



TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

-
47th Session
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VT1154E1a
(+ Annexes I to IV)

O. Fr.

Brussels, 5 October 2018.

SPECIFIC TECHNICAL QUESTIONS

VALUATION OF IMPORTED GOODS PURCHASED IN “FLASH SALES”

REQUEST BY MAURITIUS

(Item V (a) on the Agenda)

Reference documents :

VT1062E1a (TCCV/43)	VT1117E1b (TCCV/45 – Draft Report)
VT1075E1c (TCCV/43 – Report)	VT1125E1a (TCCV/46)
VT1087E1a (TCCV/44)	VT1132E1a (TCCV/46)
VT1098E1b (TCCV/44 – Draft Report)	VT1137E1a (TCCV/46 – Draft Report)
VT1107E1a (TCCV/45)	VT1144E1a (TCCV/47)
VT1115E1a (TCCV/45)	

I. BACKGROUND

1. During the intersession, a draft Advisory Opinion drawn up by the Secretariat on the question at issue was submitted to the Technical Committee for examination. That draft Advisory Opinion is set out in the Annex to Doc. VT1144E1a.

II. MEMBERS' COMMENTS

2. The Administrations of Chile, China, the United States and Uruguay submitted to the Secretariat written comments in response to the above document, which are set out in Annexes I to IV hereto.

III. SECRETARIAT COMMENTS

3. The Secretariat notes that the question at issue, which was presented by Mauritius, relates to the valuation of imported goods purchased in “flash sales”, which are promotional, short-term sales with highly discounted prices. These “flash sales” can take place on the traditional market or by means of e-commerce.

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4. Following the discussions held at its 46th Session, the Technical Committee agreed to draw up, with the Secretariat's assistance, a draft Advisory Opinion clarifying the fact that the discounted prices charged during "flash sales" should be accepted as the basis for Customs valuation under Article 1 of the Agreement. The Members reached a majority consensus on this first question, which can therefore be regarded as settled.
5. Paragraph 2 (c) of the draft Advisory Opinion was placed in square brackets owing to the Technical Committee's failure to reach a consensus on the second question at issue, namely whether this highly discounted price of \$US 11.99 could be used to determine the transaction value of identical or similar goods for which there was no transaction value. The Technical Committee must therefore continue its examination of paragraph 2 (c) of the draft Advisory Opinion.
6. The Secretariat furthermore notes that the Delegate of Uruguay stated during the 46th Session, with reference to the principles laid out in the Luxor Resolution¹, that it would be more appropriate and effective for the Technical Committee to adopt a specific and exclusive Customs valuation rule for "cross-border e-commerce" carried out via "online sales platforms". He went on to say that this new rule could be adopted at multilateral level, for example as a new decision by the WTO Committee on Customs Valuation, with application being optional for Members². It could then be incorporated into the E-Commerce Framework of Standards recommended by the WCO Working Group on E-Commerce.
7. Referring to the outcomes of the work carried out by the WCO Working Group on E-Commerce, the Secretariat informed the Technical Committee that the WCO Policy Commission and Council, during their sessions in June 2018, had endorsed the draft Cross-Border E-Commerce Framework of Standards and the accompanying draft Council Resolution. These two documents are available at the following link : <http://www.wcoomd.org/en/media/newsroom/2018/july/wco-publishes-global-standards-on-ecommerce.aspx>.
8. The purpose of the Cross-Border E-Commerce Framework of Standards is to harmonize the various approaches followed in the area of e-commerce and align them with the principles set out in the Luxor Resolution on Cross-Border E-Commerce. To achieve this goal, it outlines key guiding principles for procedures to facilitate and simplify e-commerce, alternative models for revenue collection, and safety and security measures for e-commerce channels.
9. The Secretariat believes that the work carried out by the Working Group on E-Commerce does not call into question the continuing status of the WTO Valuation Agreement as the only international legislative benchmark for the valuation of imported goods, including those purchased by means of e-commerce. Given the above, however, the Technical Committee must examine the concerns raised by Uruguay (which are summarized in paragraph 6 above) and clarify its position on the Customs valuation of imported goods purchased by means of e-commerce.

¹ Resolution of the Policy Commission of the World Customs Organization on the Guiding Principles for Cross-Border E-Commerce, Luxor, December 2017.

² As is the case for Decision 4.1 on the Valuation of Carrier Media Bearing Software for Data Processing Equipment.

IV. CONCLUSION

10. The Technical Committee is invited to continue its examination of this draft Advisory Opinion during its 47th Session, taking into account the written comments submitted by the Administrations of Chile, China, the United States and Uruguay.
11. The Technical Committee is also invited to examine the question of the Customs valuation of imported goods purchased by means of e-commerce and to present its position on this matter.

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Comments by Chile

1. The Chilean National Customs Service would like to thank the Technical Committee on Customs Valuation and its Secretariat for preparing the draft Advisory Opinion on the approach to the valuation of imported goods purchased in “flash sales”, with a view to clarifying the question concerning the method of valuation to be applied to goods purchased by this means and the relevance for determining the transaction value of identical or similar goods for which there is no transaction value.
2. In response to the call to examine this draft Advisory Opinion and to send comments to the Secretariat, with a view to reaching a consensus on paragraph 2 (c), I wish to submit the following.
3. Given that “flash sales” are promotional, short-term sales with highly discounted prices, their prices should not be used for the purpose of applying either the transaction value for identical goods or the transaction value for similar goods if the goods are not being imported under “flash sale” conditions, and, if there is no transaction value for the latter, the correct approach, in our view, is to proceed sequentially through the valuation methods set out in the Agreement to the first whereby the value can be determined.
4. In the light of the above, we consider that complying with the conditions set out in paragraph 2 (c) restricts the use of the discounted price of goods purchased during “flash sales” as the transaction value for identical goods or the transaction value for similar goods in normal circumstances, and we therefore express our agreement in general with the proposed paragraph, and suggest the following wording, in so far as this aids comprehension :

“The discounted price of imported goods purchased during a “flash sale” will be used for the purpose of applying either the transaction value of identical goods or the transaction value of similar goods laid down in Articles 2 and 3 respectively of the Agreement only if all the requirements under Article 2.1 (a) and (b) are met for each of the aforementioned articles and the imported goods purchased during a given “flash sale” fall within the definition set out in Article 15.2 of the Agreement.”

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Comments by China

1. The Chinese Customs Administration would like to thank the Secretariat and Mauritius for preparing the documents concerning the Customs valuation treatment of goods purchased in “flash sales”.
2. It is stated in the draft Advisory Opinion that “*The Agreement continues to be the only international legislative benchmark for customs valuation. Its provisions must be applied in respect of imported goods purchased both on the traditional market and through e-commerce.*” China Customs fully agrees with that statement.
3. Point 2 (c) of the draft Advisory Opinion states that “*The discounted price of imported goods purchased during a ‘flash sale’ will be used for the purpose of applying either the transaction value of identical goods or the transaction value of similar goods laid down in Articles 2 and 3 respectively of the Agreement only if the imported goods purchased during a given ‘flash sale’ fall within the definition set out in Article 15.2 of the Agreement and all the requirements under Article 2.1 (a) and (b) or under Article 3.1 (a) and (b) are met.*” While agreeing with this statement, China Customs also has some concerns. We consider that, in accordance with the definition of identical and similar goods in Article 15.2 and the requirements laid down in Article 2.1 (a) and (b) and Article 3.1 (a) and (b) of the Agreement, the “flash sale” discounted price that is accepted as the transaction value is very likely to be used for the valuation of identical or similar goods that are not purchased during a “flash sale”, which in turn will have an impact on Customs valuation practices.
4. It is noted that the Agreement does not provide for any definition or explanation of the “commercial level” mentioned in Articles 2.1 (b) and 3.1 (b) of the Agreement. We suggest that the Technical Committee might wish to conduct research in this regard in order to examine the possibility of including the factor of business model/practice in the scope of the “commercial level” and of evaluating different business models/practices in the context of the “commercial level”.

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Comments by the United States

1. The United States would like to thank Mauritius for submitting this question for the Technical Committee's consideration, and to thank the Secretariat for its work on the case. The United States has the following comments concerning the draft Advisory Opinion.
2. At its 46th Session, the Technical Committee indicated that the discounted price paid for imported goods purchased electronically during "flash sales" formed the basis for Customs valuation under Article 1 of the Agreement. Nevertheless, the second question presented by Mauritius, as to whether this discounted price could be used to determine the transaction value of identical or similar goods for which there is no transaction value, remains outstanding.
3. Paragraph 2(c) of the draft Advisory Opinion states that the discounted price of the imported goods purchased during a "flash sale" will be used for the purposes of applying either transaction value of identical or similar goods, only if the imported goods fall within the definition set out in Article 15.2 of the Agreement and all the requirements under Articles 2.1(a) and (b) or under Article 3.1(a) and (b) are met.
4. The United States agrees with the principles in paragraph 2(c) of the draft Advisory Opinion and considers it a good starting point in responding to the second question presented by Mauritius. As indicated in our written comments provided at the 44th Session and our intervention at the 46th Session of the Technical Committee, the United States is of the view that it is necessary to evaluate the time element present in Articles 2.1(a) and 3.1(a) (providing for appraisalment of the imported goods under the transaction value of identical or similar goods sold for export to the same country of importation, and exported at or about the same time as the goods being valued).
5. Explanatory Note 1.1 concerning the time element in relation to Articles 2 and 3 of the Agreement states in paragraph 12 that the terms "at or about the same time" should be taken to cover a period of time as close to the date of exportation as possible within which commercial practices and market conditions which affect the price remain the same. In this case, as indicated by responses from Mauritius at the 44th Session of the Technical Committee, "flash sales" are limited quantity offers made available on a short-term basis at discounted prices via e-commerce platform. Therefore, the "flash sale" discounted price cannot be used to determine the Customs value of the imported goods under Articles 2 and 3 because it does not meet the timing element in Articles 2 and 3 and does not reflect the same commercial practices and market conditions that exist outside of the deeply discounted flash sale.
6. The U.S. Administration anticipates that it may have additional comments to make in respect of this matter at the 47th Session of the Technical Committee on Customs Valuation.

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Comments by Uruguay

1. The Administration of Uruguay would like to thank the Administration of Mauritius and the Secretariat for their work for the 46th Session in Doc. VT1144, concerning the “Valuation of imported goods purchased in ‘flash sales’”.
2. The Administration of Uruguay considers it crucial for our Customs officials and for the private sector in general to have a thorough analysis of this technical issue that will ultimately result in an instrument of this Committee on this matter.
3. To summarize, this case raises two questions in a given scenario :
 - i. can a highly discounted price be accepted as the basis for Customs valuation under Article 1 of the Agreement; and
 - ii. if so, can this highly discounted price be used in the methods set out in Articles 2 and 3 in respect of subsequent imports?
4. Prior to commencing an analysis of the draft Advisory Opinion presented in the Annex to Doc. VT1144, it is our view that the Technical Committee should reach a consensus on those two questions in the following circumstances :
 - a. in respect of question (i), where the import is of a good purchased at a highly discounted price during a “flash sale” on the traditional market for international trade; and in respect of question (ii), the subsequent imports to which the methods set out in Articles 2 and 3 apply also originate on the traditional market for international trade;
 - b. in respect of question (i), where the import is of a good purchased at a highly discounted price during a “flash sale” via an “e-vendor platform” giving rise to direct and/or personal interaction between the parties; and in respect of question (ii), the subsequent imports to which the methods set out in Articles 2 and 3 apply originate on the traditional market for international trade or (also, perhaps) on “e-vendor platforms” giving rise to direct and/or personal interaction between the parties;
 - c. in respect of question (i), where the import is of a good purchased at a highly discounted price during a “flash sale” via an “e-vendor platform” not giving rise to direct or personal interaction between the parties; and in respect of question (ii), the subsequent imports to which the methods set out in Articles 2 and 3 apply originate on the traditional market for international trade or on “e-vendor platforms” but give rise to direct or personal interaction between the parties.
5. Positions need to be agreed in line with the following table :

	(3) (i)	(3) (ii)
4 (a)	YES	?
4 (b)	YES	?
4 (c)	?	?

6. In order to establish the position in relation to question (3) (ii) in the three sets of circumstances concerned, attention must be paid to the fact that it will be necessary to define the scope of the expression “differences in market conditions” as used in numbered paragraph 6 of this Technical Committee’s Commentary 1.1.
7. We reiterate our position as presented at the last session in the Annex to Doc. VT1132, and emphasize the importance of having regard to the principles adopted by the Working Group on E-Commerce (WGEC) of the WCO and the Report of the 78th Session of the Policy

Annex IV to Doc. VT1154E1a
(VT/47/Oct. 2018)

Commission; furthermore, in this instance we would include for consideration Article 8 of the WTO Agreement on Trade Facilitation, on expedited shipments.

8. The Administration of Uruguay would flag that it may make further comments, as it is keen to contribute to the analysis of this issue.
