



## ***First Sale for Export abolished in the EU?***

As you know, for some years now, first under the discussions on the MCC, now under the implementation of the UCC, the concept of first sale has been under discussion (i.e. the concept that allows you to also use an earlier or even the first sale in a chain of sales based upon which the destination export to the EU became known, as the basis for the transaction value at customs clearance in the EU even though there may be a latter sale based upon which the actual introduction of the goods in the EU took place). Following last week's publication of the drafts of the Union Customs Code Delegated Act and the Union Customs Code Implementing Act, quick conclusions have been released into the market that first sale for export will be abolished. In this News Flash we will provide you with an update on the situation.

Indeed last week the preliminary drafts for the delegated and implementing acts on the UCC have been made public by the EU Commission (TAXUD/UCC-DA/2014-1 and TAXUD/UCC-IA/2014-1). These documents provide the preliminary consolidated draft wording for the implementing provisions of the UCC as prepared by the EU Commission. The documents are largely based upon the prior work performed with respect to the implementation of the MCC. Although on many aspects agreement on the implementing provisions was already in place, there were and still are elements / articles that are subject to discussions. The present draft reflects the opinion of the Commission on which discussion with and consultation of the representatives of the EU Member States still has to take place.

With respect to customs valuation the draft on the implementing act shows that it is still the Commission's intention to abolish the possibility of applying first sale. However, the present draft raises quite some question marks. In that respect it is good to reflect a bit further on the developments in the past.

Under the draft implementation regulation of the MCC an attempt was made to define what constitutes a "sale for export" under the definition of the transaction value. This has led to multiple discussions which showed that such is very difficult, if not impossible, whereas in fact the existing text of article 147 of the Implementary CCC (Reg. 2454/93) showed to be one of the best definitions one can arrive at.

Apparently, the Commission now again tries to provide clarity and uniformity on what transaction should be used as the basis for customs valuation - simultaneously abolishing first sale - through determining which transaction must be used as the basis for the customs value upon importation into the EU. The reasons why first sale has to be abolished though remain vague.

In the draft wording the Commission now proposes that the (transaction) “value of the goods shall be determined at the time of acceptance of the customs declaration on the basis of the transaction occurring immediately before the goods are declared for free circulation”.

In our view, like already was the case under the proposed text under the draft implementation provisions for the MCC, the clarity and uniformity that the Commission is aiming for will not be obtained, as it is not clear what is meant with “the transaction occurring immediately before the goods are declared for free circulation”, e.g. must this transaction be (legally) finalised at the moment of importation, is this the transaction that takes place at that moment or what if there is a transaction in place in the EU but earlier and know the buyer decides to customs clear the goods?

Furthermore, this definition of what leads to a transaction value under the proposed implementing provisions for the UCC is clearly not in line with the provisions of the WTO valuation agreement (the transaction value is to be based upon” a sale for export to ...”. There are multiple cases in place where clearly a sale for export to the EU is in place (as defined in the UCC itself and the WTO valuation agreement), i.e. a sale which leads to the introduction of the goods in the territory of the EU or a sale under customs suspension within the EU (at present clearly defined in the already mentioned article 147 ICC).)

If for example there is a sale from the non-EU supplier to an EU company that receives its products in the EU and upon receipt stores them in a customs warehouse and only when sold to an EU client decides to import the products, the proposed definition imposes an importer to use the sale of products from its customs warehouse to the client, whilst under the WTO provisions the purchase from the foreign supplier that leads to introduction of the goods in the EU clearly qualifies as a sale for export to the EU under the WTO valuation agreement.

Thus it should be clearly pointed out that the proposed text of the implementing provisions is the draft of the Commission, moving back to the original starting point when discussion on the implementing provisions for the MCC commenced. After some inquiries, we understand that the Customs Authorities in some EU Member States also recognise that the proposed wording will not create the clarity and uniformity aimed for and may create the same issues that already lead to the changes in the proposed text for the implementing provisions under the MCC. Furthermore, it is also recognised that the present proposal does potentially abolish the possibility of the application of the first or prior sales principle, which these Member States would like to maintain.

Thus, although the framework and legal structure has changed, in fact we are still at a similar status as before under the MCC and the discussions on this topic likely will continue and still is an issue also of a highly political nature. Thus, the conclusion for now is that although the Commission still clearly prefers to abolish first sale, such is not a given like suggested in a number of news flashes.

## Let's talk !

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