Global Trade Advisory Alert

Abolition of the domestic sale concept in the EU

In October 2018, the European Union (EU) Member States agreed within the European Commission's Customs Expert Group (CEG) to abolish the "domestic sale" concept related to the customs value determination, which was introduced by the Union Customs Code (UCC). While this abolition has not yet come into effect for all EU Member States, some Member States, such as Belgium, have already decided to take action. This creates an uneven playing field for market operators in the EU.

Determination of the customs value in the EU

Using the transaction value for the customs valuation of goods, the value is determined on the basis of the sale for export, which is the sale occurring immediately before the goods are brought into the customs territory of the EU. This fundamental principle was introduced by the UCC, embedding a change compared to the first sale for export approach in its predecessor: the Community Customs Code. In its contested guidance document on "customs valuation" of 28 April 2016, the European Commission established that a sale between two entities established in the EU, the so-called "domestic sale," could not qualify as a sale for export to the EU.

In October 2018, however, the EU Member States agreed within the European Commission's CEG to abolish the "domestic sale" concept, which requires that the European Commission update its guidance document accordingly.

Customs Expert Group takes action

During the CEG meeting on 11 and 12 October 2018, the European Commission presented an updated version of its guidance document on customs valuation. The European Commission removed all references to domestic sales, a concept that does not exist in customs legislation. The European Commission also promised to include additional practical examples of cases where a sale between two parties, both established in the EU, could be regarded as a sale for export.

Despite an agreement at the CEG level, the updated guidance document has not yet been published.

Some Member States, including Belgium, have already begun implementing this change by issuing national guidance; whereas, others will continue applying the concept until the updated guidance document abolishing this concept is published. A disparate approach is therefore observed across the EU.

Practical change in determining sale for export

With the abolition of the domestic sale concept, a sale between two entities established in the EU can qualify as a sale for export, as long as this sale fulfills the conditions in Article 70 UCC / Article 128 UCC IA.

A direct impact is likely on businesses designating an earlier transaction as the last sale before import, or on businesses with only a sale between two EU established entities. This will particularly affect:

- Companies working with pre-order or back-order models, as one or more transactions have often already been concluded within the EU before goods are manufactured in a third country;
- Sectors that manufacture goods to order such as the automotive industry; and
- Groups distributing goods throughout the EU from a central importer that is included in every import flow.

Designating a different and later sale in the supply chain because of the abolishment of the domestic sale concept may have a direct customs duty impact. VAT consequences are also likely.

What to do?

The removal of the domestic sale concept could have a direct impact on companies’ customs valuation methodology. In view of these changes, companies should assess their customs valuation approach. Considering current differences between Member States in the concept’s application, the impact of these differences on flows of goods should be mapped.

Deloitte's Global Trade Advisory specialists are part of a global network of professionals who can provide specialised assistance to companies in global trade matters. Our professionals can help companies seeking to manage the impacts and potential impacts of the developments described above. Specifically, the Global Trade Advisory team monitors the latest developments on this matter and can support companies in determining their customs valuation methodology and application. The team can provide local advice on the approach across the different Member States.

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