



TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

-
43rd Session
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VT1059E1a
(+ Annex)

Brussels, 29 June 2016.

CONDITION OF SALES, OBJECTIVE AND QUANTIFIABLE DATA

REQUEST BY MEXICO

(Item V (b) on the Agenda)

Reference documents :

VT0993E1a (TCCV/40)

VT0994E1b (TCCV/40 - Report)

VT1006E1a (TCCV/41)

VT1044E1a

VT1011E1b (TCCV/41 – Report)

VT1031E1a

VT1038E1a

VT 1051E1a – Draft Report

I. BACKGROUND

1. At the 42nd Session, the Technical Committee continued the examination of the question submitted by Mexico concerning the valuation of goods imported under a franchise agreement. Mexico provided additional information to the Technical Committee.
2. Several delegates asked for more information/clarification to examine further the question by the Technical Committee.
3. Mexico agreed to work with the Secretariat during the intersession to improve the document, taking into account the provisions of the Development and Franchise Contract and the comments of the delegates.

II. SECRETARIAT COMMENTS

4. During the intersession, Mexico has responded to the comments made by delegates at the 42nd Session of the Technical Committee. The response is reproduced in the Annex to this document.
5. The additional information will help the Technical Committee to further examine the question at its 43rd Session.

For reasons of economy, documents are printed in limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

III. CONCLUSION

6. The Technical Committee is invited to continue the examination of the question taking into consideration the written response from Mexico.
7. Members are invited to submit their comments and suggestions on the latest version of the draft case study to the Secretariat not later than 4 September 2016 and are kindly requested to send their comments in electronic format where possible (E-mail address : valuation@wcoomd.org). Comments received in response to this document will be published and circulated to members of the Technical Committee for consideration at the 43rd Session.

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RESPONSE BY MEXICO TO THE COMMENTS RAISED AT THE 42ND SESSION OF THE
TECHNICAL COMMITTEE ON CUSTOMS VALUATION:

Comments:

- A. 'Several delegates agreed that it would be necessary to examine whether the imported input was necessary and essential in the production of the final product to determine whether there was a link between the input and the final product.'
- B. 'One delegate also suggested to look at whether the imported input materials are ordinary materials or special branded ones. However, another delegate wondered how it would be possible to determine whether an input was essential in the production of the final product.'

Response

- 1. The imported supplies consist of flour, fillings (jams, syrups and preparations with specific flavors) and sugar, which are used to make confectionery goods such as donuts and cakes.
- 2. As it can be deduced, all are necessary and essential elements for making cakes and donuts, therefore they cannot be substituted and even if substitute inputs could be used, these will not have the taste, consistency and appearance characteristics required by these products.
- 3. In this regard, it is also important to take into account that these supplies are used for products that are part of a franchise and therefore must meet very strict specifications allowing them to always have the same taste and consistency.
- 4. This element is essential to our analysis because the characteristics of these supplies are so important, that the franchisor requires the franchisee to buy them exclusively from him or from an authorized person (clauses 3.2.3. and 3.2.5. from the franchise agreement).
- 5. As consequence, we consider the supplies are essential and necessary for the manufacturing of products.
- 6. Supplies are not patented and can be obtained from other suppliers. However, there is a condition of sale from the moment the franchisee is obliged to acquire them from the franchisor or from a person he authorizes.
- 7. It is very important to take this into consideration given that without such requirement, the related imports would not have been made, since they were conditioned to the terms of the franchise agreement.

Comments:

- C. 'Several delegates who took the floor referred to patent and know-how in their analysis and questioned whether there existed any such related contracts. In the case of raw

materials, one delegate questioned whether the royalty could be considered to be related to the imported goods.'

Response

8. As it was pointed out when the case was presented to the Committee, there is a contract which establishes payments for various items, including the know-how (clauses 5.1 and 5.2 of the franchise agreement).
 9. However the royalties, currently studied, derived from another clause (5.3) and are calculated on net sales from products that are sold in each shop that has the franchisee, under the contract.
 10. In this sense, the sale of each product manufactured with the imported supplies is taken into account in order to determine the amount of royalties that the franchisee pays to the franchisor, which demonstrates that imported goods (flour and fillings) are directly related to those which are subject to royalty payment (donuts and cakes).
 11. In other words, the related royalty could not be generated from the sale of products if supplies had not been imported to make them. And these supplies may not have been imported if there were no contractual obligation of the franchisee to acquire them from the franchisor or from a person authorized by him.
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