

A large container ship is shown from a high-angle perspective, sailing on a blue ocean. The ship's deck is covered with numerous colorful shipping containers in shades of red, blue, green, and white. The ship's superstructure, including the bridge and various antennas, is visible at the top. The ship is moving towards the viewer, leaving a white wake in the water.

CUSTOMS VALUE: EXISTING APPROACHES AND NEW DEVELOPMENTS IN THE CUSTOMS REGULATION

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18 January 2018

Customs valuation principles

- CC EAEU* contains Chapter 5 concerning six customs valuation methods (Articles 39-45 of the CC EAEU) which are similar to the provisions of the Customs Valuation Agreement of the Customs Union of 25 January 2008
- **The core principles** of customs valuation **remain** the same in the CC EAEU
- According to the CC EAEU, the customs authority reserves the right to verify any statement, document or declaration confirming the customs value for authenticity or accuracy
- EEC** was vested with powers in relation to particular customs valuation issues

*CC EAEU – the Customs Code of the Eurasian Economic Union (effective from 01.01.2018)

** EEC – the Eurasian Economic Commission



Powers of the EEC under the CC EAEU



- The EEC issues acts on the consistent application of Chapter 5 of the CC EAEU (entitled "The Customs Value of Goods") with respect to the use of customs valuation methods (taking into account the international guidelines and documents)
- Determines the particular aspects of customs valuation of goods upon the completion of customs procedures (for example, processing)
- Adopts the forms, structures and formats of customs value declarations
- Determines the particular aspects of customs value control (the draft Decision can be found on the web-site of the EEC)

Customs valuation issues: at a national level

Draft FL on CR*:

- The procedure of customs valuation/customs valuation control for goods that are exported from the EAEU
- The procedure of consulting customs authorities on customs valuation issue
- A deferred decision procedure and particular aspects of importing goods (in some cases upon the decisions of the EEC) + a similar procedure for exported goods
- Particular aspects of customs valuation control in the case of advance declarations and periodic customs declarations
- The procedure of issuing an advance ruling on issues relating to the application of customs valuation methods to the goods being imported



The foregoing procedures are yet to be approved (within the authority of the FCS and Minfin)

* FL on CR – Federal Law 'On Customs Regulation'

Advance ruling

- The CC EAEU provides for an opportunity to introduce an advance ruling procedure at a national level

The Law "On Customs Regulation in the Russian Federation"

Article 113 Consulting on customs valuations issues

In the course of such consultations **the tax authority may not** check documents and **make advance rulings on the customs value**

The EAEU Customs Code

Clause 19 of Article 38

Advance rulings on issues relating to the application of customs valuation methods with respect to the goods being imported may be made in the event that this is established by the customs regulation legislation of the member states

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- Draft FL on CR:
 - An advance ruling is to be adopted within 30 calendar days;
 - Minfin establishes a procedure for the adoption and issuance of the advance ruling;

Particular aspects of customs valuation control for goods that are being imported

Article 313 of the CC EAEU

- The customs authority shall check correctness of the customs value determination and statement (the choice and application of a customs valuation method, the structure and amount of the customs value, and documentary proof of customs value data)
- The customs authority may request written explanations from the declarant with respect to the factors influencing price formation and other circumstances
- Other particular aspects of control shall be determined by the EEC [Draft Decision of the EEC Board "Regulations on particular aspects of the goods customs value control"](#)



Sources of information for customs authorities

Draft Decision of the EEC Board establishes the data sources similar to those reflected in Decision 376*

Probable information sources:

- Information on transactions in identical and homogeneous goods of the same class or kind
- Information on stock quotes, stock market indices, auction prices, and information from price catalogues
- Information received from the state missions (trade missions) of the EAEU member states in third countries
- Information from public authorities of the EAEU member states
- Information from enterprises and professional alliances (associations), including suppliers and manufacturers of declared, identical and homogeneous goods, and from transport and insurance companies

(!) Information may be obtained in any permitted way (*inter alia*, via the Internet)

*Decision of the Customs Union Commission No. 376 of 20 September 2010

Indications of a false customs value

- 1) Conflicting data
- 2) Lower prices compared with:
 - the price of identical/homogeneous goods under comparable terms of import
 - stock quotes, auction data and price catalogues
 - the price of components (including raw materials) which the goods are made of
- 3) Related party relationship between the seller and purchaser coupled with lower prices compared to the prices of identical/homogeneous goods in the sales between an unrelated seller and purchaser
- 4) Grounds to believe that the customs value structure has not been observed

INDICATIONS DETECTED = A GROUND TO REQUEST ADDITIONAL DOCUMENTS (Clause 4 of Article 325 of the CC EAEU)

Particular aspects of pre-release customs valuation control with respect to the goods being imported

Indications of a false customs value do not apply (a set of conditions):

- 1) The goods being declared and those imported earlier are identical
- 2) Goods are imported under a foreign trade contract in accordance with which identical goods were earlier imported
- 3) The same terms of the transaction (price/terms of delivery)
- 4) The indications identified are the same as were identified in the course of undertaking controls with respect to the earlier imported identical goods
- 5) The value of the earlier imported identical goods was determined with the help of valuation method 1 and no changes were made to the Goods Declaration
- 6) The Goods Declaration is filed with the same customs authority as was the case with the earlier imported identical goods
- 7) Reference is made in the Goods Declaration to the number of the Goods Declaration under which the earlier imported identical goods were declared
- 8) The period from the date of release of the earlier imported identical goods is determined with the use of an RMS (risk management system), but cannot exceed 180 days

(Minor changes to the text compared to Decision 376)

Documents to be requested (1)

- The list of documents is determined taking into account the detected indications of a false customs value
- **The request must contain** the list of indications, the list of additionally requested documents/data and the time of submission thereof
- The customs authority may request written explanations
- There are **two options to explain** why you cannot provide the requested document:
 - The document does not exist or is not applied within the framework of the transaction in question
 - The person holding the documents/data refuses to provide them to the declarant
- The requested documents must be provided **in a set (all at once)** per each request
- Together with the requested documents the declarant **may provide other documents/data**



Documents to be requested (2)

- 1) price lists of the **manufacturer/seller** of the goods being declared, commercial proposals, offers of the declared, identical and homogeneous goods as well as of the goods of the same class or kind
- 2) information on the value of the goods being declared in the country of consignment: an export declaration if required to be completed in the country of consignment
- 3) documents relating to payment for the goods being declared
- 4) packing lists
- 5) accounting documents relating to the taking of the declared, identical and homogeneous goods on record
- 6) information on the value of the declared, identical and homogeneous goods in the light of trademarks (brands), models and product items
- 7) contracts of supply with respect to the declared, identical and homogeneous goods for sales thereof in the territory of the Eurasian Economic Union
- 8) explanations regarding the grounds and conditions on which the seller grants discounts to the purchaser
- 9) documents and information on the physical properties, quality and reputation of the goods being declared and their influence on the price of the goods being declared

Documents to be requested (3)

- 10) documents and information relating to the carriage (transportation) of the goods being declared, the loading, unloading or transshipment thereof and any other operations relating to the carriage (transportation) of goods
- 11) documents and information confirming the activities undertaken following the import of the goods being declared into the customs territory of the Eurasian Economic Union with respect to constructing, erecting, assembling, installing, servicing or providing maintenance of such goods and so forth
- 12) documents confirming the absence of a related party relationship between the seller and purchaser or that the related party relationship between the seller and purchaser did not influence the price of the transaction in the goods being imported
- 13) a license agreement, a VAT invoice, bank payment documents, accounting and other documents containing information on payments for the use of intellectual property that pertains to the goods being declared
- 14) other documents and information, including those received from the declarant from other persons, including those who are connected with the production, carriage (transportation) and sale of the goods being declared

Securing payment of customs charges in the course of customs valuation control

- ❑ When requesting additional documents, the customs authority informs the declarant of the possibility to have the goods released against a security deposit and sends a calculation of such a deposit
- ❑ In order to determine the amount of the deposit securing an obligation to pay customs charges, one may use **information on the value of goods of the same class or kind as may be available to the customs authority**
- ❑ There is a risk that instead of using the value of identical/homogeneous goods, the customs authority will take the value of goods of the same class or kind in order to determine the amount of the security deposit (**a coincidence of the HS code and the country of origin would be sufficient for that purpose**)
- ❑ In such a situation **it may be the case that the functional or commercial interchangeability will not be taken into account**

IMPORTANT ! If a deposit has been made and the customs value is adjusted as a result of customs control, penalties will not be charged (the draft FL on CR)

Time allowed for checking the requested documents

- Total duration of the post-release document check – not later than **30 calendar days of the date of submission of the requested documents**
- If the documents are not provided in due time, the check will be completed **starting from the expiration of such time**
- The customs authority **may make a repeated request** (for example, in the case there are no explanations or the document has not been provided)
- The duration of the check is suspended from the date of registration of the request and resumed from the date of receipt of additional documents/data

Analysis of existing approaches: general recommendations

- Checking of the set of documents under the transaction in order to prevent conflicting data (contract, price list, invoice, order, shipping, customs documents, *etc*)
- Provision of the widest possible range of documents at the checking stage
- Submission of substantiated comments on the reasons why it is impossible to provide some of the requested documents
- Active and early collection of the supporting documents, including those from the export country (export declarations, price list)
- Special focus on:
 - related parties: a stricter regulation: the burden of proof of the factual customs value shall be on the declarant
 - royalties: analysis of the set of documents to find out whether they are attributable to the customs value in full or in part

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