

Customs Flash

News you can count on



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Belgian Court of appeal clarifies the direct shipment condition for the "first sale for export" principle in customs valuation

Recently, the Belgian court of appeal ruled that the "first sale for export" principle can be used to determine the customs value when the goods, ordered from an intermediary, are shipped directly from the manufacturer to the European Union. Contrary to the Belgian customs administration's point of view, it is neither required for transport to be the manufacturer's responsibility nor that transport is facilitated on his behalf.

Import into the European Union

The import of goods into the European Union may involve the payment of customs duties. The amount of duties to be paid upon import depends on the applicable customs duty rate as well as on the customs value of the products concerned. The customs value of a product is often based on the transaction value which is increased or decreased by elements such as freight costs or royalty payments.

First sale for export principle

In global supply chains, it is common that multiple sales transactions take place before a product is actually imported into the EU. In most cases, the last transaction in the chain will be used to determine the customs value. Under certain conditions however, the EU Customs legislation allows a previous sales transaction (before the actual import) to be used. Such prior transaction is referred to as the "first sale for export". Such structure could lead to a reduced import duty burden upon customs clearance.

The "first sale for export" principle can only be used if it is clear that the products are sold for export to the European Union. This element will have to be proven to the satisfaction of the customs authorities on the basis of e.g. delivery conditions, ordering instructions, etc.

Condition of direct shipment

In their commentary number 7, the EU Customs Code Committee gives some examples on how to duly demonstrate that the goods have been sold for export to the Community's customs territory.

One of the examples given by the Committee is "direct shipment", stating that the "first sale for export" principle can be used when "specific goods are ordered from an intermediary who sources the goods from a manufacturer and the goods are shipped directly to the EC from that manufacturer".

As the Dutch version of the above Commentary leaves some room for interpretation, the Belgian Customs Administration believed that the transport should not only depart from the manufacturer's premises, but that the transport should also be organised by him or on his behalf.

As the Belgian Customs Administration's interpretation is not in line with the wording in the English and French texts, the Belgian court of appeal ruled that the "first sale for export" principle can be used if the goods are

shipped directly from the manufacturer to the European Union and that it is not required for transport to be the manufacturer's responsibility nor that transport is performed on his behalf.

In order to apply the "first sale for export" principle it is sufficient to duly prove that the shipment to the European Union has been done directly from the goods' manufacturer.

What does it mean for you?

Based on this court case, there could be a possibility for companies to create an opportunity to reduce the customs value and, consequently, the payment of import duties (in cases where the direct transport condition was not fulfilled today).

What to do?

Review the flows where the direct transport is not performed on behalf of the manufacturer and assess if, based on this appeal, the first sale rule can be applied today. In addition, we recommend that you check your supply chains in general for any undiscovered opportunities to apply a 'first sale for export' structure in the EU, as well as in other jurisdictions where the same principle is accepted.

Contact

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