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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs
Rules of Origin and Customs Valuation

Brussels, December 2024
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CUSTOMS EXPERT GROUP
CUSTOMS VALUATION SECTION

**SUBJECT: MINUTES OF THE 17TH MEETING OF THE CUSTOMS EXPERT GROUP –
VALUATION SECTION, HELD ON 26 NOVEMBER 2024**

Please find enclosed the draft minutes of the meeting referenced above.

Member States are kindly requested to send their comments on the document to TAXUD Unit A6's functional mailbox TAXUD-VALUATION@ec.europa.eu by 20 December 2024, COB.

c.c.:
- Customs Attachés of the Member States
- Delegates of the Customs Expert Group – Valuation Section
- Expert Group Registry

Minutes of the
17th Customs Expert Group – Valuation Section (CEG/VAL/17)
26 November 2024, virtual format

1. Adoption of the agenda

The Chair opened the meeting and presented the agenda (Annex 1), introducing the participants (Annex 2) to the virtual format of the meeting. No additional items were introduced under AOB and the agenda was approved by the Committee.

Following a request from a Delegate, the Chair indicated that the issue of Transfer Pricing would be included on the agenda of a future meeting.

2. Approval of the minutes of previous meeting

The minutes of the 15th and 16th CEG-VAL meetings were adopted.

3. List of points discussed

3.1 Draft guidelines on undervaluation

Document: taxud a.6(2024)8679247

COM presented a new version of the draft guidelines on undervaluation. This document aimed to provide customs officers with guidance and best practices on how to handle undervaluation controls and audits in conformity with the WTO Customs Valuation Agreement and the Union Customs Code. COM reminded that it would have no formal legal value but was intended as guidance and would not prevent Member States from using different approaches that were recognised as compatible with the WTO and EU legislation on customs value.

The revised version aimed to provide more clarity and took into account the comments and concerns previously expressed by delegates.

Several Members States expressed their support to the document and several Member States indicated that further written comments would be submitted to COM.

Guarantees

Several Member States expressed their wish for further guidance on the constitution of guarantees in the guidelines.

COM proposed to calculate guarantees based on the aggregated statistical data available at the EU level, for the goods under clearance.

Some Member States confirmed that they were using this approach already. Other Member States expressed their wish to calculate guarantees based on their own national databases, which they deemed to be more precise. One Member State proposed to calculate guarantees based on a lump sum or forfeit and deduct a gross estimation of the costs arising within the EU (importer's margin, cost of transport within the EU etc).

COM reminded that the rules on customs valuation did not apply to the calculation of guarantees. Therefore, Member States had more flexibility setting the amount of the guarantee in accordance with Article 244 UCC IA. COM informed Member States that the proposed process was only one example of a method to estimate guarantees and should not preclude Member States from using similarly effective methods.

COM agreed to develop the text relating to guarantees in the next version of the draft guidelines.

Use of European databases

COM asked Member States about their practices on the use of European databases throughout the control process (risk analysis, reasonable doubts, notification of the rejection of the customs value, redetermination of the customs value).

Some Member States used European databases at the stage of reasonable doubt. Some Member States also used EU level databases either directly or as a reference for subsequent steps of the control process, including publicly available data that could be communicated to the importers.

Some Member States informed COM that they did not provide the importer with any data at the stage where reasonable doubt was being established and only asked for documentation proving that the declared value was accurate. If doubts persisted, the notification of the rejection of the customs value and the redetermination of the customs value were done on the basis of data from the national databases.

COM acknowledged some Member States' preference towards their own national databases rather than the European databases, and informed delegates that the Guidelines would not prevent them from continuing to use their national databases but were intended to contribute to a harmonisation of the approaches within the customs union.

Benchmarking

COM presented the benchmarking approach introduced in the guidelines, and informed delegates that this approach would be promoted under article 144 (1) UCC IA (flexible application of the comparative methods under the fallback method) rather than article 144 (2) UCC IA (any other appropriate method).

COM explained that the suggested benchmarking approach was to be used in cases where it was impossible to identify one declaration concerning identical or similar goods, under article 141 UCC IA (strict application of the comparative methods).

In this regard, some Member States expressed their wish to add further guidance on the identification of the relevant sample in the guidelines.

COM informed Member States on further developments to EU-wide level databases, indicating the upgrades envisaged would provide more detailed descriptions of the imported goods. COM invited Member States to take advantage of these improvements, as a benchmark to assess whether the figures found in the national databases were in line with those observed at a European level.

One Member State requested the guidelines to be translated into all the EU languages. COM informed delegates that this was already planned.

Delegates were given until the 13 December to provide the Commission with further written comments on the draft guidelines.

3.2 Order of sales

Document: taxud a.6(2024)8679163

COM presented three cases brought to the Committee's attention by two different Member States, respectively at the 12th and 14th sessions of the CEG-VAL.

In the first example described, the on-line trader based in the EU, having received the purchase order from a customer, would confirm it and then submit it to the manufacturer located in a third country. When the goods were ready, the manufacturer would deliver them directly to the EU customer. The requesting Member State was of the opinion that, as the last sale in the commercial chain, the sale between the online trader and the EU customer should be considered the sale for export to the EU in the sense of article 128 UCC IA.

COM presented its analysis of the case, stating that since the movement of the goods to the customs territory of the EU had happened because of the sale between the manufacturer and the on-line trader, this sale was the sale for export in compliance with article 70 UCC and article 128 UCC IA. Moreover, COM argued that the sale between the on-line trader, established in the EU, and the EU customer, was an internal sale.

Several Member States agreed with COM's position.

One Member State asked for more clarification on the logistical scheme at stake to assess precisely what actually triggered the exportation of the goods to the customs territory of the EU.

One Member State agreed with the analysis of the requesting Member State, contrary to the position presented by COM.

The Member State contended that Article 128 UCC IA should be interpreted to mean that, in a series of sales, the last sale in the commercial chain was normally the sale for export.

COM countered that the sale for export was the one that met the criteria of Article 70 UCC. Therefore, Article 128 UCC IA should be interpreted in conjunction with Article 70 UCC. It followed that the sale for export was not necessarily the last sale in a commercial chain. The second and the third cases were submitted by another Member State.

The second case concerned a series of successive sales on the basis of orders placed by a distributor located in the European Union to a central purchasing company located in a third country which, in turn, placed an order with the manufacturer, also located in a third country. The latter accepted the order and sent the goods directly to the distributor companies located in the European Union. The distribution company, as an indirect representative, lodged the customs declaration on behalf of the central purchasing company, declaring the value of the sales invoice between the latter and the manufacturer. The requesting Member State's opinion was that the sale for export in the meaning of article 128 UCC IA was the sale between the central purchasing company and the distributor company.

COM agreed with the requesting Member State, stating that the sale between the central purchasing company and the distributor company was the sale that met the criteria of article 70 of the UCC.

Several Member States expressed their agreement with COM's proposed analysis.

One Member State asked for more clarification on the logistical scheme at stake to assess precisely what actually triggered the exportation of the goods to the customs territory of the EU.

COM introduced the third case, where, as a result of sales concluded between the central purchasing company and the manufacturer (both parties were located outside the Union), sporting goods were directly delivered to warehouses in different Member States where the distributors of the Group operated and released for free circulation. The sale between the central purchasing company and the distributor companies took place after the goods were released for free circulation.

COM agreed with the requesting Member State, stating that the goods were sold for export to the EU with a sale that took place after the goods were already in the EU, and therefore argued that the sale between the central purchasing company and the distributor companies could be taken into account to apply the secondary methods provided for in article 74 UCC.

One Member State believed the sale for export to the Customs territory of the EU was the sale between the manufacturer and the central purchasing company, even though neither party was located in the EU. The Member State stated that the goods were sent directly to the EU by the manufacturer, which showed a movement of the good to the EU subsequently to that sale. Indeed, the Member State stressed that the distributor company only acted as a customs representative at the moment of customs clearance and bought the goods after clearance.

Some Member States took the floor to explain that in order to apply the transaction method, the buyer was supposed to be established within the EU and that therefore, the sale between the manufacturers and the central purchasing company could not be taken into account. Other Member States replied, stating that there was no such obligation in the UCC, nor in the WTO CVA.

COM reminded delegations that a non-paper was being studied to introduce an obligation of establishment within the EU for the buyer.

The Chair concluded the point and explained that discussions on the issue of order of sales would continue at a future meeting of the Committee.

3.3 Unit prices for certain perishable goods

Document: taxud a.6(2024)8564240

COM explained that a draft list of Member States tasked with reporting on the unit prices in 2025, but that some Member States had reported difficulties to find reliable data. COM asked other delegates if they would be able to report on additional products and undertook to circulate a revised list before the end of the year.

COM also introduced a non-paper sent by a Member State before the committee. This document summed up the difficulties encountered by the requesting Member State to collect reliable data. These difficulties were due to the lack of cooperation from certain main national importers, as well as the low quantity of goods actually sold on the national market of the reporting country. The requesting Member State proposed to discuss the relevance for Member States to continue to collect unit prices in the way foreseen in Annex 23-02 to the UCC-IA.

In reply to the non-paper, COM proposed to check whether it would be feasible to collect data on the EU countries where the goods were consumed, rather than imported, so that Member States could then consider whether the procedure for reporting on unit prices could be amended. Some Member States expressed their support to this proposition.

3.4 Emissions Trading System (ETS)

Following up on a non-paper requested by a Member State during the 15th CEG-VAL, COM presented its analysis on the consequences on customs valuation of the inclusion of CO2 emissions from large ships to the EU-ETS scheme.

From the start of 2024, the EU's Emissions Trading System (EU ETS) was extended to cover CO2 emissions from all large ships (of 5 000 gross tonnage and above) entering EU ports, regardless of the ship's nationality. Maritime transport companies now needed to purchase emission quotas to be able to ship within the EU or between the EU and a third country.

The question asked by the requesting Member State was where exactly that surcharge was incurred and whether the calculated surcharge was to be added in whole or in part to the price paid or payable in accordance with Article 71(1)(e) UCC, as a transport cost to be included to the customs value of the imported goods.

In COM's opinion, the ECJ's case law could be used to solve the issue at stake. Indeed, the ECJ considered that the notion of "transport costs" was to be interpreted broadly. According to the Court, "the term 'cost of transport' within the meaning of article 71(e)(i) of the Customs Code referred to the movement of goods to the customs territory of the European Union, irrespective of whether those costs were inherent in or necessary for the actual transport of the goods.

Therefore, the ETS imposed on maritime transporters should be included in the customs value of the imported goods.

A vast majority of Member States agreed with the analysis proposed by COM. Only one Member State expressed a contrary opinion to COM's analysis.

One Member State proposed to explicitly mention that EU ETS purchased to transport shipments between two EU Member States were transport costs to be deducted from the customs value of the goods under article 72 (a) UCC. COM supported this view.

Another Member State requested to add a paragraph in the draft instrument explaining why the issue at stake was different from the issue concerning internal market CO2 emission allowances, analysed in commentary 36 of the Compendium and where such costs were not to be included in the price paid or to be paid for the importation of the goods.

4. Information

4.1 59th session of the WCO TCCV

COM presented the outcomes of the 59th Technical Committee on Customs Valuation (TCCV), held in the WCO premises from 7-11 October 2024. COM thanked the Member States' delegates who participated physically in the meeting for their support during the discussions.

COM reminded that the case on vouchers in the context of e-commerce was put under part III of the Conspectus, but that the Secretariat suggested to introduce a draft instrument on the notion of vouchers and discounts.

One Member State requested that COM circulate the draft guidelines on e-commerce currently discussed at the levels of WTO and WCO via CIRCABC. COM agreed.

COM reminded Member States that the 60th session of the TCCV would take place from 7-11 April 2025.

4.2 Next meeting of the WTO CCV

COM informed Member States that the WTO Committee on Customs Valuation would be held in Geneva on 11 December 2024, following some postponements.

5. AOB

No other point was raised by delegates during the session.

Next meeting of the CEG-VAL

COM explained that the next meeting of the CEG-VAL was provisionally foreseen for the first quarter of 2025.

17th Customs Expert Group – Valuation Section (CEG/VAL/17)

WEBEX – 26 November 2024

Agenda

26 November 2024, 10:00-17:30 CET

- 1. Adoption of the agenda**
- 2. Approval of the minutes of the previous meetings**
 - 2.1 15th meeting (12-13 March 2024); taxud a.6(2024)3478203 rev**
 - 2.2 16th meeting (24 September 2024); taxud a.6(2024)8060285**
- 3. Points for discussion**
 - 3.1 Draft Guidelines on Customs Undervaluation; taxud a.6(2024)8679247**
 - 3.2 ‘Order of Sales’; taxud a.6(2024)8679163**
 - 3.3 Unit prices for certain perishable goods; taxud a.6(2024)8564240**
 - 3.4 Emissions Trading System (ETS)**
- 4. Information point:**
 - 4.1 59th meeting of the WCO Technical Committee on Customs Valuation**
 - 4.2 Next session of the WTO Committee on Customs Valuation**
- 5. AOB**

16th Customs Expert Group – Valuation Section (CEG/VAL/16)

WEBEX – 26 November 2024

ATTENDANCE LIST

Chairperson: European Commission - DG TAXUD A6

Member States and TR	Ministry/Perm. Rep
AUSTRIA	Federal Ministry of Finance
BELGIUM	Ministry of Finance
BULGARIA	Bulgarian Customs Agency
CROATIA	Ministry of Finance – Customs Adm.
CYPRUS	Department of Customs and Excise
CZECHIA	General Directorate of Customs
DENMARK	Tax and Customs Administration
ESTONIA	Tax and Customs Board
FINLAND	Finnish Customs
FRANCE	Ministry of Finance
GERMANY	German Customs Authority
GREECE	Public Revenue Authority
HUNGARY	National Tax and Customs Administration
IRELAND/EIRE	Irish Perm. Rep. and Irish Customs
ITALY	Customs and Monopoly Agency
LATVIA	Latvian Customs Board
LITUANIA	National Customs Department
LUXEMBOURG	Luxembourg Customs Administration
MALTA	Maltese Customs Authority
NETHERLANDS	Dutch Customs
POLAND	Ministry of Finance
PORTUGAL	Ministry of Finance
ROMANIA	General Customs Directorate
SLOVAKIA	Slovak Republic Financial Directorate
SLOVENIA	Financial Administration
SPAIN	Customs Department
SWEDEN	Swedish Customs