

European Commission deletes "domestic sale" principle from guidance document on customs valuation

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Executive summary

On 30 October 2018, the minutes of the 5th meeting of the European Commission's Customs Expert Group, Valuation Section (CEG) were published. In short, the CEG decided to delete all references to the so-called domestic sales in the Guidance Document on Customs Valuation.¹ The removal of the domestic sale principle from the aforementioned guidance documents will substantially affect the customs valuation of goods for export to the European Union (EU) that are subject to transactions between two EU residing parties.

Detailed discussion

Background

On 29 December 2015, the *Implementing Act to the Union Customs Code*² was published introducing the last-sale principle to determine the customs value of goods sold for export to the EU customs territory. As a result, the customs value from that time is to be established on the basis of the sale that brings the goods into the EU. In other words, the sale occurring immediately before the introduction of the goods into the EU customs territory. The legal package of the Union Customs Code³ and therewith the last-sale principle became effective on 1 May 2016.

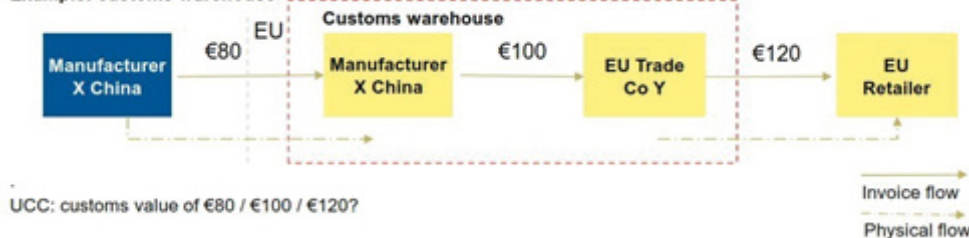
On 28 April 2016, the European Commission published the *Guidance Document on Customs Valuation* (the guidance document). This legally non-binding document provided further guidelines to apply the last-sale principle and at the same time introduced the "domestic sale" principle. The European Commission held that the domestic sale cannot constitute a sale for export. A transaction qualifies as a "domestic sale" if the sale is concluded between two EU residing parties.

Example



In the above example the sale occurring immediately before the introduction of the goods into the EU customs territory - the last-sale - is the sale between EU Trade Company Y and the EU Retailer (€120). However, this sale is, based on the guidance document, to be treated as domestic sale. Hence, this sale cannot constitute a sale for export and subsequently the customs value should be based on the transaction between the US Trade Company X and EU Trade Company Y, provided of course that this transaction constitutes a sale for export to the EU customs territory.

Example: customs warehouse



This same domestic sale principle applied to the situation that the goods were sold for export in a customs warehouse in the European Union, where there was no sale which covered the goods on arrival into the EU. In those situations, the customs value should have been based on a transaction value of a sale "taking place in/from the custom warehouse"⁴ within the EU customs territory provided that such sale(s) do(es) not qualify as domestic sale. Following that principle, in the above example, the customs value should be based on the transaction between the Manufacturer X China and EU Trade Company Y (€100).

Domestic sale deleted from the EU

On 30 October 2018, the minutes of the CEG were published. The proposal to delete all references to domestic sales (a concept that does not exist in the customs legislation) from the chapter on sale for export in the guidance document was accepted. The guidance document has not been updated yet following this decision, but it is clear from the minutes that the domestic sale principle will be removed.

For the first example described above, this would mean that the customs value should be based on the transaction between the EU Trade Company Y and EU Retailer (€120) provided that this transaction constitutes a sale for export. For the second example, the customs value can also be based on the transaction between the EU Trade Company Y and EU Retailer (€120). As stated under A, it seems that the European Commission in the current guidance document is providing the option to importers to determine that the customs value is based on the transaction value of the sale within or from the customs warehouse. It is not yet clear whether the option to choose between these transactions will remain part of the guidance document or that it will also be revised. The minutes of the CEG mention that this will be further examined for the next meeting of the CEG, with some Member States having a preference for taking as the relevant sale "the one involving the EU buyer who finally declares the goods for free circulation." However, a final position has not been taken by the CEG on this issue.

Implications

Taxpayers should evaluate their supply chain to ascertain if determining the customs value of goods being imported in the EU customs territory is impacted as a result of the deletion of the domestic sale principle. Especially in the event that currently a transaction between two EU residing parties in a company's supply chain qualifies as a "last-sale-for-export," it should be considered whether the removal of the domestic sale principle has an impact. This could,

for example, mean that going forward the customs value should be determined on a later sale within the supply chain. However, using a later sale will result in higher customs duties being payable upon import by the party subject to such duties.

The above is based on our interpretation of current tax legislation and case law published to date. This Indirect Tax Alert provides general information with no pretence of completeness, and it is not a tax advice.

Endnotes

1. Guidance Document on *Customs Valuation Implementing Act* Article 128 and 136 UCC IA and Article 347 UCC IA.
2. Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343, 29.12.2015, p. 558-893.
3. Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1-101.
4. Guidance Document on *Customs Valuation Implementing Act* Article 128 and 136 UCC IA and Article 347 UCC IA, page 9.

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