of his own account after purchase of the goods but before importation.

17.1. Buying commissions.

18.1. Relationship between Articles 8.1 *(b)* (ii) and 8.1 *(b)* (iv).

19.1. Meaning of the expression “right to reproduce the imported goods” within the meaning of the Interpretative Note to Articles 8.1 *(c).*

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20.1. Warranty charges.

21.1. Cost of transportation: Free-on-board system of valuation.

22.1. Meaning of the expression “sold for export to the country of importation” in a series of sales.

23.1. Examination of the expression “circumstances surrounding the sale” under Article 1.2 (a) in relation to the use of transfer pricing studies

24.1. Determination of the Value of an Assist under Article 8.1(b) of the Agreement

25.1. Third party royalties and licence fees - General commentary

26.1 Meaning of the expression “in substantially the same quantity” according to Articles 2 and 3 of the Agreement.

LIST OF EXPLANATORY NOTES

1.1. Time element in relation to Articles 1, 2 and 3 of the Agreement.

2.1. Commissions and brokerage in the context of Article 8 of the Agreement.

3.1. Goods not in accordance with contract.

4.1. Consideration of relationship under Article 15.5, read in conjunction with Article 15.4.

5.1. Confirming commissions.

6.1. Distinction between the term “maintenance” in the Note to Article 1 and the term “warranty”.

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1.1 Report on a case study with special reference to Article 8.1 *(b)* : engineering, development, artwork, etc.

2.1 Application of Article 8.1 *(d)* of the Agreement.

2.2 Treatment of proceeds under Article 8.1 *(d)*.

3.1 Restrictions and conditions in Article 1.

4.1 Treatment of rented or leased goods.

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5.1 Application of Article 8.1 (b). (Assists in relation to armoured vehicles: the basic vehicles.)

5.2 Application of Article 8.1 (b). (Assists in relation to the manufacture of racing cars: the carburettors; the electronic checking equipment; the fuel for the racetrack tests; and the plans and sketches.)

5.3 Treatment of cash discount under the Agreement. (The case that payment for the goods has not yet been made at the time of valuation: the transaction value under Article 1 of the Agreement.)

6.1 Insurance premiums for warranty.

7.1 Application of the price actually paid or payable.

8.1 Application of Article 8.1. (Adjustments in relation to the garments: the licence fee that is required to be paid for the right to use the paper patterns.)

8.2 Application of Article 8.1. (Adjustments in relation to the video laser disc: the licence fee that is required to be paid for the right to use the music video clips and master tape.)

9.1 Sole agents, sole distributors and sole concessionnaires.

10.1 Application of Article 1.2.

11.1 Application of Article 15.4. (e) – related party transactions.

12.1 Application of Article 1 of the Valuation Agreement for goods sold for export at prices below their cost of production.

13.1 Application of Decision 6.1 of the Committee on Customs Valuation. (Declared value of imported goods lower than identical goods)

13.2 Application of Decision 6.1 of the Committee on Customs Valuation (Declared value of imported goods lower than raw materials.)

14.1 Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement (TNNM method).

14.2 Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement (Resale price method).

14.3 Use of transfer pricing documentation when examining related party transactions under article 1.2(a) of the Agreement. (Transfer pricing study based on the OECD's Cost Plus Method and the flexible application of Article 6 under Article 7 of the Agreement.)

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14.4 Use of transfer pricing documentation when examining related party transactions under article 1.2(a) of the Agreement. (Transfer pricing study based on the OECD's Resale Price Method and its corresponding compensatory adjustment.)

LIST OF STUDIES

1.1. Treatment of used motor vehicles. Supplement to Study 1.1.

2.1. Treatment of rented or leased goods.

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