



TECHNICAL COMMITTEE ON
CUSTOMS VALUATION

VT1074E1a

-
43rd Session
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O. Eng.

Brussels, 19 September 2016.

DISCUSSION ON FUTURE THEME MEETING

(Item VII (c) on the Agenda)

Reference documents :

VT1051E1b (TCCV/42 - Draft Report)
VT 1065E1a

I. BACKGROUND

1. During the intersession, the Secretariat published Doc. VT1065E1a soliciting Members' suggestions on possible topics of interest for discussion at the Theme Meeting planned for the 44th Session. The proposals and related issues would be examined at the 43rd Session of the TCCV.
2. Members wishing to speak on specific topics were also invited to disclose their interest.
3. The Secretariat compiled a list of topics discussed in previous Theme meetings and Symposiums and also made some suggestions on new topics which could be considered by Members when making their decision.

II. SECRETARIAT COMMENTS

4. Written comments were received from Uruguay supporting the holding of a Theme Meeting and highlighting its importance.
5. Uruguay proposed the topic of "**Cases in which the relationship does have an influence on the price**" for discussion and its interest to speak on this particular topic. Uruguay's proposal is produced in the Annex to Doc. VT 1074E1a.
6. One of the areas of interest of the G20 group is cross-border financial flows derived from illicit activities including trade misinvoicing and its impact on revenue collection as stated in the G20 Leaders' Communique Hangzhou Summit of September 2016.

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.

7. Paragraph 36 of the Communique reads as follows : “We will continue our work on addressing cross-border financial flows derived from illicit activities, including deliberate trade misinvoicing, which hampers the mobilization of domestic resources for development, and welcome the communication and coordination with the World Customs Organization for a study report in this regard following the Hangzhou Summit.”
8. Trade misinvoicing is not prevalent in unrelated party transactions only but also occurs in transactions between related parties. A Theme Meeting on trade misinvoicing may cover various aspects, including valuation, fraud, trade, tax, finance and could take into account the theme proposed by Uruguay.

III. CONCLUSION

9. The Technical Committee may wish to consider paragraph 36 of the G20 Communique in relation to trade mispricing, which captures the proposal of Uruguay, as the possible basis of the proposed Theme Meeting.

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THEME MEETING - PROPOSAL BY URUGUAY

1. Following the Secretariat's invitation soliciting Members' suggestions on possible topics for a future Theme Meeting to be held during the 44th Session, Uruguay would like to put forward the following topic to the Technical Committee :

“Cases in which the relationship does have an influence on the price”

2. This topic may include, among others, the following subtopics :
 - A. *The main characteristics of such cases including : related party company policies, the meaning and relevance of such cases for Customs, international market presence and participation, the main sectors involved, analysis of tariff rates vs. income tax and tax planning, the effectiveness of Customs controls, etc.*
 - B. *Customs proceedings for analysing the circumstances surrounding the sale :*
 - a. *Examples such as those set out in point three of interpretative note to paragraph two of Article 1 of the Agreement, but which allow us to conclude that the price has indeed been influenced by the relationship.*
 - b. *Situations such as those foreseen for the category (a) ingredients in Case Study 10.1.*
 - c. *Clear and revealing comparisons of the related-party transaction with goods from other, non-related importers using the methods set down in Articles 2, 3, 5 or 6.*
 - d. *Cases whereby the importer is related to its supplier (Article 1.1d) and is then unable to demonstrate that the transaction value is acceptable for Customs purposes according to the provisions set out in Article 1.2.*
 - e. *Analysis of the information contained in a transfer pricing study used by the importer for tax purposes.*
 - f. *Other methods.*
 - C. *Once the Customs Administration has concluded that the relationship has influenced the price, how can the Customs value be determined?*
 - a. *By applying the subsequent Articles in the Agreement.*
 - b. *By subsequently reviewing the price (TCCV Commentary 4.1).*
 - c. *By subsequently reviewing prices each financial or accounting year.*
 - d. *In coordination with the internal tax administration and its transfer pricing system (with APA).*
 - e. *With full and mutual compliance and cooperation between the importer and Customs.*
 - f. *Based on other criteria.*
 - D. *Final conclusions*
 - a. *What can Customs improve even further in order to identify and facilitate the resolution of such cases?*

b. What other TCCV documents may be needed on this topic?

c. What else can the Secretariat do to help Members in this respect?

3. The reasons for our proposal are, among others, as follows :
- (i) We must take into account the fact that more than 50 % of the commercial operations dealt with by Customs take place between related parties.
 - (ii) In the Agreement it is assumed that if a sale takes place between related parties, the relationship may have influenced how the price actually paid or payable was settled.
 - (iii) Apart from the case of the 'ingredients' in Case Study 10.1 (uncommon in commercial practice as it is unusual for an external supplier to sell both to related and non-related buyers from the importing country), the Technical Committee does not have any interpretative documents showing Members when and how to conclude that the relationship has influenced the price.
 - (iv) We feel that it would be very useful to hear about the experiences of other Customs Administrations and the private sector on situations in which the price has been influenced by the relationship, how this was detected and how the proper Customs value was later determined.
 - (v) This theme is also of topical importance in other domains. Such is its significance that in order to determine the correct income tax to be collected from related parties the OECD, in addition to the Transfer Pricing Guidelines, has recently presented its Base Erosion and Profit Shifting (BEPS) Action Plan, with special focus on the tax planning taking place in certain multinational groups.
 - (vi) Finally, the Secretariat is continuing to develop the 'Revenue package' and supports other committees that are working on Customs-Tax cooperation, both activities that are related to the proposed topic.
4. Our delegation would like to assure you of our readiness to work with the Secretariat and the Technical Committee to plan the next Theme Meeting.
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