



Mr Algirdas Šemeta
European Commissioner for Taxation and Customs
Union, Audit and Anti-Fraud

Rue de la Loi 200
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BELGIUM

21 February 2012

Dear Commissioner,

We have actively followed the current drafting of the new Implementing Provisions to the Modernised Customs Code (hereafter: MCCIPs) which we understand are in their final stages. BUSINESSEUROPE has raised a number of issues and we urge the Commission to ensure that our recommendations are retained in the MCCIPs. In this letter we would like to highlight one specific concern of great urgency relating to customs valuation.

The current proposal for the MCCIPs concerning customs valuation is aimed at clarifying the method for the calculation of the customs value of goods. The possibility of using 'earlier sales for export' as a basis for valuing goods that are sold through complex supply chains will be eliminated. Only the so-called 'last sale'¹ will be used to determine the customs value.

BUSINESSEUROPE is concerned that this will result in significantly higher import duties which in turn will lead to increased prices for a broad range of goods imported into the EU. Moreover, it discriminates against those European companies based in countries without overseas ports, because when goods land at an interim EU member state and require import there, it is common for the import declaration to be made by a local entity registered for VAT in that country. In many cases that entity takes title in order to facilitate the declaration and recovery of the import VAT. It is entirely possible that its involvement in the transaction chain may end before the import of the goods.

Equally, when the goods are transported from the member state of arrival to the member state of importation under Community Transit, there should be no requirement for any sale between EU parties to be used to determine the customs value of the goods upon their ultimate importation. This will lead either to higher prices for EU customers or to lower margins for EU companies. In the light of the current economic and financial crisis you will agree that these consequences of the proposed legislation are highly undesirable and should be avoided.

¹ TAXUD/MCCIP/2010/100-3 - article 230-02: "In the case of successive sales, the transaction value is determined on the basis of the last sale in the international commercial chain before the goods are brought into the customs territory of the Community."



BUSINESSEUROPE is also afraid that the aim of the proposed MCCIPs, which is to clarify the method for the calculation of the customs value of goods, will not be served by the current proposal. To illustrate the difficulties of applying the 'last sale' concept, one case position is attached to this letter. The case position demonstrates that companies will not have sufficient information available to declare goods according to the 'last sale' method at the time the customs value has to be determined.

Although the purpose of the proposed text in the MCCIPs, which in effect excludes the 'earlier' or 'first sale' method for the calculation of the customs value of goods, is to simplify the determination of the customs value, the case position proves that the 'last sale' concept will not preclude legal uncertainty. On the other hand, the obligation to use the 'last sale' method for calculating the customs value will mean that import duties will rise. Both European traders and customers are paying the price, European competitiveness is affected. In the current, very difficult economic situation this is unacceptable. We therefore urge you to reconsider the draft MCCIPs on customs valuation and to keep the present provision Article 147 on customs valuation in the existing CCCIPs (Community Customs Code Implementing Provisions) unchanged.

BUSINESSEUROPE is available to further explain and discuss this letter and the case position in detail with you and your staff.

Yours sincerely,

Philippe de Buck

Addressees:

Mr. Joaquin Almunia, Vice-President and European Commissioner for Competition

Mr. Michel Barnier, European Commissioner for Internal Market and Services

Mr. Algirdas Šemeta, European Commissioner for Taxation and Customs Union, Audit and Anti-Fraud

Mr. Karel De Gucht, European Commissioner for Trade

Mr. Malcolm Harbour, Chairman of the EP Committee on Internal Market and Consumer Protection

Mr. Vital Moreira, Chairman of the EP Committee on International Trade

Annex:

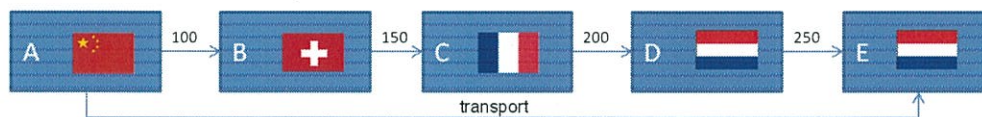
Case position

Annex to letter on ‘first sale’, dated 21 February 2012:

Determination of ‘last sale’ in successive sales (MCCIP, vers. 25 November 2011)

Fact

- A Chinese manufacturer ‘A’ makes sales of 100 to a company ‘B’, resident in Switzerland;
- The Swiss company ‘B’ subsequently makes sales of 150 to the French company ‘C’, whereby it is agreed that B will release the goods into free circulation;
- The French company ‘C’ makes sales of 200 to the Dutch company ‘D’;
- The Dutch company ‘D’ makes sales of 250 to another Dutch company ‘E’;
- At the request of Swiss company ‘B’, the goods are transported from China directly to the territory of the Community. The Swiss company declares them for release into free circulation.
- All transactions are carried out before the goods actually arrive in the Community.



Case analysis

- Swiss company ‘B’ is only aware of two prices: its purchase price of 100 and its sale price of 150;
- ‘Last sale’ is defined as “the last sale in the international commercial chain before the goods are brought into the customs territory of the Community;”
- Therefore, only the last transaction preceding the goods entering the Community can be used to determine the customs value;
- The customs declaration for release into free circulation is prepared on behalf of Swiss company ‘B’. This company is not aware of the transactions that take place after it has sold the goods to French company ‘C’. It is not aware that transactions have taken place, nor what prices have been agreed on.
- According to current interpretations of ‘last sale’, only the transaction between the two Dutch companies can be used to determine the customs value in the case described above. This is the last sale in the commercial chain before the goods entered the territory of the Community. The starting point for determining the customs value is the transaction between company ‘D’ and company ‘E’ (250).

Conclusion

- As Swiss company ‘B’ is not aware of the successive transactions, it cannot declare the correct customs value; in other words, it will file an incorrect customs declaration.
- If the ‘First Sale For Export’ is applied, then the customs value is 100. If the ‘Sale For Export’ is applied, then the customs value is 150.
- If the MCCIP is applied, then the customs value is 250.
