



EURO 2004

(case C-291/15, of 16 June 2016)

Dr. Santiago Ibáñez Marsilla

Jean Monnet Chair "EU Customs law" – Universidad de Valencia



With the support of the
Erasmus+ Programme
of the European Union

The Technical Committee on Customs Valuation

- **Advisory Opinion 2.1** 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.**”
 - Art. 17 CVC: “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.”

The Technical Committee on Customs Valuation

- **Case Study 12.1** Application of Article 1 of the Valuation Agreement for goods sold for export at prices below their cost of production.
 - “8. Advisory Opinion 2.1 concludes that the mere fact that a price is lower than prevailing market prices for identical goods is not sufficient grounds for rejection of the transaction value under Article 1. Similarly, **the mere fact that the price in this case is below the seller’s cost of production and does not return a profit to the seller, is not sufficient grounds for rejection of the transaction value.**

Conclusion

- 9. Based on the information provided, the Customs value should be calculated on the basis of the transaction value using the price Importer A pays Exporter S adjusted in accordance with Article 8”.

The WTO's Dispute Settlement Body

- **Dispute WT/DS366** Colombia — Indicative Prices and Restrictions on Ports of Entry.
 - Colombia is alleged by Panama to require that importers of specific goods pay customs duties and other duties or charges and taxes based on the indicative prices, rather than on the valuation methods set out in Article VII of the GATT 1994 and the Agreement on Customs Valuation.
 - The **panel upheld Panama's claims** that Articles 128.5 e) of Decree No. 2685 and 172.7 of Resolution No. 4240, as well as the various **resolutions establishing indicative prices, are inconsistent “as such” with the obligation** established in the Customs Valuation Agreement to apply, in **a sequential manner, the methods of valuation provided** in Articles 1, 2, 3, 5 and 6 of the Customs Valuation Agreement and with Article 7.2(b) and (f) of the Customs Valuation Agreement.
 - On 20 May 2009, the DSB adopted the panel report.

The WTO's Dispute Settlement Body

- **Dispute WT/DS371** Thailand — Customs and Fiscal Measures on Cigarettes from the Philippines.

SUMMARY OF KEY PANEL/AB FINDINGS

- • CVA Art. 1.1 and 1.2(a) (valuation in a related-party transaction): In determining the acceptability of the transaction value declared by the importer in a related-party transaction, customs authorities must (i) examine the circumstances of the sale in the light of the information provided by the importer or otherwise; (ii) communicate to the importer the grounds for preliminarily considering that the relationship influenced the price; and (iii) give the importer a reasonable opportunity to respond so that the importer can submit further information. The Panel found that **Thai Customs acted inconsistently with Arts. 1.1 and 1.2(a) in rejecting the transaction value of the imported cigarettes because it failed to properly examine the circumstances of the transaction between the importer and the seller.**

The WTO's Dispute Settlement Body

- **Dispute WT/DS371** Thailand — Customs and Fiscal Measures on Cigarettes from the Philippines.

SUMMARY OF KEY PANEL/AB FINDINGS

- • CVA Art. 16 (customs' explanation of valuation decision): Under Art. 16, when requested, the customs authority must provide a written explanation that is sufficient to make clear and give details of how the customs value of the importer's goods was determined. **The Panel concluded that the basis for rejecting the transaction value as provided in Thai Customs' letter to the importer (i.e. “it cannot be proven whether the relationship has an influence on the determination of customs values or not”) was inadequate to explain the reason for rejecting the transaction value within the meaning of Art. 16.**
- CVA Art. 1.1 and 1.2(a) (valuation in a related-party transaction): The BoA ruling and the Charges **violated Arts. 1.1 and 1.2(a) of the CVA by rejecting the importer's declared transaction values without a valid basis.**

From a trade policy perspective

- What if other countries apply the same interpretation when EU exporters sell in their markets?
 - Is TV applicable only where the authorities feel it is fine to apply it?
In practice, could this be the end of the CVC?

EURO 2004 (case C-291/15, of 16 June 2016)

Thanks for your attention!

Santiago.Ibanez@uv.es

Jean Monnet Chair “EU Customs law” – Universidad de Valencia

<http://www.uv.es/ibanezs>



With the support of the
Erasmus+ Programme
of the European Union