



Legal provisions to prevent undervaluation

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Main topic

The possibility of rejecting the transaction value in case of detecting undervaluation:

- Customs Valuation Code
- Article 140. Commission Implementing Regulation (EU) 2015/2447
- The Ministerial Decision on "Cases where customs administrations have reasons to doubt the truth or accuracy of the declared value"
- Advisory opinions

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01

Provisions



Customs Valuation Code


PART I: RULES ON CUSTOMS VALUATION

Article 1

“1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, ...”

Article 17


“Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.”





Article 140. Commission Implementing Regulation (EU) 2015/2447

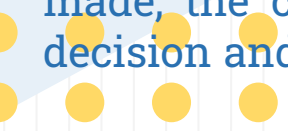
Non-acceptance of declared transaction values (Article 70(1) of the Code)

1. Where the customs authorities have reasonable doubts that the declared transaction value represents the total amount paid or payable as referred to in Article 70(1) of the Code, they may ask the declarant to supply additional information.
 2. If their doubts are not dispelled, the customs authorities may decide that the value of the goods cannot be determined in accordance with Article 70(1) of the Code.
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Uruguay Round Ministerial Decision


“1. When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8. If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 11, be deemed that the customs value of the imported goods cannot be determined under the provisions of Article 1. Before taking a final decision, the customs administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor.”





Advisory Opinions

Acceptability of a price below prevailing market prices for identical goods.

1. The question has been asked whether a price lower than prevailing market prices for identical goods can be accepted for the purposes of Article 1 of the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade 1994.
 2. The Committee considered this question and concluded that the mere fact that a price is lower than prevailing market prices for identical goods should not cause it to be rejected for the purposes of Article 1, subject of course to the provisions of Article 17 of the Agreement.
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02

Understanding the Problem



Developing countries vs US & EU

Developing countries

- Fight false invoices
- Find an effective tool against these behaviors

US & EU

- Customs Valuation Code principals
- Avoid introducing foreign elements



Review

03

Review

Precautions to observe before resorting to an alternative valuation method:

1. Customs administration must have reasons to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration
2. Customs administration may ask the importer to provide further explanation, including documents or other evidence
3. If customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may be deemed that the customs value of the imported goods cannot be determined under the provisions of Article 1
4. Before taking a final decision, the customs administration shall communicate to the importer its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond
5. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor



Technical Committee exam:

- Case 9.1
- Case 12.1
- Case 13.1



Technical Committee exam: Case 9.1



Technical Committee exam: Case 9.1

Facts:

- Autoex, a company established in country of export X, manufactures high-performance motor vehicles under the “Auto” trademark. Autoex appoints Auto Inc. (Inc.), a recently established company in country of import I, as its exclusive distributor in country I.
- Inc. sells two “Auto” vehicles to PCO, a dealer of automobiles established in country I. Autoex manufactured both cars and sent them to Inc. for preparation before delivery
- Inc. is responsible for customs clearance
- Prior to importation, submits all documents relating to the transaction to the Customs of country I, asking them to calculate the customs value
- There are 2 invoices:
 - 1st - Issued by Autoex to Inc., is 200,000 C.U., less a “discount” of 20,000 CU, which amounts to a total of 180,000 C.U.
 - 2nd - Issued by Inc. to PCO, amounting to 300,000 C.U. (Customs and taxes included)

Technical Committee exam: Case 9.1

Determination of customs value

- The determination of the customs value in this case depends on the role and legal status of each of the parties to the transaction.
- An examination of the agreement signed between Autoex and Inc. and the actions of the parties reveal that:
 - Inc. is an independent legal entity;
 - ownership of the goods is transferred to Inc. who bears the risks in the FOB phase;
 - Inc. bears the risk of non-payment by PCO.



Technical Committee exam: Case 9.1

Conclusions:

- A sale is made for export to country I
- Autoex is the seller and Inc. is the buyer of the imported goods.
- No element of the agreement between Autoex and Inc. allows us to assume that there is a **link** in the sense of article 15.4, and, specifically, of article 15.4 e).
- The different elements of said agreement do not constitute conditions or restrictions according to article 1.1
- The sale between Autoex and Inc. forms the **basis** for determining the customs value according to article 1



Technical Committee exam: Case 12.1



Technical Committee exam: Case 12.1

Facts:

Importer A, in country B, buys high-quality components from exporter S, in country T, which will be consumed in its manufacturing process.

- Exporter S is a subsidiary of a multinational conglomerate that sells to a specific industry sector
- There is no link between the buyer and the seller
- All negotiations have been carried out in conditions of free competition
- Exporter S has warned importer A that the agreed price levels can only be maintained until available stocks are exhausted
- Exporter S does not have a position in the market of country B and sees this sale as an opportunity to enter it
- A successful penetration of the market would produce important benefits for the company in the long term and would serve as a platform so that the most profitable related companies of its group could also enter this market
- These considerations have influenced the price.
- Global economic circumstances have forced exporter S to sell stock items at prices that are on average 30% below their cost of production in order to generate cash flow
- Components ordered by importer A fall into this category. However, due to the marketing opportunity, exporter S has agreed to sell at prices 40% lower than its cost of production

Technical Committee exam: Case 12.1

How would the customs value be determined when applying the Agreement?

- The transaction value is the first basis for determining the value of imported goods, that is, the price actually paid or payable for the goods, adjusted in accordance with the provisions of Article 8
- In the case that is being examined, no element seems to constitute a reason to discard the transaction value when applying the requirements of Article 1, without prejudice, obviously, to the provisions of Article 17 of the Agreement
- Advisory Opinion 2.1 concludes that the mere fact that the price is lower than the seller's cost of production and does not produce a profit for the seller, is not sufficient reason to reject the transaction value under Article 1



Technical Committee exam: Case 12.1

Conclusion

- Based on the information provided, the customs value will be calculated on the basis of the transaction value using the price that importer A pays to exporter S, adjusted in accordance with the provisions of Article 8.



Technical Committee exam: Case 13.1



Technical Committee exam: Case 13.1

Facts:

The ICO company, from country I, has imported 2,000 units of consumer goods from country of export X. ICO has presented the following information in the declaration of import:

- the seller of the goods is the company XCO, domiciled in the country of export X
- the manufacturer of the imported goods is the MCO company, domiciled in country M
- the declared value has been calculated using the transaction value method provided for in the Article 1 of the Agreement
- no price adjustments have been made pursuant to Article 8.1 of the Agreement
- according to the provisions of Article 15.4, there is no link between ICO, XCO or MCO
- according to the commercial invoice, the unit price of the imported goods is 9.30 CU (FOB value)
- payment has been made in cash



Technical Committee exam: Case 13.1

The Customs Administration has analyzed all imports of identical goods and has obtained the following information:

- nine other buyers have imported identical goods at the same time as the goods being valued or at an approximate time
- the customs value of the identical goods has been declared using the value method transaction
- the transaction values of the identical goods varied from 69.09 CU to 85.00 CU (FOB)
- the quantities of imported goods in each transaction have been almost the same (between 1,800 and 2,300 units) than those of the transaction between ICO and XCO (2,000 units)
- payments for imports of identical goods have also been made in cash, except where the goods cost 85.00 CU (FOB)



Technical Committee exam: Case 13.1

Customs Administration actions:

- It notified ICO in writing that, based on the data obtained, especially on the basis of the low value, had reasons to doubt the veracity of the declared transaction value
- It asked the importer to notify any additional evidence, for example, business correspondence and/or any other document confirming that the invoice price corresponds to the total price actually paid or payable for imported goods



Technical Committee exam: Case 13.1

ICO has responded as follows:

- all the details of the transaction are indicated in the commercial invoice that has been facilitated
- no special commercial conditions have been applied to the transaction such as those provided Article 1 of the Agreement
- the transaction has been made from a normal XCO offer
- there is no written contract of sale or any commercial correspondence
- the sale has been made by telephone



Technical Committee exam: Case 13.1

The Customs Administration has obtained the following information during the audit of the ICO office:

- There is no commercial correspondence with XCO
- ICO has sold all the goods to the BCO company in country I at the price of 281.00 CU
- The accounting records were neither in order nor up to date and could not justify the amount paid for the imported goods in question
- The audit revealed that one of the employees of the ICO company had made a credit card payment to a third person during a business trip to country X, these payments were recorded in the accounting records as administrative charges
- The importer did not provide any explanation as to the nature of this payment



Technical Committee exam: Case 13.1

Decision of the Technical Committee:

- The Committee, in this set of circumstances, decides that Customs may properly conclude that the value of the goods cannot be determined under the transaction value method
- In this case, the customs value was determined in accordance with the provisions of Article 2



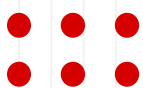
Final remarks

04

Final remarks

- The valuation code makes it clear that transaction value is the preferred method of determining value
- Only when it cannot be determined in accordance with article 1 may alternative means be used
- In the event of fraud, the Administration must initiate an investigation to verify the veracity of what was declared by the importers
- We must expect the courts to be the guardians of the application of the code





Thanks!

Do you have any questions?
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