



## Global Trade Advisory Alert

The European Commission's Expert Group on Customs Valuation addresses "domestic sales" and transactions in a customs warehouse

The 5<sup>th</sup> meeting of the European Commission's Customs Expert Group on Customs Valuation took place in Brussels on 11-12 October 2018. Several key customs valuation topics were discussed during the meeting, including those described below.

One of the customs valuation topics discussed concerns the so-called **domestic sale**, and how it compares to the sale for export. The domestic sale principle precludes sales transactions where both buyer and seller are established in the European Union (EU) from being regarded as a sale for export or used as the transaction value for customs purposes. While the domestic sale is mentioned in a current guidance document of the European Commission, it is not mentioned in the Union Customs Code (UCC). As such, it has been subject to

substantial criticism, particularly since it introduced an unofficial term to a highly sensitive discussion.

Following its discussion of this issue, the Customs Expert Group concluded that the domestic sale principle should be deleted from the next update of the Guidance Document on customs valuation. This may have an impact on the customs valuation of goods for transactions between EU established parties.

Another topic discussed during that meeting that has potentially far-reaching consequences from a customs valuation perspective concerns customs valuation in relation to **sales in customs warehouses**. The Customs Expert Group discussed that the Guidance Document currently allows for an importer to determine the customs value on the basis of an earlier transaction within a customs warehouse if this can be substantiated by necessary documentation.

## **Background**

One of the most extensive implications following the application of the UCC on 1 May 2016 was the implementation of the “last sale for export rule” as opposed to the prior “first sale for export rule.” Under the previous Community Customs Code, it was possible to use an earlier sale in the chain of transactions if it could be evidenced that this sale was already aimed at export to the EU.

Under the UCC, the basis for the transaction value is the sale occurring immediately before the goods are brought into the customs territory of the EU. This means that transactions between EU companies could in principle also lead to a customs value under the transaction value method, as these fall under the definition of the last sale. As that created an undesired effect, the “domestic sale” was introduced in the Guidance Document to emphasize that the last sale should be the basis for the customs value and that transactions between buyers and sellers in the EU should not be considered as ‘sold for export’.

Now that the Customs Expert Group has concluded that the “domestic sale” reference is to be deleted, it does not necessarily mean that transactions between EU companies should again be considered as “sold for export.” It merely indicates that the Customs Expert Group no longer wants to use a concept that does not exist in the UCC. The minutes of the meeting mention that, instead of the domestic sale, there will be additional examples to illustrate when transactions are considered to be “sold for export.”

Next to abolishment of the domestic sale principle, the Customs Expert Group considered the situation where goods are brought into the customs territory of the EU before being sold and are subsequently sold several times in a customs warehouse. The Customs Expert Group discussed that the Guidance Document currently provides

for the possibility of determining the customs value on the basis of an earlier transaction within a customs warehouse if this can be substantiated by necessary documentation. Some Member States have expressed their concerns that it is possible to make use of an earlier sale depending on the availability of documentation.

The Customs Expert Group indicated that multiples sales in a customs warehouse as such was not considered in the UCC. Therefore, the Customs Expert Group states it seems appropriate to follow the rules of the sale closest to the entry of the goods into the European customs territory. However, it remains unclear what is meant by that. Furthermore, the Customs Expert Group considers that in any event, the determination of the relevant sale cannot be conditional to the availability of the relevant documents to the customs authorities.

Further explanations on this matter and examples on other complex trade patterns are expected in a new version of the Guidance Document.

## **What could this mean for your business?**

Companies should evaluate their supply chain in order to identify possible implications as a result of the abolishment of the domestic sale principle. In addition, companies should consider how transactions under a customs warehousing procedure are currently approached from a customs valuation perspective. If you have a supply chain consisting of multiple transactions, this would mean that the customs value may be based on a transaction further down the supply chain, resulting in a higher customs duty burden.

Deloitte's Global Trade Advisory specialists have hands-on experience in trade matters and are part of a global network of professionals who can provide specialized assistance to companies seeking to defend their interests in global trade matters.

## **Contact**

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