



Customs Flash

Belgium

Does Customs Value include leftover fabric?

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The Supreme Court in the Netherlands currently faces an interesting case on the inclusion (or exclusion) of the value of leftover fabrics when determining customs value.

Companies operating in the textile industry will likely be familiar with the following scenario:

- An EU importer purchases clothes from a non-EU manufacturer;
- The non-EU manufacturer is supplied with fabrics by a third party;
- The third party fabric supplier only supplies these fabrics at minimum volumes, so it is likely that the manufacturer will have unused rolls of fabric when the supplied fabrics exceed the ordered amounts of clothes (leftovers);
- These leftovers are invoiced separately to the importer by the manufacturer.

Given the above, the EU importer had not added the cost of these leftovers in the calculation of the customs value. The Dutch Customs Authorities, however, believed these should be included and proceeded to retroactively claim customs duties.

The Netherlands Advocate General did not agree and pointed out that it should be reviewed whether the reasons of excessive fabric are directly linked to the purchase of the final products. As the use of minimum purchase amounts is not directly linked to the conditions in the purchase agreement between the manufacturer and the importer, the Advocate General concluded that the costs of leftovers should not be part of the transaction value of the imported clothes. Additionally, since the leftovers are not used for the production of the imported clothes or processed in the imported clothes, the Advocate General concluded that the costs of leftovers do not have to be added to the transaction value.

While this initial decision favours the importer, the final verdict is still in the hands of the Supreme Court in the Netherlands.

What does it mean for you?

For companies that import clothes or other textile products in the Netherlands, the Supreme Court's decision could potentially be beneficial, or harmful, to businesses' operations.

If the Supreme Court takes over the Conclusion of the Advocate General, the costs of leftovers could be excluded from the customs value, which could reduce the cost price of products and even allow for a refund on overpaid duties for the past.

On the other hand, should the Supreme Court disagree with the Conclusion of the Advocate General, the costs of leftovers could cause an increase of cost price and a potential claim from the Customs Authorities of additional duties.

What to do?

If faced with costs of leftovers in the production of imported products, it is recommended that businesses first review whether their purchase agreement contains any clauses pertaining to these leftovers. Furthermore, it is recommended to also examine how these leftovers are treated in import declarations.

Depending on the purchase agreement, the outcome of this Court case and the way these leftovers were treated in import declarations, a refund of overpaid duties could be obtained or a retroactive claim of underpaid duties could arise.

Deloitte's Customs and Global Trade (CGT) team will monitor the outcome of this case and will provide updates as soon as the final decision has been made public. For more detailed information on how this decision could impact businesses, the below contacts are readily available to assist.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

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