



TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

-
43rd Session
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VT1060E1a
(+ Annex)

O. Eng.

Brussels, 23 June 2016.

SPECIFIC TECHNICAL QUESTIONS

EXAMINING THE CIRCUMSTANCES SURROUNDING THE SALES UNDER THE PROVISIONS OF ARTICLE 1.2(a) – GOODS PRODUCED IN DIFFERENT COUNTRIES – DRAFT CASE STUDY SUBMITTED BY ECUADOR

(Item V (c) on the Agenda)

Reference documents :

VT1019E1a (TCCV/41)
VT1046E1a (TCCV/42)

VT1033E1a (TCCV/42)
VT1051E1a (TCCV 42/Draft Report)

I. BACKGROUND

1. At the 42nd Session, the Technical Committee examined the draft case study, based on the examination of the circumstances surrounding the sales under the provisions of Article 1.2(a), submitted by Ecuador.
2. Ecuador provided additional clarification in response to a number of questions from Members. Additionally, delegates made a few drafting suggestions.
3. Ecuador agreed to revise the issues, taking into consideration comments and suggestions from delegates, and update the document accordingly.
4. The Technical Committee agreed to continue the examination of the draft case study at its next Session.

II. SECRETARIAT COMMENTS

5. During the intersession, Ecuador updated the draft case study taking into consideration comments and suggestions made by delegates. The new draft is attached as the Annex to this document.

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6. Members may wish to consider the provisions of Article 15.3, paragraph 8 of the Note to Article 6 and the Interpretative Note to paragraph 2 of Article 1 in the examination of this question.
7. Members are invited to submit their comments and suggestions on the latest version of the draft case study to the Secretariat not later than **4 September 2016** and are kindly requested to send their comments in electronic format where possible (E-mail address : valuation@wcoomd.org).

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DRAFT CASE STUDY
EXAMINING THE CIRCUMSTANCES SURROUNDING THE SALE UNDER THE
PROVISIONS OF ARTICLE 1.2 (a) OF THE WTO VALUATION AGREEMENT

Introduction

The present case depicts an example in which, for the examination of the circumstances surrounding the sale referred to in Article 1.2 (a) of the WTO Valuation Agreement, Customs took into account the information provided in a transfer pricing study based on the comparable uncontrolled price method (CUP).

Facts of the transaction

1. ICO, a distributor located in country I, imports coffee beans from XCO, a related company of country X.
2. The coffee beans are unbranded, originate from country X, and are sold only to ICO in country I. In addition, identical or similar goods are not imported into country I.
3. BCO, a distributor located in country B, buys and imports from ECO, a company located in country E, unbranded coffee beans originating from E, of a similar type, quality and quantity as the coffee beans which XCO sells to ICO. Both BCO and ECO are independent companies which are not related in any way to each other or to companies ICO or XCO.
4. In 2014, ICO declared the price of the imported coffee beans based on the value in the commercial invoice issued by XCO. The commercial documents presented to Customs of country I indicated that there was no special arrangement or additional payment which would prevent the use of the transaction value or require an additional adjustment to the import price under the provisions of Article 8 of the Agreement.
5. In 2015, Customs of country I conducted a post-clearance audit to verify the import price declared by I, in accordance with Article 1.2 of the Agreement, because it had doubts as to the acceptability of the price.
6. ICO did not provide the test values required for the application of Article 1.2 (b) and (c) of the WTO Valuation Agreement as a means of demonstrating that the relationship had not influenced the price. However, ICO provided Customs with a transfer pricing study which had been prepared on the basis of the comparable uncontrolled price method (CUP), and in which the situation is identical to the example described in paragraph 2.18 of Chapter II of the OECD Guidelines.

7. The examination showed that BCO is the only company which imports unbranded coffee beans of a similar type, quality and quantity as those sold by XCO to ICO, but with a different origin and import destination. According to the transfer pricing study submitted by ICO, the unrelated transaction (between BCO and ECO) is the only transaction comparable with the related transaction (between ICO and XCO), which occurred at about the same time, at the same stage in the production process/distribution chain, and under similar conditions. In addition, the transfer pricing study established that the differences due to origin and import destination do not have a material effect on the price of the coffee beans.
8. Finally, the transfer pricing study concluded that, in accordance with the provisions of Article 1.2 (a) of the Agreement, the relationship between the parties had not influenced the price agreed between ICO and XCO.

Issue for determination

9. In view of the above, for the purposes of Article 1.2 (a) of the Agreement, Customs of country I poses the question whether the transactions under review and unrelated transactions could be comparable, even if they originate from a country other than that of the goods under review; and/or are sold for export to a country other than the country of importation, where differences due to the origin and/or destination of the goods do not influence the price, or if they do influence the price, whether the appropriate adjustments can be made in a reliable manner.
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