



TECHNICAL COMMITTEE ON  
CUSTOMS VALUATION

VT1152E1a  
+ Annex

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47<sup>th</sup> Session  
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O. Eng.

Brussels, 28 September 2018.

QUESTIONS RAISED DURING THE INTERSESSION

TREATMENT APPLICABLE TO A SITUATION IN WHICH THE PRICE DEPENDS ON THE  
OWN TRADEMARK OF THE BUYER

REQUEST BY URUGUAY

(Item VI (c) on the Agenda)

I. BACKGROUND

1. During the intersession Uruguay submitted a question for consideration by the Technical Committee.
2. The question refers to the determination of Customs value on importing a product bearing the importer's own trademark when, at the same time, the same product with another trademark is presented for importation at a different price.
3. Uruguay notes that on importing a product bearing the trademark of the exporter from outside the country of importation, if all the requirements of Article 1 are met, the Customs value will be based on Article 1, plus the adjustments under Article 8.
4. However, doubt arises as to how to deal with the Customs valuation when importing an identical product which is presented to Customs at a different price due to the fact that it bears the importer's own trademark.
5. Uruguay considers that the Technical Committee can issue a document ensuring uniformity in interpretation and application of these cases, both for Members and for all private sector businesses.
6. The text submitted by Uruguay is reproduced in the Annex to this document.

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## II. SECRETARIAT COMMENTS

7. Advisory Opinion 4.13 deals with a situation where the importer provides labels bearing the trademark which are affixed to the product by the manufacturer and other suppliers before importation. The Technical Committee opined in this case that the importer did not have to pay the royalty in order to purchase the product hence, it should not be added to the price actually paid or payable as an adjustment under Article 8.1 (c). The Advisory Opinion concluded by stating that whether the supply of labels evidencing a trademark would qualify as dutiable under the provisions of Article 8.1 (b) is a separate consideration.

## III. CONCLUSION

8. The Technical Committee is invited to consider the question at the 47<sup>th</sup> Session and determine whether it wishes to examine this issue as a Specific Technical Question at a future Session.

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**Issue for submission to the Technical Committee on Customs Valuation**

**TITLE :** Treatment applicable to a situation in which the price depends on the own trademark of the buyer

**SUBJECT MATTER:** The Technical Committee is asked to provide advice on how to determine the customs value on importing a good bearing the importer's own trademark when, at the same time, the same good with another trademark is presented for importation at a different price.

**SUBMITTED BY:** Uruguay

**DESCRIPTION OF ISSUE:**

1. Imports of goods bearing the importer's "own trademarks" which are to be sold subsequently through its distribution networks are sometimes presented to Customs. The importers who own these trademarks are not manufacturers, they merely distribute products manufactured by third parties, distinguishing them with their own trademark. They do this to promote their commercial reputation or good name relatively quickly by means of their trademarks without significant financial investment.
2. These trademarks can be classified, *inter alia*, as :
  - a. Generic trademarks. These are used to market basic products aimed at consumers with very low purchasing power whose purchases are based solely on price. Such products are packed in simple, cheap wrapping, either without a trademark or with a trademark placed inconspicuously on the packaging.
  - b. Establishment trademarks. Used on products that bear the distributor's trade name, through very careful packaging and presentation, these trademarks seek to convey a sense of quality, promote the distributor's brand qualities or assets and compete with leading brand products.
  - c. Product trademarks. The distributor applies a distinguishing sign different from its own on the products, but the latter are distributed exclusively through the distributor's own network. This means that, although in the early stages of distribution consumers do not associate the products with the distributor's trademark, in the medium term their exclusivity is such that customers identify

the link and associate the two brands with each other, with the opportunities and synergies this offers.

- d. Intermediary trademarks. These are used when the same product is marketed by several distributors, with different distinguishing signs for each distributor, thus ensuring rapid market penetration (to the producer's benefit) with a unique market image (to the distributor's benefit).
3. In practice, it is possible that an exporter E from outside the country could sell a product with a particular original trademark at a particular price during a period of time to an importer I from an importing country.
4. It is also possible that, during that period of time, the same importer I may have made another purchase of the same product in the same quantities from the same exporter E, but with its "own trademark" (which the exporter was previously provided with), but for various commercial reasons at a price different from the previous price. In this case, no adjustment under Article 8.1 (b) is applicable, since the importer does not provide the exporter with any design or artwork free of charge, and the trademark of buyer I has no value outside the importing country.
5. The same situation could arise between different importers : an importer I who purchases the product with the original trademark of exporter E from outside the country at a determined price, and another importer J who purchases the same goods at the same time at a different price from the same exporter E, but with its own trademark.
6. In all these cases, all the requirements of Article 1 are met, and the adjustments laid down in Article 8 of the Agreement do not apply.

**REFERENCES:**

Articles 1 and 8 of the Agreement, Advisory Opinion 2.1

**ANALYSIS:**

7. On importing a product bearing the trademark of exporter E from outside the country, if all the requirements of Article 1 are met, the customs value will be based without doubt on the transaction value method, i.e. on the price actually paid or payable, plus the adjustments under Article 8.

The doubt arises as to how to deal with the customs valuation when importing an identical product which is presented to Customs at a different price due to the mere fact that it bears the importer's or buyer's own trademark.

In principle the possibilities for the customs value could be :

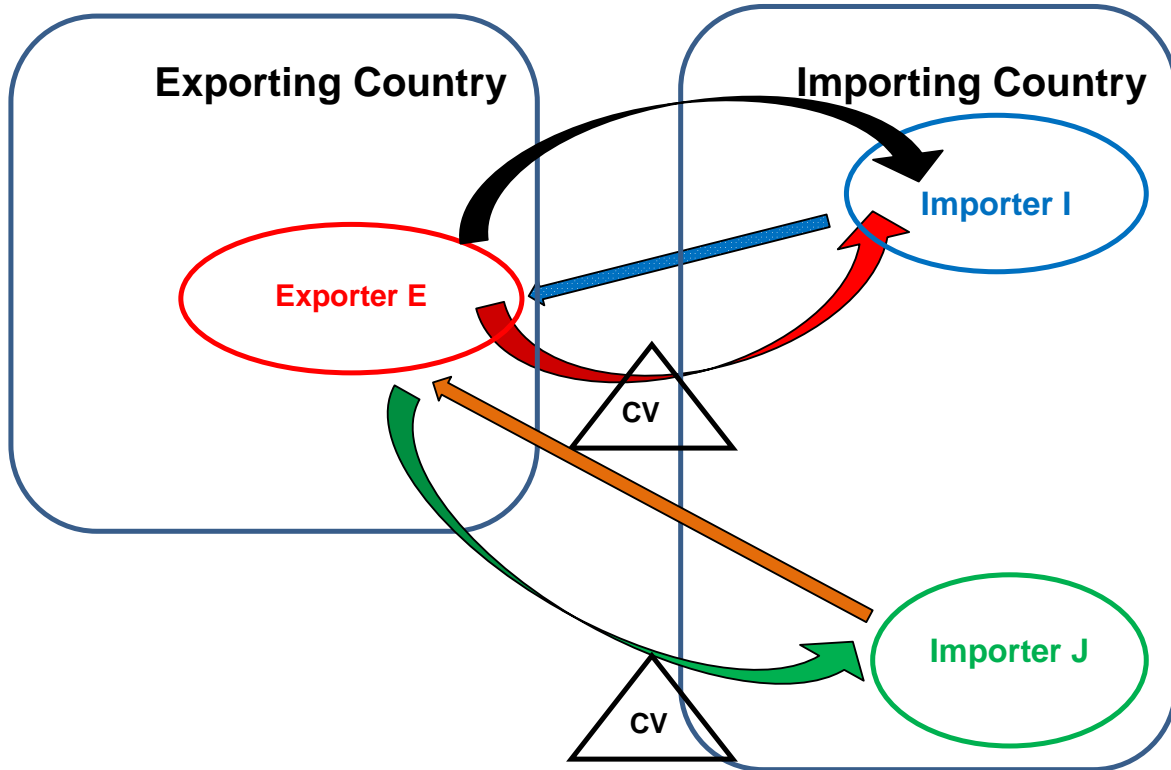
- (a) Application of Article 1 : the customs value is the transaction value, since all its requirements are met, and in particular the adjustment under Article 8.1 (b) does not apply.
- (b) Non-application of Article 1 : and application of Article 2 or 3, since the provisions of Article 1.1 (b) of the Agreement are not met because the price actually paid or payable is subject to some condition or consideration concerning the "own trademark" provided by the buyer to the seller.

A **diagram** of the situation has been provided for a better understanding.

**PROPOSED OUTCOME - Member's View:**

8. That after studying the issue the Technical Committee on Customs Valuation can issue a document ensuring uniformity in interpretation and application of these cases, both for Members and for all private-sector operators.

Figure



**Black Arrow** : Routine sale of good bearing the trademark of Exporter E

**Red Arrow** : Sale of good bearing the trademark of Importer I

**Blue Arrow** : Prior submission of the trademark of Importer I to Exporter E

**Green Arrow** : Sale of good bearing the trademark of Importer J

**Orange Arrow** : Prior submission of the trademark of Importer J to Exporter E