



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

Brussels, 11 October 2024
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CUSTOMS EXPERT GROUP
CUSTOMS VALUATION SECTION

**SUBJECT: MINUTES OF THE 16TH MEETING OF THE CUSTOMS EXPERT GROUP –
VALUATION SECTION, HELD ON 24 SEPTEMBER 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 25 October 2024, COB.

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

Minutes of the
16th Customs Expert Group – Valuation Section (CEG/VAL/16)
24 September 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. The order of the agenda was modified slightly and approved by the Committee.

2. Approval of the minutes of previous meeting

The Chair recalled that the draft minutes of the 15th CEG-VAL meeting had been circulated in April and that a revised version had been circulated earlier in September. Several delegates suggested further modifications to the text and COM undertook to provide a revised version to the Committee, so that it could be approved at the next meeting.

3. List of points discussed

3.1 WCO 59th TCCV coordination

Document: TAXUD/A6/2024/7529711

COM presented a draft document containing comments and contributions in view of the next TCCV meeting at the WCO, scheduled to take place on 14-18 October 2024. Each technical question to be discussed at the next meeting of the TCCV was presented COM sought technical approval from delegates.

(i) Accumulated discounts in e-commerce sales

The issue, raised by Uruguay had been discussed since the 54th session, without the committee reaching consensus. COM explained that the EU position had not changed since the last meeting, where the EU had presented a non-paper providing some background to the e-commerce environment. However, during the inter-session period, Uruguay submitted additional questions to the EU, based upon two hypothetical situations (contained in WCO doc. VT1436Ea). The draft EU Position contained a partial response to the questions.

Several members intervened, underlining the need to distinguish between discounts, which fall within the meaning of EU customs valuation rules on discounts (Article 130.1 UCC IA) and vouchers that would be considered as a means of payment.

One Member State suggested the case brought by Uruguay underlined the difficulties faced by everyone and indicated that the TCCV might not be able to reach consensus.

The Committee considered that further details of the hypothetical situations would be required to make an informed decision on whether the first scenario fell within the scope of Article 130.1, though insofar as the voucher was considered to fall within the scope of customs valuation rules relating to discounts, the value could be based upon the discounted price for all examples under this scenario – even if the last example was considered unrealistic.

The second scenario was less clear and it was agreed to ask Uruguay to provide more information. Nevertheless, the Committee considered it was more likely that the situations being there would be no formal link between the provider of the voucher and the seller and the voucher would therefore not be considered as a discount within the meaning of Article 130 (IA).

It was also agreed that the Union would continue to propose to the members of the TCCV that, for e-commerce transactions, the application of customs valuation rules should be considered in a flexible manner, to enable administrations to find appropriate solutions to new forms of commerce. The Union could also support members who propose to move this technical question to Part III of the Conspectus.

(ii) Meaning of the expression “the price for the imported goods” in accordance with paragraph 4 of the Interpretative Note to Article 1 of the CVA:

COM presented the case recalling that the issue had been on the agenda since the 55th session of the TCCV. It was proposed to maintain the same position presented to the 57th TCCV, with one additional element; China had questioned whether a Commentary was the appropriate instrument for this issue. The WCO Secretariat subsequently issued a document suggesting that an Explanatory Note could be the appropriate instrument. COM suggested such an approach would be acceptable and Member States had no objections to this.

(iii) Treatment applicable to transactions agreed in cryptocurrency units:

COM explained that this topic was on the agenda since the 56th TCCV and that it proposed to maintain the same Position presented to the 57th TCCV, which was based on Conclusion No 29 of the EU Compendium. The draft advisory opinion comprised two sections and the second, ‘For members that have not recognised cryptocurrencies as legal tender’ was considered acceptable by the Committee.

(iv) Use of transfer pricing documentation when examining related party transactions under Article 1(2)(a) of the Agreement:

COM recalled that the present case had been on the agenda since the 57th session of the TCCV. After a brief summary of the facts already been presented at the previous TCCV, COM proposed to agree with the findings of the case study on the basis that the information

from a transfer pricing study was sufficient to reject the customs value declared for the reasons set out in the reply to the first question.

For the reasons set out in the reply to the second question, the information obtained from the transfer pricing study was considered to be sufficient to determine the customs value in accordance with Article 7 of the Agreement (fallback method) with a flexible application of Article 6 of the Agreement (computed value method) in the circumstances described in the case.

The Member States did not object to the findings as presented by the COM.

(v) Treatment of freight and freight charges under Article 8 (2) of the Agreement:

COM explained that this issue had been raised by Uruguay and had been on the agenda since the 57th session of the TCCV. Insofar as discussions continued, the EU Position expressed previously remained valid. However, there was little consensus between members on how to tackle the issues raised by Uruguay, as the case involved the treatment of freight and freight charges, an area where the CVA provides flexibility.

COM proposed that Union should continue with this approach and if the TCCV was not able to reach consensus on this matter, the EU should not object to moving the case to part III of the Conspectus of valuation cases.

(vi) Use of transfer pricing documentation when examining related party transaction under Article 1 (2)(a) of the Agreement:

COM explained that the Union's Position expressed at the previous TCCV remained valid, namely that the EU supported the draft conclusions proposed by Uruguay in its Case Study concerning the use of transfer pricing documentation.

The Committee agreed to retain the EU Position on this case and one Member State underlined the importance of also recalling that any price adjustments to the price declared at the time of importation of goods should be attributed (upwards or downwards) to individual customs declarations concerning those goods and it should be clear that it wasn't a flat rate adjustment.

(vii) Valuation treatment of imported goods when goods are provided free of charge according to the quantity purchased:

COM explained this case was put forward by Korea and was discussed for the first time in detail at the 58th TCCV. The case concerned the valuation treatment of imported goods when goods were provided free of charge according to the quantity purchased and Korea raised three questions.

The first question concerned the valuation treatment of additional goods provided with each purchase, where the additional goods were shipped together with the paid goods and the Union's position was that the price of the paid goods should cover the total quantity imported, including any free goods accompanying them. There was therefore no need to evaluate the free goods separately.

One Member State suggested a modification to the draft EU Position on the second question concerning the valuation treatment of additional goods provided separately in the following year based on the total quantity of paid goods purchased during the previous year after all annual imports had been completed. After some discussion it was agreed to modify the EU Position on the second question, as follows:

Insofar as customs are satisfied that the supply of the goods results from the contractual obligations between seller and buyer, the goods should be treated in the same way as under the first example above; namely that the goods, provided by the seller at no additional cost, should be valued together with the purchased goods.

The third question concerned the valuation treatment of previously purchased paid goods, when a 3-day tour was provided instead of additional goods. The Committee agreed that in such cases, the tourism could be seen as a general sales promotion activity of the seller and there was no basis for denying the transaction value under Article 1 of the Agreement.

(viii) Application of Article 1.1

COM presented the case put forward by Vietnam and recalled that it had been decided to include it as a new technical issue for discussion at the 58th TCCV.

COM described the case, which concerned the valuation of imported goods when a "representative company" negotiated with the manufacturer to determine the prices of the imported goods and subsequently received a commission from the importer. Both the representative company and the importer were subsidiaries of the same multinational corporation, and a contract was in place between both parties to allow the representative company to negotiate the price on behalf of the importer.

Vietnam requested the opinion of the TCCV, arguing that the transaction value could not be applied because the condition set out in Article 1.1(b) of the Agreement were not met.

COM recalled the salient points of the case, namely that the importer and the representative company had entered into a contract under which the latter undertook to provide services in return for a commission expressed as a percentage of the purchase price of the goods. The representative company had the mandate to negotiate the price and terms of the contract with the manufacturer on behalf of the importer. The importer then paid the agreed price to the exporter/manufacturer of the goods ordered and declared to the customs authorities.

COM considered that there appeared to be no evidence that the requirements of Article 1.1(b) of the Agreement had not been met and therefore the transaction value method could apply. The Member States had no objections to the COM's analysis.

(ix) Treatment applicable to non-payment by the buyer

COM presented the case put forward by Uruguay and recalled that it had been decided at the 58th TCCV to include it as a new technical issue for discussion.

The case concerned a situation where, following the conclusion of a commercial contract, the goods were exported and delivered, but the buyer ultimately failed to pay all or part of the agreed price. Uruguay sought to determine whether the amounts not paid by the buyer should be included in the customs value.

COM considered that the price actually paid or payable included all payments actually made or to be made by the buyer to the seller, as a condition of the sale of the imported goods. The transaction value was defined as the price actually paid or payable. In general, the term "payable" was used to describe financial obligations due for payment on a specific date but had not yet been settled. In the context of customs valuation, it referred to the buyer's liability towards the seller for the amount of the price agreed in a contract of sale that was due but not yet paid.

COM concluded that by the words "price actually paid or payable" the Agreement seemed to mean that it was relevant that there was a sale (for export) which created an obligation on the part of the buyer to pay the agreed price, and that it was sufficient that the buyer was obliged to pay under the contract of sale, even if he had not yet done so ("...price to be paid..."). Thus, the Agreement seemed to accept that the transaction value method applied even in cases where the buyer had not yet fulfilled his payment obligations at the time of the valuation of the goods. The Member States had no objections to the analysis presented by COM.

3.2 - Non-paper submitted by France on 'Sale for export'

The French Delegate presented France's non-paper entitled "Sale for export", which had been previously circulated to the Committee. Taking into account the on-going discussions in the Committee on the concept of 'Sale for export' and the apparent differing views, the non-paper was aimed at launching a broader reflection.

It was suggested that the WTO's Customs Valuation Agreement (CVA) no longer grasped the reality of today's international trade and the resulting regulatory gaps needed to be addressed. This was particularly the case for e-commerce, where the goods for sale were no longer displayed physically in the EU and where the commercial chain involved new actors such as the e-commerce platforms. The non-paper drew attention to the TCCV's Commentary 22.1, which included the following:

The Technical Committee is of the view that the underlying assumption of Article 1 is that normally the buyer would be located in the country of importation and that the price actually paid or payable would be based on the price paid by the buyer.

Although not explicitly stated in the UCC, the delegate suggested that the CVA and consequently, EU rules could be interpreted in line with the agreed texts adopted by the TCCV, to ensure consistent and coherent approach within the EU.

The delegate also drew attention to the proposed amendments set out in the non-paper, to introduce a territorial aspect into the concept of “Sale for export”. The Committee was invited to consider introducing such a concept into EU legislation, through the on-going discussions on the Customs Reform package. The aim was to tackle uncooperative trade in an efficient manner and not to disrupt existing legitimate trade.

Although any formal discussions on the proposed Customs Reform would take place in the Council, COM explained that it would be useful to have the views of the Committee on the suggestion to introduce the notion that the transaction method to determine customs value should only be use where the buyer is located in the customs territory of the Union.

One Member State explained that it supported the initiative, explaining that such a measure would also impact on traditional forms of commerce, where similar situations could be found in B2B commerce. It was acknowledged that the CVA did not address this issue, though other members appeared to be following the same approach.

Another Member States expressed strong interest in clarifying the application of the current legislation (Article 128 UCC IA), especially where the chronological order did not follow the commercial chain. It was pointed out that many traders were not based in the EU. Attention was also drawn to the text of the TCCV’s commentary 22.1 and the fact that it only stated that the buyer should “*normally ... be located in the country of importation*”. Therefore, any new requirement could set a legal precedent, going beyond the scope of the CVA.

It was understood that the French proposal would be considered within the framework of the Customs Reform and reference was made to the provisions concerning e-commerce and the notion of ‘distance sales’, as well as a possible alignment of customs and VAT definitions.

Several members expressed interest in discussing the issue further, in the context of the current UCC rules.

COM suggested further consideration should be given to the legal aspects of the suggested new approach and Member States were invited to consider the potential economic impact.

4. AOB

Next meeting of the CEG-VAL

The next meeting of the CEG-VAL was provisionally planned to take place in November 2024.

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

WEBEX – 24 September 2024

Agenda

24 September 2024, 10:00-17:30 CET

- 1. Adoption of the agenda**
- 2. Approval of the minutes of the previous meeting**
- 3. Points for discussion**
 - 3.1 WCO 59th TCCV coordination**
 - 3.2 Non-paper submitted by France on ‘Order of Sales’**
 - 4. AOB**

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

Brussels (BORSCHETTE) – 24 September 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