



TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

VT1151E1a
(+ Annex)

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47th Session
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O. Eng.

Brussels, 29 September 2018.

QUESTIONS RAISED DURING THE INTERSESSION

COMMISSIONS PAYABLE UNDER PROMOTION AND MARKETING SERVICES

AGREEMENTS:

SUBMITTED BY URUGUAY

(Item VI (b) on the Agenda)

I. BACKGROUND

1. During the intersession, Uruguay raised a new question concerning the Customs valuation treatment of 'commissions' payable under a promotion and marketing services agreement in a four - party scenario (buyer/producer, promoter, supplier of inputs and final customer). The question is set out in the Annex to this document.
2. This question deals with inputs which are purchased and used in the production of branded goods by a buyer/producer. In addition to the price of the inputs paid to the supplier, the producer has to pay to the promoter of the branded goods a 'commission' based on the purchase price of the inputs. The producer is also required to pay to the promoter another 'commission' based on the selling price of the branded goods the producer sells to customers abroad.
3. The commissions are required to be paid by the producer under a contract for the supply of promotion and marketing services. These services include the following activities undertaken by the promoter:
 - (a) the design of the goods and their production;
 - (b) the identification of suppliers of the inputs needed to manufacture the goods;
 - (c) the registration and promotion of the brand name at international level; and
 - (d) the identification of customers for the branded goods.
4. Advice is being sought as to how to determine the Customs value of the inputs when they are imported by the buyer/producer.

For reasons of economy, documents are printed in limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

II. SECRETARIAT COMMENTS

5. According to the facts of the case, the promoter drives and controls the supply chain from the conception to the sale for export of the goods in the importing country and the question relates to a part of the supply chain.
6. The issue is about the valuation of the imported inputs for which there is a payment of a 'commission' by the buyer of the imported inputs to the promoter under a promotion and marketing service agreement.
7. Uruguay has provided four options to be considered when dealing with the issue raised in the question.
8. Advisory Opinions 4.5, 4.6, 4.9 and 4.17 are instruments issued by the Technical Committee that deal with the payment of a similar nature in the valuation of imported inputs. Commentary 25.1 might be useful when examining the question.

III. CONCLUSION

9. The Technical Committee is invited to consider the question submitted by Uruguay at the 47th Session in order to determine whether it should be accepted as a Specific Technical Question for examination at a future Session.

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**COMMISSIONS PAYABLE FOR PROMOTION AND MARKETING SERVICES
QUESTION SUBMITTED BY URUGUAY**

Facts of Transaction

1. Some contracts entered into between commercial operators might be called “Promotion and Marketing Service Agreements” or similar, under which one party, let us call this the **Promoter**, specializes in the development of a brand for goods at international level; and the other party, let us call this the **Producer**, specializes only in the production and bringing to market of the said goods under this brand.
2. The **Promoter** generally designs the goods and their production, identifies suppliers of the inputs needed to make them, registers and promotes the brand name at international level and locates the final customers.
3. The **Producer**, for its part, purchases the inputs (domestically or abroad) from the identified suppliers, produces the goods with the branded designs and brings them to market (domestically or abroad) with the promotional support of the brand.
4. Thus, the **Producer** has to purchase and import certain inputs from suppliers abroad that were previously identified (by the **Promoter**); and, once they have been produced, the **Producer** may be obliged to sell and export the goods with the brand previously designed (by the **Promoter**) to customers abroad that were previously identified (by the **Promoter**).
5. Generally, the parties agree in these contracts that, for the “services of promotion and marketing” provided by the **Promoter**, the **Producer** is obliged to pay the **Promoter** a “commission”, which is normally calculated on the basis of :
 - a. a percentage of the purchases of inputs by the **Producer** from the suppliers identified (by the **Promoter**), and
 - b. a percentage of sales of branded products by the **Producer** to the customers identified (by the **Promoter**).
6. As a consequence of the first option, once a purchase of inputs has been made abroad, the **Producer**, in addition to paying the price to the supplier, is obliged to pay the **Promoter**, by way of commission, the percentage fixed in 5 (a) of the total amount of the purchase. The same applies if the supplier is from the **Producer**'s country, but in this case there would not be a Customs operation, and therefore there is no need for further commentary.
7. For the second option, once a sale of branded products to a purchaser abroad has taken place, the **Producer** is obliged to pay the **Promoter**, by way of commission, the percentage fixed in 5 (b) of the total amount of the sale. As in the previous option, if the buyer is from the **Producer**'s country, there would not be a Customs operation in this case either, so that, here again, there is no need for further commentary.
8. Having carried out a study of the documents already approved by the Technical Committee, our delegation has not found any precedents that can guide us as to how to determine the Customs value in these cases, and especially for the first option.
9. The initial situation could present further characteristics, which, as far as we understand, would not change the consultation on the issue set out here, for instance that :

- a. The **Promoter** could also enter into other similar “Promotion and Marketing Service Agreements” with the suppliers and/or customers abroad;
- b. The **Producer** could also purchase abroad, in the same manner, finished branded products for resale in its country or abroad;
- c. The **Producer** could also produce and sell, in the same manner, inputs to other “producers” abroad identified by the **Promoter**; or
- d. Some or all of the parties (**Promoter, Producer**, suppliers and customers abroad) are related under the terms of the Agreement, for which purpose we should assume that this relationship does not affect the transaction value of the imports of inputs and finished products between themselves.

Issue for Determination

10. How to determine the Customs value in these cases, and especially the circumstances where the commission is fixed as a percentage of the purchases of inputs from suppliers abroad?

Analysis

11. The commission that the **Producer** is obliged to pay as a percentage of the sales abroad of the branded products will doubtless form part of the sale price and, therefore, as far as we understand, will not be a particular issue for Customs valuation in the country of the importer.
12. The main query arises in respect of the first option – that is to say, how to deal with the Customs valuation of the imported inputs, given that the **Producer**, as well as paying the purchase price to the supplier, is obliged under the signed contract to pay the **Promoter** a commission, which itself is calculated as a percentage of that price.
13. In principle, the options for dealing with this commission could be :
 - (a). Not to include the commission, since it was not imposed by the seller as a condition of sale;
 - (b). To include this commission as an indirect payment in the price actually paid or payable, since under the “contract” it was imposed on the buyer as a condition of sale;
 - (c). To include it as an adjustment under Article 8.1 (c), although it is derived from the purchase price of the imported good and not actually as a royalty or licence fee; or
 - (d). To include it as an adjustment under Article 8.1 (d), although it is derived from the purchase price of the imported good and not from the resale price in the country of import.
14. A graphical representation of the situation is attached as an aid to understanding.

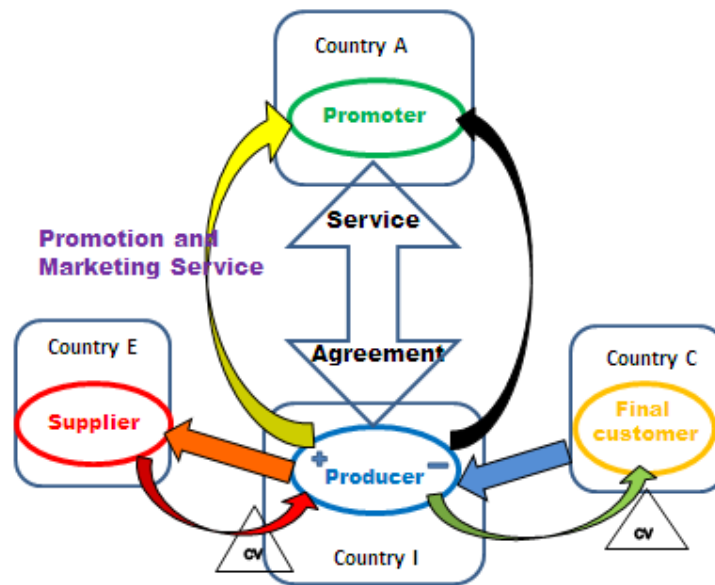
Member’s View – Proposed Outcome

15. Although the requesting member already has a position on this request for advice, it prefers to keep it in reserve for the time being, in order to avoid influencing the opinion of the other members of the Technical Committee.

16. After its investigation, the Technical Committee on Customs Valuation might issue a document providing for the uniform interpretation and application for these cases, both for its Members and for all operators in the private sector.

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Graphical representation



Red arrow : Purchase of the input from the supplier identified by the Promoter

Orange arrow : Payment of the price for the purchase of the input from the supplier

Yellow arrow : Payment of the commission by the Producer to the Promoter on the purchase price of the input (commission not included in the amount of the **orange arrow**).

Green arrow : Sale of the finished branded product to the final customer abroad identified by the Promoter.

Blue arrow : Payment of the sale price for the finished branded product.

Black arrow : Payment of the commission by the Producer to the Promoter on the sale price of the finished product (commission included in the amount of the **blue arrow**).