



TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

VT1146E1a
(+Annex)

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47th Session
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O. Eng.

Brussels, 9 July 2018.

SPECIFIC TECHNICAL QUESTIONS

SALE FOR EXPORT TO THE COUNTRY OF IMPORTATION : SUBMITTED BY CANADA

(Item V (c) on the Agenda)

Reference documents :

VT1127E1a (TCCV/46)
VT1134E1a (TCCV/46)

I. BACKGROUND

1. At the 46th Session, the Technical Committee discussed the technical question submitted by Canada, which concerns establishing the sale for export in a particular transaction. The Delegate of Canada provided responses to written comments and questions submitted by Chile, China, Japan and Uruguay.
2. The Delegate of Canada clarified that ICO is just a warehouse/ distribution centre created by XCO. Although the payments for imported goods are made to ICO's bank account, ICO's employees and agents do not have access to this account; the money is used by XCO to pay, inter alia, ICO's general expenses. He also confirmed there were no adjustments under Article 8 in this case.

II. SECRETARIAT COMMENTS

3. Following the Session, the Secretariat worked with Canada who provided further proposals to modify the text in order to address Members' questions and take into account other points raised. The updated text is reproduced in the Annex to this document. The proposed modifications are shown in **bold**.

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III. CONCLUSION

4. Members are invited to examine the updated text and submit their suggestions and comments in electronic form to the Secretariat (e-mail address: valuation@wcoomd.org) not later than **9 September 2018**. Comments received in response to this document will be published and circulated to Members of the Technical Committee for consideration at the 47th Session. Members may also contribute their views and discuss the case via the WCO's CLiK! platform.

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Sale for Export to the Country of Importation

Facts of Transaction

1. ICO is **[a legal entity]** located in the country of importation I and is a wholly-owned subsidiary of XCO of country of exportation X. XCO is the exclusive distributor for territory Y, which includes countries I and X, **[and is a wholly-owned subsidiary of ACO, the headquarters of a multinational enterprise that sells apparel worldwide].**
2. The garments are sold in country I through retail stores **[and via a website for individual orders]**. The retailers are not related to ICO and XCO within the meaning of Article 15.4 of the Agreement.
3. The Customs declaration prepared when goods are imported to country I indicates that ICO is the importer and XCO is the **seller [exporter]** of the goods. The commercial documents submitted to Customs of country I indicated that there was no special circumstances or additional payments which would prevent the use of the transaction value as set out in subparagraphs (a) to (c) of Article 1, or require an additional adjustment prescribed by Article 8 to the import price.
4. Customs in country I decided to conduct a Post-Clearance Audit to verify ICO's declared Customs value.
5. Based on the information gathered before the Post-Clearance Audit, ICO uses sales agents in order to promote its products to different retailers in country I.
6. ICO operates in country I from its own warehouse. An on-site visit by Customs indicated that ICO has five full-time employees at the warehouse. A representative from XCO was in attendance to provide information on the procurement and distribution processes.
7. XCO's representative explained to Customs that all purchase orders are sent electronically by the retailers of country I through XCO's computer system, which automatically generates two **[electronic] invoices [concurrently]**: one from ICO to the retailer indicating the price charged for the goods, and another one from XCO to ICO at a **[lower] price. [The terms of the invoice between ICO and the retailer require payment to be made through wire transfer to ICO's bank account.]**
8. The Customs broker responsible for submitting ICO's Customs declaration determines the Customs value based on the amount XCO invoices ICO. For a selected transaction, the declared Customs value for the garments was 10,000 currency units (c.u.). Customs also asked for the invoice and proof of payment concerning the transaction between the retailer and ICO. The invoice price showed an amount of 12,000 c.u., with a corresponding payment to ICO's bank account.
9. XCO's representative confirmed that ICO's employees and sales agents do not have access to ICO's bank account, and that only XCO's officers have this authority. XCO withdrew the 10,000 c.u. directly from ICO's bank account for the payment of the imported goods. **[The balance of the bank account is used by XCO to pay ICO's general expenses, such as employees and sales agents' remuneration, import, logistics and administrative fees, and domestic tax assessment. The remaining profit is retained in ICO's bank account.]**
10. The goods are either shipped directly from XCO to the retailers, or to ICO's warehouse for delivery to individual retailers. ICO's employees at the warehouse are responsible for delivery

logistics within country I, and are never involved in the ordering of the goods from XCO. **[The selling price is set by XCO and ICO does not incur any credit risk].**

Issue for Determination

11. Which sale **[transaction]** is the relevant sale for export to the country of importation that must be considered to determine the Customs value under the transaction value method?

Analysis

12. Under Article 1, the Customs value of the 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. Price actually paid or payable is defined in the Note to Article 1 as "the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods".
13. Furthermore, Advisory Opinion 14.1 provides that the importer must demonstrate that the immediate sale under consideration took place with the view to export the goods to the country of importation for Article 1 to apply.
14. It is therefore necessary to establish which of the two transactions; the one between the retailer and XCO, or the other between ICO and XCO, should be taken into account in order to identify the price actually paid or payable for the imported goods.
15. The basis for the application of the transaction value method is a transaction between a buyer and a seller. Naming a person as the "importer" on the Customs declaration does not in any way affect the determination of whether a sale for export to the country of importation has occurred.
16. Where a person in the country of importation has agreed with a seller to purchase goods that are then imported as a direct result of that agreement, the transaction in which the person in the country of importation is directly involved constitutes the relevant sale to use to determine the transaction value.
17. ICO's sales agents and employees are not involved in the procurement process for goods; ICO is only a distribution center responsible for delivering goods to retailers and does not act as the buyer of the imported goods.

Member's Proposed Conclusion

18. After an examination of the facts of the transaction, Customs concluded that the relevant sale for establishing the Customs value is the one that triggers the exportation of goods to the country of importation, that is, the transaction in which the buyer of the goods is directly involved.
19. The purchase order that is directly sent from the retailer to XCO through the computer system initiates the actual international transfer of goods. This is the event that causes the exportation of goods to the country of importation.

20. Given that ICO in fact does not order the goods, the transaction between ICO and XCO is a [secondary sale] which does not trigger the exportation of goods to the country of importation, and is not the immediate sale under consideration.
21. Accordingly, the relevant sale for export to the country of importation is between the retailer and XCO, and the amount paid by the retailer, 12,000 c.u., represents the **[basis for the calculation of the]** Customs value. **[The cost of transportation after importation, and any duties and taxes of the country of importation, can be deducted from this price provided that they are identified separately from this amount.]**

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