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CUSTOMS EXPERT GROUP

CUSTOMS VALUATION SECTION

Subject: Minutes of the 7th meeting of the Customs Expert Group – Valuation held on 24th and 25th October 2019

Please find enclosed the minutes of the meeting mentioned above**.**

The attached document is drafted in accordance with the new structure and format for reports, introduced by the Commission for all its groups of experts**.**

(e-signed)
Jean-Michel Grave
Head of Unit

Copies:
- Customs Attachés of the Member States
- Delegates of the Customs Policy Group (Deputies)
- Delegates of the Customs Expert Group – Valuation Section
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CUSTOMS EXPERT GROUP - VALUATION SECTION

CEG/VAL/7

Brussels, 24-25 October 2019

1. Approval of the agenda and of the minutes of previous meeting

1.1 Agenda

The Chair presented the Agenda (Annex 1) and announced that due to some administrative obstacles the interpretation service would not be provided during the morning session of the first day of the meeting. Moreover, the Chair informed the Customs Expert Group – Valuation Section (CEG-VAL) that representatives of the Trade Contact Group (TCG) were invited to present their views on the working document concerning the revision of Guidance on Customs Valuation (Articles 128, 136 and 347 UCC IA).

Before the meeting, MS requested to adress three topics in CEG-VAL: treatment of excess emission premium (EEP) for the customs valuation purposes; determining the customs value for returned Union goods (Art. 203 UCC); and apportionment of assists for the customs valuation purposes. The first two issues were included into the agenda of the meeting under AOB. The last one would be just introduced during the the meeting and deeper discussed at a subsequent one. The European Commission (COM) proposed to include into the agenda three other topics: the annual statistics concerning importation of particular fruit and vegetables for the purposes of the unit price system (Annex 23-02 to UCC IA); presentation of two rulings issued by CJEU (C-1/18 and C-249/18); and a general discussion on concerning the improvement of working methods of CEG-VAL.

With these changes, the agenda was adopted.

1.2 Minutes

Document TAXUD/6623666/2019

A MS questioned the status of the document *TAXUD(2019)2816336* related to the treatment of sales made by branch offices. In reply, COM noted that that after the 6th meeting of CEG-VAL, the MS that proposed the document decided to withdraw it from the agenda, and that the minutes of the 6th meeting of CEG-VAL will be supplemented with this information. The same MS noticed the non-uniformity as regards the usage of abbreviation for the European Union (i.e. "EU") in the draft minutes. Finally, a MS pointed out to a discrepance in the attendance list of the 6th CEG-VAL.

With these corrections and additions, the minutes of the 6th meeting of CEG-VAL were adopted.

2. Nature of the meeting

Non-public

3. List of points discussed

3.1 Hunting trophies

Document TAXUD/6972940/2019
Document TAXUD/6973605/2019

Summary of discussion

COM presented a draft document (*TAXUD/6972940/2019*) on the determination of the customs value for hunting trophies, prepared on the basis of the results of previous discussions in CEG-VAL, as well as on the basis of outcomes from further researches made by COM. One MS presented its observations in relation to the subject (document *TAXUD/6973605/2019*).

Based on the two documents presented, all participants of the discussion agreed that the customs value for hunting trophies imported into the customs territory of EU by private persons, determined on the fall-back method, should reflect the *trophy fee* and other costs indicated in part V.5 of the document *TAXUD/6972940/2019*. However, the *hunting permit fee* was seen only by some MSs as part of the customs value, while other expressed a different opinion.

One MS asked about the treatment of costs for the preparation of an export customs declaration in the country of exportation for the purposes of the determination of the customs value of hunting trophies. Another MS indicated that taking into account rulings of ECJ issued in cases concerning quota charges, CEG-VAL should take a cautious approach as regards the treatment of the costs incurred by the hunter in order to import a hunting trophy into the customs territory of EU.

One MS noticed that a reference to Art. 74(3) UCC should be added in the paragraph V.6 of the draft document.

Conclusion

Based on the outcomes of the discussion, COM will prepare a revised draft document for the next meeting of CEG-VAL.

3.2 Waste from fertilisers

Document TAXUD/6974702/2019

Summary of discussion

COM presented a draft document (*TAXUD/6974702/2019),* based on two cases of treatment of waste from fertilisers for the customs valuation purposes, as discussed in the 5th and 6th meeting of CEG-VAL (documents *TAXUD(2019)2817800 and TAXUD(2019) 3082543)*. The draft consists of two parts. It starts with the presentation of specific cases encountered by the customs authorities of MS and a way they were solved. In the second part,it provides general comments/observations concerning the determination of customs value for waste, based on the agreement reached in the previous CEG-VAL meetings that in most cases, the customs value for waste would be determined under Art. 74 (3) UCC and its relevant implementing provisions.

During the ensuing discussions, a MS proposed to make a distinction between cases where waste was imported to be disposed or utilised and cases where waste was imported to be destroyed/neutralised at the customs territory of EU (point V.4.a) of the document). Additionally, the MS suggested that the document should be supplemented with additional observation concerning other way of the determination of customs value for waste in the framework of the fall back method. The same MS expressed its opinion that a disposal/destruction fee that was charged for services provided by an importer inutilising or destroying waste could not be used as a basis for the determination of customs value for such waste, referring to "*Compilers guide on European statistics on international trade in goods"*. This guide states that "*If the waste has no market value and its shipment is seen only as a service, and the exporter pays for waste disposal (the value of waste might be negative), then for practical reasons the negative value* ***shall*** *be adjusted close to zero or to 1 unit of value"* (par. 143)[1]. In that context a possible problem of double taxation could be raised as well.

One MS noticed that the document could also cover the treatment of situations in which secondary outcomes with commercial value result from the destructions of waste (e.g. a thermal treatment of waste with a recovery of heat, the latter being subject of a subsequent sale). The MS also pointed to a perceived lack of clarity in the presentation of some facts of a case described in the first part of the document.

After these discussions, it was agreed to restructure the document. It will cover in the initial part the general observations on treatment for valuation purposes of waste, while the specific cases discussed in the previous CEG-VAL meetings will be covered in 2nd part as examples/particular application of the general observations..

Conclusion

[1] https://ec.europa.eu/eurostat/web/products-manuals-and-guidelines/-/KS-02-17-333

Based on the discussion, COM will prepare a revised version of the document for for the next meeting of CEG-VAL.

3.3 Royalties – outward processing procedure

Document TAXUD/6974817/2019 (revision document TAXUD(2019)2817776)

The discussion was based on the revised version of the document *TAXUD(2019)2817776*, discussed in 6th CEG-VAL. Two MSs referred to the CJEU case C-116/12 Christodoulou and Others and pointed out that the customs value for processed products could be determined under the transaction value method, whereas the discussed document proposed using one of the secondary methods of the determination of customs value for this purpose. Another MS pointed out that it should be decided first whether the payments for royalties are related to the imported goods and whether they are paid as a condition of sale of the goods, before starting dealing with questions on determination of customs value for the processed products. Therefore, the first part of the document should be further developed. Several MSs, including the one that brought the question to CEG-VAL, agreed with the presented approach.

Conclusions

With further support of the MS that proposed the case, COM will supplement and revise the document taking into account all comments, for the next meeting of CEG-VAL.

3.4 Revision Conclusion 22 of the Compendium (ex. *Valuation of computers with adjustable memory capacity*)

Document TAXUD/6975265/2019 (revision document TAXUD(2019)28116627)

Summary of discussion

The discussion was based on the revised version of the document *TAXUD(2019)28116627*, discussed in 6th CEG-VAL.
Two MSs pointed out that the information provided under point IV.4 a) should be clarified, particularly, whether the manufacturer located in a third country and a car dealer in the customs territory of the EU made in their agreement any references to any third party (i.e. a potential final EU buyer). One MS proposed to change the title of the draft conclusion in order to make it applicable not only in relation to motor vehicles. For the rest, CEG-VAL agreed with the content of the draft and presented conclusions.

Conclusions

COM will revise the document taking into account all comments, for the the next meeting of CEG-VAL.

3.5 Implementation of the UCC legal package – Update of Guidance on Customs Valuation (Articles 128, 136 and 347 UCC IA)

a. Common session with the Trade Contact Group members (TCG)

Document TAXUD/6974934/2019

The aim of the common session was to hear TCG's opinions on the current working document used in revision of the Guidance on Customs Valuation (Article 128, 136 and 347 UCC IA).

COM introduced the main changes in the working document under discussion (*TAXUD/6974934/2019).* It recalled the decision to remove all previous references to "*domestic sale",* as this concept does not exist in the Union legal provisions. The revised version of the document presents the positive approach in terms of identifying a sale which should be basis for the determination of the customs value under the transaction value method – *the sale for export to the customs territory of the EU.* Moreover, the draft revised version contains now more examples illustrating the application of Art. 128 (1) and (2) UCC IA.

The members of TCG welcomed the removal of the reference to the domestic sale concept. Another comment referred to the scenario of successive sales in warehouse, where TCG underlined that a sale that takes place just after the goods have been introduced into the warehouse should be used for the customs valuation purposes even if there are other subsequent sales before the goods are declared for free circulation. TCG sees a need for providing more explanations as regards the application of the provisions dedicated to the treatment of royalties and licence fees for the customs valuation purposes (Art. 136 UCC IA), suggesting that an example concerning the application of provisions on apportionment of royalties or licence fees as dutiable and not-dutiable ones should be part of the revised Guidance as well. Furthermore, the Guidance should contain an example illustrating situations in which the royalties or license fees were not included in the customs value. One of the representatives of TCG expressed the opinion that the existing Guidance is not applicable in uniformed way across the EU; even the revised draft of the document would not exclude the possibility for many interpretations. TCG asked for sufficient time to think about the draft revised text of the Guidance and to have an opportunity to comment also a final version of the revised document when the text is agreed by CEG-VAL.

In reply, COM noted that TCG and MSs are welcomed to provide additional comments and observations on the working document under discussion, which will be taken into consideration for possible amendments.

COM adressed also the TCG comments related to *sale for export*, and sales in a warehouse. As regards remarks concerning this part of the Guidance that refers to the treatment of royalties and licence fees for the customs valuation purposes, COM recalled that the Guidance cannot provide a legal interpretation (this is the role of the court). The Guidance is intended as a tool that helps to apply the existing legal provisions in uniform way across the EU. Every case should be considered individually on the basis all relevant circumstances connected with the examined case.

At the request of TCG, COM provided an update on the work of the Project Group on BVI, indicating a possible launch of the impact assessment and public consultations on the BVI by the end of next year (2020). TCG will be kept informed on this in due time.

b. Discussion on the update of the Guidance (CEG format)

Document TAXUD/6974934/2019
Document TAXUD/7161828/2019

Summary of discussion

COM introduced the revised version of the document (TAXUD/6974934/2019) and invited a MS that provided the written comments on the draft revised Guidance (*TAXUD/7161828/2019*) to present them to the audience. In the opinion of the MS the current version of the draft reinstates the successive sales principle, which was removed from the EU legislation with the UCC. The MS pointed out that solutions presented in the discussed document appear to favour related parties, because in practice, in a successive sale scenario, a buyer not related to a seller, would not be able to provide the customs authorities with an invoice and other relevant documents necessary to apply the transaction value method. The MS raised the question whether in such situations a buyer not related to a seller will declare the customs value in accordance with one of the secondary methods, noting that examples 4 and 7 seem to indicate this approach. Several MSs shared the above-mentioned observations, with a couple of them also referring to Commentary 22.1 "Meaning of the expression *sold for export to the country of importation* in a series of sales adopted by the Technical Committee on Customs Valuation" to justify applying the last sale before the release in free circulation in the successive sale scenario under Art. 128 (2) UCC IA.

One MS pointed out that under Art. 128 (2) UCC IA in a successive sale scenario in which there is no access to documents related to the first sale, the secondary methods should be applicable. In the opinion of the MS the current legal provisions do not allow a different solution in this respect. The comments were supported by several other MS.

One MS believed that the document could be further simplified (as it offers too many examples) and focused on the fundamental issues necessary to understand the discussed provisions.

In reply, COM recalled that in the framework of Art. 128 (1) UCC IA, in a successive sale scenario, only the sale occurring immediately before the goods were brought into the customs territory of the EU should be used to determine the customs value under the transaction value method. In cases in which such a sale does not exist, the secondary methods shall be applicable. However, the provisions of Art. 128 (2) UCC IA allow to apply the transaction value method in situations in which there was no a sale occurring before the goods were introduced into the customs territory of the EU, but just after that moment. The provisions of Art. 128 (2) UCC IA should be seen thus as an exception from the basic rule indicated in paragraph 1 of that Article. Nonetheless, the provisions of Art. 128 (2) UCC IA should be applied in the spirit of paragraph 1 of that Article – i.e. the sale that should be taken into account for the customs valuation purposes is the sale that takes place closest to the moment when the goods crossed the EU border. This implies as well that in cases covered by Article 128 (2) UCC IA, in successive sale scenario, in order to make it possible to determine the customs value of imported goods on the basis of the last sale taking place before the goods were released for free circulation in the customs territory of the Union, the wording of the legal provisions would have to be changed accordingly.

COM agreed that an access to the document concerning the previous sale might raise practical problems in some cases covered by Art. 128 (2) UCC IA, and therefore the transaction value method would not be applicable. However, COM requested CEG-VAL to consider whether the customs value in such cases could be determined under one of the secondary methods, on the basis of documents related to the last sale before the goods were released for free circulation (e.g. under the fall-back method with the flexible application of the transaction value method). A MS believed that the proposal was worth considering, while other MS pointed out that an unjustified consequence of this approach might be a higher customs value than it should be or that the customs authorities may encounter situations in which an importer, after entering into possession of an invoice relating to the first sale in the customs territory of the Union, may request for a repayment as the duties were calculated on the basis of a higher customs value. Another MS noticed that an additional difficulty is connected with the legal requirement that the secondary methods should be used in hierarchical order (see the ruling of CJEU issued in the Case C-1/18 Oribalt Riga).

A MS suggested that the notion of "*sale for export"* should be defined better in the document, because in its opinion the "*sale for export"* is not necessarily connected with the physical movement of the goods being valued. Furthermore, in the opinion of this MS, a sale is a *sale for export* only if the sale takes place with the intention of the importing the goods into the Union. In that context one MS recalled the provisions of Art. 147 (1) of the Regulation 2454/93 (which were in force until 30 April 2016) that recognised the fact that the goods, which were subject of a sale, were declared for free circulation in the customs territory of the Union as adequate indication that they were sold for export to that customs territory. Another MS pointed out that in order to identify a sale for export to the customs territory of the Union, we may refer to the definition of the price actually paid or payable (Art. 70 (2) UCC).

One MS proposed to start discussing examples presented in the discussed document in order to make a progress in the work on the revised Guidance.

Finally, the group concluded that if there is a need for extending this part of the Guidance that refers to the treatment of royalties and licence fees, it may be done as a separate line of work.

Conclusion

COM asked MSs to contribute to the discussion and send written comments on the examples themselves before 25 November. On the basis of the inputs from MSs, as well as from the TCG, COM will redraft the text to reflect the comments. The revised document will be presented to the next meeting.

3.6 Controls on valuation
Information point – Launch of the Project Group

COM thanked all MSs that expressed their willingness to participate in the planned Project Group on updating the guidelines produced during PCA Discount 2011. COM prepared a working plan for the PG, that was consulted with relevant units inside TAXUD, as well as with DG BUDG and OLAF. COM suggested that the initial guidelines could be complemented with new elements, e.g *reasonable doubts* (Art. 140 UCC IA). The PG will consist of twelve MSs. MSs that are interested in participating in the PG were invited to send the CVs of their potential representatives. The PG will meet 4 or 5 times, with the first meeting planned for December 2019 or January 2020.

3.7 Binding Valuation Information (BVI), the Customs 2020 Project Group and feasibility study

- *Information point – 4th and 5th meeting of the PG*
  Document (TAXUD/7228736/2019)
  Document (TAXUD/7228386/2019)

- *Presentation eBTI and Generic Trade Portal*

COM presented a short summary of work that has been done so far by the PG. Since the last meeting of the CEG-VAL two meetings of the Project Group took place (on 6-7 June 2019 in Turku, Finland; on 11-12 September 2019 in Zagreb, Croatia). The PG has been working on the feasibility study. COM thanked hosting MSs for their hospitality and support, as well as the members of the PG for their work and contributions to the project, and encouraged the other members of the CEG-VAL to support actively the work of the PG.. In response, one MS pointed out that the scope of BVI should be considered carefully, as a BVI would be applicable across the EU; e.g. his country has not had much experience in the field of

transfer pricing and customs value. Another MS asked for the access to documents related to work of the Project Group on BVI. In reply, COM informed that any MSs might request and obtain access to the dedicated PG BVI CIRCABC group.

Under this point a representative of COM (TAXUD, UNIT B3) provided a presentation on the European Binding Tariff Information (EBTI) system, with the aim to familiarise the CEG-VAL with the IT solutions adopted for the purposes of BTI. COM pointed out that it might be assumed that similar arrangements might be adopted for the purposes of BVI.

Conclusion

The presentation will be made available on CIRCABC.

3.8 Low value consignment - information point

COM provided a presentation on ***Customs issues on e-commerce*** , in which informed the CEG-VAL about the work of a Project Group on e-commerce.
As regards the planned legislative work, the CEG-VAL was informed about the intention to introduce a legal definition of "intrinsic value" into the Union customs legislation (UCC DA) for the purposes of duty relief, in connection with the Duty Relief Regulation /Regulation No (EU) 1186/2009/ and VAT E-Commerce Directive /Council Directive 2017/2455. CEG-VAL was informed also on the developments related to a new super-reduced dataset (Annex B to UCC DA), as well as the Import One Stop Shop(IOSS).

The presentation was followed by an exchange of views between the MSs and COM, where some MSs voiced their ideas and sometimes concerns regarding a definition of "intrinsic value", in particular verification of the truth or accuracy of the declared intrinsic value and treatment of transportation costs in the case of low-value consignments.

Conclusion

The presentation will be made available on CIRCABC.

3.9 WCO Coordination

The following items on the Agenda of the 49 the Session of the WCO TCCV were considered:

Interpretation of the value of adjustments under Article 8(1)(b) of the Agreement

Documents: VT1195E1a, VT1208E1a

Summary of case:

A case concerns the determination of the value of assists in accordance with Article 8(1) (b) of the Agreement. Precisely, it concerns the treatment of costs and charges incurred for the delivery of assists to the seller or the manufacturer of the imported goods to be valued. Such costs items include, usually, (i) charges for the export of the goods, (ii) costs of transport to the seller's country, (iii) duties and taxes paid at import of such elements in the seller's country. Such costs are normally included into the price actually paid or payable for the imported goods when they are born by the seller. On the other hand, when the buyer incurs such costs, they are not yet included in the price actually paid or payable.

Almost all Members presented the view that when such costs and charges were borne by the buyer and were not already included into the price actually paid or payable, they should be taken into account for the customs valuation purposes under Article 8 (1) (b) of the Agreement. A draft commentary presented in the annex to doc.VT1195E1a reflects this approach. The conclusion presented in the draft is contrary to the EU's position on the issue. At the last session of the TCCV, the EU presented the opinion that the Agreement does not allow reaching a definitive conclusion in the direction pointed out in the draft instrument. Therefore, this matter should be left to the discretion of the national legislation, as, rightly, it is pointed out the WCO Customs Valuation Control Handbook.

In the absence of consensus, the Chairperson proposed to include the question in Part III of the Conspectus of Technical Valuation Questions. One Member did not agree for such solution. The question decided to be discussed at the 49th Session of the TCCV.
Due to the lack of consensus on this question, the Secretariat invited the Technical Committee to rule on the action to be taken in respect of this matter.

Summary of discussion

COM presented the proposed line to take during a discussion on the issue at TCCV.
The EU customs legislation deals with this issue. Art. 135 UCC IA indicates that the *value of the assists is equal to their purchasing price, inclusive of all payments that the buyer must make in order to acquire the goods or services*. On the other hand, the same article stipulates that *when the assists are produced by the buyer, their value equals the production costs*.

As only EU is not in favour of working on a new instrument reflecting the above-described approach accepted by the majority of TCCV, COM asked whether MSs saw a room for flexibility as regards a language of the draft instrument i.e. the draft would stipulate that costs of delivery of assists to the producer of the imported goods might be adjusted for the customs valuation purposes.

Consultation after the meeting

After a tour de table, it was concluded that such a flexible approach would be counterproductive for the future work of TCCV. Therefore EU should maintain its position – i.e. that it is not possible to reach a conclusion along the lines proposed in the document.

Sale for export to the country of importation under Article 1 of the Agreement

Documents: VT1196E1a, VT1209E1a

Summary of case:

A case concerns a commercial practice which is described as the sale to retailers in the country of import through an intermediary distributor (related to the seller). The intermediary and the retailer are both established in the same country of import. The retailers are not related to the exporter and the intermediary distributor/declarant within the meaning of Article 15 (4) of the Agreement. The intermediary distributor uses sale agents in order to promote the imported products to different retailers in the country of importation.

The orders from the retailers in the country of import are sent directly to the exporter, **whose computer system generates at the same time two invoices:** one from exporter to the intermediary/declarant (at a lower price) and one from the latter to the final buyer (retailer) indicating the price charged for the goods. Which one of these two transactions should be taken into account for the customs valuation purposes in the legal framework of Article 1 of the Agreement?

The retailer therefore receives the goods (already cleared) at a price higher than declared by the intermediary, and is instructed to pay to the intermediary's account. The goods are either shipped directly from the exporter to the retailers, or to the intermediary's warehouse for delivery to individual retailers. The intermediary's employees and sale agents have no access to this account, which is fully managed by the exporting company.

Having examined the roles of exporter and its intermediate distributor it may be concluded that the substance of the relationship between the two entities is that of a seller and its sale agent. The exporter (seller) is responsible for fulfilling the order placed by the retailer, sets the price to the retailer. In addition, the exporter (seller) incurs all risk of loss and determines the intermediate distributor's compensation by controlling its bank account. The intermediate distributor doesn't incur any credit risk related to the payment owed by the retailer, nor does the entity incur any inventory risk. The intermediate distributor's sales agents and employees are not involved in the purchasing process. Title of the goods is not transferred to the intermediate distributor.

Based on the results of the discussion on the case at the last meeting of the TCCV, the Secretariat and a Member who brought the case to the TCCV redrafted the case – annex to doc. VT1196E1a. The draft clarifies the roles of parties in the analysed transactions, as well as describes the nature of risks incurred by them. For better presenting the key elements of the case the reference to Advisory Opinion 14.1 and Case Study 9.1 are made.

Most of the delegates who took the floor at the last session of the TCCV agreed with the conclusion that the sale for export to be considered is the sale between exporter (seller) and the retailers (buyers). The price established in that transactions should be deducted in relation to

the cost of transportation after importation, and any duties and taxes of the country of importation.

Summary of discussion

COM recalled the last TCCV discussions on the document. It was decided that EU should continue to support the proposed solution. The case might be used to prepare a draft of advisory opinion (Article 2 (a) of Annex II to the Agreement).

Royalties and licence fees under Article 8(1)(c) of the Agreement

Documents: VT1197E1a, VT1210E1a

Summary of case:

A patented concentrate is purchased by an importer from a manufacturer, who is also the patent holder. The imported concentrate is simply diluted with ordinary water, not using a patented process, and is consumer-packed for its sale in the importing country as a soft drink. There is no relation between the importer and the manufacturer in the meaning of the provisions of Article 15 (4) of the Agreement. In addition to the price of the goods, the importer (buyer) is required to pay to the manufacturer/patent holder, as a condition of sale, a single royalty for the right to incorporate or use the patented concentrate in products intended for resale and for use of the trademark. **The amount of the royalty was set at 15% of the sale price of the finished product, the soft drink.**

The importer subsequently sells the soft drink to retailers in the country of importation at a price of 100 c.u. per litre, of which it pays to the manufacturer and patent holder a royalty of 15 c.u. for the use of the imported concentrate and for use of the trademark. The royalty is a payment related to the imported goods that the buyer is required to pay as a condition of sales of those goods in accordance with Article 8 (1)(c) of the Agreement.

The issue to consider is what amount of royalties is to be added to the price actually paid or payable under Article 8 (1) (c) of the Agreement for the imported concentrate?
A draft of Advisory Opinion has been developed for discussion. The draft has been reproduced in annex to doc. VT1197E1a.

Summary of discussion

COM presented the proposed line to take and recalled the last TCCV discussions on the document. As it was pointed out by the Secretariat in doc. VT1197 there are two separate instruments that are addressing already such issues: Advisory Opinion 4.4 and Advisory Opinion 4.6. Some Members who took the floor presented the opinion that the case might be resolved on the basis of guidance provided by the above-mentioned existing instruments. The EU also agreed with the view. On the other hand, the Member who brought the case under the consideration of the TCCV was pressing the TCCV to discuss the case and adopt an instrument.

It was decided that EU should take a neutral position and not stand up against the adoption of the instrument.

Royalties and licence fees under Article 8(1)(c) of the Agreement (Royalty-Income tax)

Documents: VT1198E1a, VT1211E1a

Summary of case:

A case refers to a situation where an importer/buyer in the country of importation enters into a license agreement with a supplier/seller/licencor for the use of a patent. As part of this arrangement the parties agree that the royalty payable by the importer/buyer/licensee to the seller/licenor for the commercial use of the patent licensed in the agreement will be calculated by applying a rate of 5% of the net sale price of the patented goods in the country of importation.

In addition to the royalty payment, the buyer/licensee should pay the royalty income tax on behalf of the seller/licensor to tax authority in the country of importation. According to tax provisions in force in the country of importation, the income derived from royalty payment is subject to income tax, the amount of which is calculated by applying a nominal rate of ten percent of the total royalty income.
The TCCV agreed that the royalties paid by the buyer met all the requirements to be included in the customs value of the imported goods under Article 8 (1)(c) of the Agreement. The TCCV decided also that the income tax paid by the buyer to satisfy an obligation of the seller/licenor to the tax authority of the country of importation should form part of the customs value of the imported patented goods.

Now, the TCCV is to consider which of the proposed justifications for the inclusion of the tax payment should be presented in a final version of the draft. At the last session of the TCCV it was agreed that the case should not be examined in the light of paragraph 3 (c) of the Interpretative Note to Article 1 of the Agreement. This kind of tax is not one that is excluded from the customs value under the provisions of the above-mentioned note.

Moreover, the case cannot be examined in isolation from **Advisory Opinion 4.16** adopted by the TCCV. According to that **opinion** ***the duties and taxes of the country of importation which shall be excluded from the customs value as prescribed in paragraph 3 (c) of the Interpretative Note to Article 1 of the Agreement relate to domestic taxes which may be levied on the import of goods rather than taxes which may apply to royalty income.***

According to the document which is to be discussed there are two possible solutions how to classify the tax income payment under the Agreement:

a) According to Article 8(1)(c) of the Agreement, the amount paid by the importer/licensee to the tax authority for the benefit of the licensor/seller should be regarded as an payment of royalty, and thus it should be included to the customs value.
b) According to Article 1 and paragraph 1 of the Interpretative Note to Article 1, the amount paid by the importer/licensee to the tax authority for the benefit of the seller/licensor should be regarded as an indirect payment for the imported goods, which

should form part of the price actually paid or payable.
Detailed explanations on the reasoning to classify the tax income payment under these particular provisions of the Agreement are presented in annex to doc. VT1198E1a.

Summary of discussion

COM presented the case and underlined that, bearing in mind general remarks concerning the characteristics of this kind of tax presented in **Advisory Opinion 4.16**, it seems that there is no possibility to treat the currently examined case in a different way. Therefore, the additional payment (income tax from royalties) should be treated under the provisions of Article 8 (1) (c) of the Agreement and should be included in the customs value based on the transaction value method (i.e. the option presented under point a)). Additionally, it was concluded that as there is already an existing instrument dealing with the situation presented in the discussed case, EU should not support another instrument dedicated to the issue.

Commissions payable under promotion and marketing services agreements

Documents: VT1199E1a, VT1212E1a

Summary of case:

An issue refers to contracts called *Promotion and Marketing Service Agreements* or similar, under which one party (promoter) specializes in the development of a brand for goods at international level. The other party (producer) specializes in the production and marketing of the goods under this brand. The promotor generally designs the goods and their production, identifies suppliers of the inputs needed to make them, registers and promotes the brand name at international level and locates the final customers. The producer purchases the inputs abroad from certain suppliers (identified by the promotor), produces the goods with the branded designs, sells and exports the goods to customers abroad that were previously identified by the promotor.

The parties agree in these contracts that, for "the services of promotion and marketing provided by the promoter, the producer is obliged to pay the promoter a ***commission"***, which is normally calculated from:
a) **a percentage of the price of purchases of inputs by the producer from the suppliers identified by the promoter;** and
b) **a percentage of the price of sales of branded products** by the producer to the customers identified by the promoter.

The promotor and producer are related under the terms of the Agreement, and at the same time both can be related with certain suppliers or customers abroad, although in all these cases it may be concluded that the transaction value of their purchases of goods was not affected by the relationship.

The issue to consider is how to deal with the customs value of the imported inputs, given that the producer, as well as paying the purchase price to the supplier, is obliged under the signed contract to pay the promotor a commission, which itself is calculated as a percentage of that price.

Summary of discussion

COM presented the case and proposed to support written comments made by China (Annex I to doc. VT1212E1a). It was decided that the facts of the case still needed to be clarified and the nature of *commission* should be better described.

Treatment applicable to a situation in which the price depends on the own trademark of the buyer.

Documents: VT1200E1a, VT1213E1a

Summary of case:

A question refers to the determination of customs value on importing a product **bearing the importer's own trademark** when, at the same time, **the same product with another trademark is presented for importation at a different price.** Should the declared transaction value be accepted in such case? It is encountered quite often that the same producer sells to the buyer the same products under its brand, as well as, under the buyer's own brand. On the labels of products marked as own-brand products, sometimes, it can be read that they have been manufactured by a known producer for a specific supermarket chain.

The TCCV after examining the case, concluded that Article 1 of the Agreement would be applicable and agreed that an instrument would be useful to Members and economic operators.

A Member who brought the question into the consideration of the TCCV has prepared draft advisory opinion, which reflects the above-mentioned approach (Annex to doc. VT1200E1a).

Summary of discussion

COM presented the case and proposed that EU would support continuing the TCCV's work on the draft instrument; the statements concerning the application of the provisions of the Agreement should be further refined. COM pointed out that there was a basic concern about the consideration of a trade mark as an assist defined in the provisions of Article 8 (1)(b)(iv) of the Agreement, as a trade mark was connected with marketing and selling the goods rather than with the production of the goods. In that sense the remark that *In this case, no adjustment under Article 8 (1)(b)(iv) would apply concerning the provision of the buyer's trademark to the seller, as the trademark would be produced in the country of importation* seemed to be irrelevant.

Valuation of imported goods sold at discounted prices to accredited buyers related to the seller

Documents: VT1201E1a, VT1214E1a

Summary of case:

An importer is an accredited company authorized to market the products of a parent company in the country of importation. The importer and the parent company are related according to Article 15 of the Agreement. The accredited companies import their goods from their parent company and are not permitted to import these items from other suppliers. The pricing policy is determined by the parent company for each market. Imported goods to be supplied to government agencies are invoiced at 10% of the corresponding list price while goods that are not sold to government agencies are invoiced at 80% of the corresponding list price.

The question refers to the valuation of imported goods for which prices differ depending on who is the ultimate customer in the country of importation. **The invoiced import prices vary from 10% up to 80% of the export price list. The highly discounted goods are sold to the government of the country of importation.**

The customs authorities of the Member who asked for an advice questioned the declared customs value and re-determined it under Article 7 of the Agreement. Each item imported was identified in the price list available on the website of the exporting company and the corresponding list price was marked down by 50% to arrive at an acceptable value.

Summary of discussion

COM presented the case and underlined that the Member who brought the question under the consideration of the TCCV did not provide any other information or clarifications concerning the facts of the case, as announced in the 48th session. Taking into account this,EU should recall in the TCCV discussion that that the Preamble to the Agreement stipulates that *the customs value should be based on simple and equitable criteria consistent with commercial practices (...).* The problem of granted discounts has to be considered in the light of thisprinciple.

Furthemore, in accordance with the information presented by the Member, when the customs authorities re-determined the customs value of the imported goods under the fall-back method, they used the information available on the website of the exporting company. The usage of prices available on the website of the exporting company in order to re-determine the customs value is not consistent with Article 7 of the Agreement. Potentially, such information might be used to show the existence of ***reasonable doubts*** as regards the truth or accuracy of the declared customs value.

Valuation treatment of amounts paid for access rights to the "TV NAME"

Documents: VT1202E1a, VT1215E1a

Summary of case:

According to the facts pertaining to a question presented by a Member, the company ICO (importer), a subsidiary of the company XCO (exporter), is located in the country of importation. The company

operate radio and television channels primarily broadcasting the programs supplied by its parent company – EXO, as well as those other channels. The company XCO provides subscription of audio-visual channels and operates the "TV NAME" in a given territory. The company X is the holder of an intellectual property right in relation to both the hardware (decoders, satellite dishes, flash memory cards, etc.) and the content of the "TV NAME".

The company ICO purchases from the company XCO, and imports into the country of importation hardware (decoders, satellite dishes, flash memory cards, coaxial cables, etc.) in respect of which ICO plays the customs duties and charges. Then it sells this hardware to its subscribes, what gives them direct and exclusive access to the audio-visual programmes supplied by XCO via satellite. This equipment is necessary for the reception of the broadcast programmes along with the initial sign-up (first subscription) to the "TV NAME" offerings.

In addition, XCO and ICO have signed **a sales commission contract.** In accordance with this contract, XCO ("the principal") entrusts ICO ("the commission agent") with the marketing in the territory of the country of importation, on an exclusive basis, in the name of the commission agent but on behalf of the principal, of subscriptions to the audio-visual programmes of the "TV NAME" marketed by XCO. ICO hands over to XCO on a monthly basis the amount paid by the subscribers in respect of access to the "TV NAME" after deducting its commission. The remuneration of the commission agent consists of x % of the turnover, excluding taxes, achieved by ICO in the form of individuals and group subscriptions.

XCO bears a portion of the costs and charges of the company ICO by means of chargeback. This occurs in the case of the subsidies from the company XCO for the purchase by the subscribers (of ICO) of the equipment necessary for reception (decoders, satellite dish, cards, etc.). Thus, ICO, in order to attract new subscribers, sells the aforementioned equipment **formerly purchased from XCO at less than cost price**, **and the difference compared with the cost price is then charged back to XCO.**

How the amounts that ICO (importer and commission agent) receives from its subscribers in respect of access rights to the "TV NAME" and remits to XCO (exporter and principal), after deduction of its commission, can be classified in the framework of the Agreement?

It should be also pointed out that the case is currently the subject of a dispute between the customs authorities of the Member and ICO.

Summary of discussion

COM proposed that EU would point out that in the light of the presented facts it seemed that the main economic purpose of the commercial relations between XCO and ICO was supplying television-broadcasting services in the country of importation. In that context, the importation of decoders, satellite dishes, and flash memory cards is secondary/ancillary to the main objective. Thetelevision broadcasting services and the importation of ancillary devices should be examined and treated separately. Therefore, (the amounts paid by the subscribes in respect of access rights to the "TV NAME", which ICO remits to XCO, neither constitute royalties or licence fees within the meaning of Article 8 (1)(c) of the Agreement, nor "the value of any part of the proceeds of any subsequent resale, disposal or

use of the imported goods that accrues directly or indirectly to the seller", as provided in Article 8(1) (d) of the Agreement.

Customs value – intra-group sales

Documents: VT1203E1a, VT1216E1a

Summary of case:

A question asked by a Member refers to a situation involving intra-group transactions where **two invoices with different prices for the same consignment are found** during the examination of the documents submitted by an importer. The invoices were issued for different companies: the first invoice was issued by the manufacturer to the distributor (lower price) and another one was issued by the distributor to the importer (higher price). There is a big difference in prices between the two documents.

The declared value was based on the higher invoice price and the importer explained the difference between the two invoices being due to the fact the one addressed to the importing company in the country of importation included the value of intangibles and systems profits which were not accounted for in the other invoice which was meant to be a factory reference price used for internal purposes only.

Summary of discussion

COM presented the case and proposed that EU would point out that, in case of a significant difference between prices for goods presented on two documents (invoices) referring to the same goods, the customs authorities could have ***reasonable doubts*** as regards the declared customs value in the meaning of the *Decision 6.1 Cases where customs administrations have reasons to doubt the truth or accuracy of the declared customs value* issued by the Committee on Customs Valuation. Additionally, it should be highlighted that unjustified price increases (overvaluation) might involve the need for an examination of circumstances of the sale in order to verify whether the relationship influenced the price for the goods being valued.

QUESTIONS RAISED DURING THE INTERSESSION[2]

Valuation treatment of transportation charges relating to the return of means of transport used in the transportation of imported goods

Document: VT1207E1a

Summary of case:

[2]It must be recalled that, concerning questions raised during the intersession, the TCCV is asked only to decide on the inclusion of the case in the agenda for the next session.

During post-clearance audit of the accounting records of the importing company, **invoices were found for the services performed for international transport, namely the return of empty carriages by which the goods in question were originally delivered (the goods were sent by rail).** So, the transport company that brought the goods that were customs cleared has delivered invoices to the importer for the same carriages with which the goods were imported, but now for the return of those carriages. The importer initially paid an invoice for the transport of the goods and, following the import, it pays the same transport company for the return of the same carriages.

A Member who brought the question into the consideration of the TCCV is asking whether the above-mentioned transportation costs should be added to the price actually paid or payable for the imported goods in the framework of the provisions of Article 8 (2) of the Agreement.

Summary of discussion

COM proposed that EU would not oppose an inclusion of the item into the agenda of the TCCV.

Ancillary charges under Article 1 of the Agreement

Document: VT1206E1a

The question brought by a Member for the consideration of the TCCV relates to "ancillary charges", separately invoiced by the supplier to the buyer for the importation of goods, but which were not included in the customs value of the said goods in the customs declaration.

The amount of the "ancillary charges" is paid by the buyer to the supplier for each import of goods, in respect of :

- Charges invoiced by the supplier to the company under a savings programme called the **"Inventory Protection Program (IPP)",** which enables the buyer to benefit from free units of goods if the purchasing target is met;
- **"Club" charges** invoiced by the supplier to the company, which enable the latter to benefit from gifts if the purchasing target is met;
- Charges known as a **"currency surcharge",** invoiced by the supplier, which enable the latter to maintain the price of the goods in case of fluctuation on the Forex market.
-

The Member seeks the opinion of the TCCV as to the valuation treatment of these "ancillary charges" under Article 1 of the WTO Customs Valuation Agreement.

Summary of discussion

COM proposed that EU would not oppose an inclusion of the item into the agenda of the TCCV.

Preparation for the theme meeting to be held during the 50th session of the TCCV

Document: VT1205E1a

Summary of discussion

COM proposed that, bearing in mind the fact that the customs authorities in the EU deal more and more often with cases concerning the treatment of assists for the customs valuation purposes, EU should support Japan's proposals for a theme meeting. COM invited Member States to propose subjects that might be worth being analysed by TCCV.

Review of working methods for dealing with technical questions of TCCV

Document: VT1204E1

The EU proposed to improve the methods of working/dealing with technical issues brought to the TCCV. At the 48th Session, the EU clarified this question put to the Technical Committee was not intended to review the rules of procedure of the Technical Committee, which would involve wider discussion, but to help improve the content of technical questions examined by the Technical Committee and to achieve technical decisions which would address the changes in trade.

Summary of discussion

Taking into account the lukewarm reception of the EU paper, COM proposed that EU should recommended to suspend the discussions on it.

3.10 AOB

3.10.1 Customs Valuation aspects of the EU Excess Emissions Premium (Regulation (EC) No 443/2009 and Regulation (EU) No 510/2011)

Document (TAXUD/6975529/2019)

Summary

COM presented a question concerning the treatment of emission premium for excess CO_2 emissions (EEP) raised by a MS before the CEG-VAL meeting. In accordance with the EU legislation (Reg. No 443/2009 (cars) and No 510/2011 (vans)), the EEP is imposed on a manufacturer, on the basis of the CO_2 emissions of motor vehicles registered in the EU, Iceland and Norway in the previous calendar year.

In the case raised by the MS, a manufacturer intends to include from 2020 the EEP in individual invoices issued for each of motor vehicles imported into the EU.

One MS believed that the EEP has an effect on the price for the imported goods. In the opinion of that MS, to deal with such situations the provisions on simplified

declaration might be applicable (Art. 166 UCC). Another MS pointed out that the problem of registration of motor vehicles in the customs territory of the EU should be further analysed, as it seems that the obligation to pay the EEP is connected with the fact of the registration of the car and not its importation.

Conclusion

COM will preparea revised version of the document and will circulate it as quickly as possible, with the aim to close the issue before the end of the year 2019.

3.10.2 Customs Valuation of returned Union goods (Art. 203 UCC)

Document (TAXUD/697556/2019)

Summary

The case, submitted by a MS between meetings of CEG-VAL, concerned the determining the customs value of returned Union goods (fashion cloths). The goods were exported from the customs territory of the Union with the aim of selling them abroad. The unsold goods in the destination country were returned into the customs territory of the Union in the framework of Art. 203 UCC. The commercial value of the exported goods at the time of return into Union significantly decreased in comparison to the commercial value at the time of export. The MS asked for an opinion what method of the determination of customs value has to be used in the examined case.

During the discussion on the issue the MS that brought the case into the discussion of CEG-VAL provided the additional information that the returned goods were subject of a sale transaction after export from EU (they were bought back by the initial EU exporter).

Several MSs expressed the view that the case should be analysed in the light of the provisions dedicated to customs procedures rather than in the light of the provisions on the determination of the customs value. In that context the customs authorities would check whether the goods were returned in the same state in which they were exported (the physical condition of the goods should stay the same as at the time of exportation – Art. 203 (5) UCC). They pointed out that in that sense the value of the returned goods is irrelevant, as the goods are subject of customs relief. However, according to some MSs, the VAT issue might play the role. On the other hand, several MSs pointed out that as the returned goods were subject of a sale contract (they were bought back by the EU exporter), the transaction value method should be applied in order to determine the customs value of the returned goods.

Conclusion

COM will analyse further with the MS that submitted the way forward for this document and will present, if necessary, a revised version in the next meeting of the CEG-VAL.

3.10.3 Recent ECJ cases related to customs valuation (C1/18 Oribalt Riga, C-249/18 CEVA Freight)

COM informed the CEG-VAL about new rulings of the Court of Justice of the European Union issued in two cases: C-1/18 and C-249/18.

3.10.4 Unit prices fruits and vegetables (Annex 23-02 UCC IA) – annual statistics, use of Surveillance2

COM thanked all MSs that already provided COM with the Annex 23-02 UCC IA yearly statistics for their commitment and efforts.

At the previous meeting of CEG-VAL MSs were informed that in order to avoid a situation in which the choice of MSs responsible for providing the information on unit prices is based on incomplete statistics, COM is considering to use data from SURVEILLANCE 2 database for the purposes, subject to further confirmation from the MS. In October 2019 all MSs received from COM the annual statistics from the mentioned database. In the vast majority of cases the SURVEILLANCE 2 data was identical with the data provided by MSs. In cases where some differences were noticed COM and the MS concerned tried to clarify this.

MSs agreed that the SURVEILLANCE 2 database may be used as a starting point for the purposes of the application of the provisions of Annex 23-02 to UCC IA. The SURVEILLANCE 2 data will be further checked with the MSs and used to select the MSs responsible for delivering unit prices for the following year.

3.10.5 Additional points

a) COM proposed to use a standard format when discussing specific technical questions in the framework of CEG-VAL, as follows:
   - Background;
   - Issue at stake;
   - Relevant regulatory provisions;
   - Preliminary observations;
   - Conclusions.

   MSs were asked to comment the proposed document format. At the same time MSs were also requested to use the same format when submitting a case to be examined by CEG-VAL.

One MS proposed to use an editing command - *track changes* when a new version of a document is prepared. COM agreed; a track changes version will be made available as well.

b) Before the meeting one MS requested to include into the agenda the point concerning the application of Art. 136 (3) UCC IA. It was decided that the question will be made available on CIRCABC for comments and observations of MSs. It will be decided whether the issue will be discussed at the next meeting of CEG-VAL.

c) COM proposed that meetings of CEG-VAL might be also used to transmit information by one MS to the others. Such exchange of information seems to be particularly important in cases where the customs authorities of one MS suspected some irregularities in terms of the determining the customs value. MSs agreed.

   One MS presented a way of conducting international business activities by one company that might be not compliance with Union customs regulations. The MS that shared the information with CEG-VAL offered also to provide further details on bilateral basis, if necessary. MSs were asked to keep the received information confidential.

4. Conclusions/recommendations/opinions

The expert group formulated no conclusions/recommendations/opinions of a general nature, apart from those referred to specific items on discussion listed under point 3 above.

5. Next steps

Pending issues will be further considered at forthcoming meetings, as appropriate.

New or revised documents will be issued, as specified above.

6. Next meeting

The 8th meeting of the CEG/VAL is scheduled (provisionally) for 23 and 24 April 2020. Delegates will be duly informed on the exact dates.

Annex 1

7th Customs Expert Group - Valuation
24-25 October 2019, Brussels
BORSCHETTE, room 3.A

Agenda

Thu 24 October 2019

1. Adoption of the agenda (*9:30-9:40*)

2. Approval of the minutes of the previous meeting (*9:40 – 9:50*)

Document (TAXUD/6623666/2019)

3. Points for discussion

3.1 Hunting trophies *(9:50-10:30)*

Document (TAXUD/6972940/2019)

Document (TAXUD/6973605/2019)

3.2 Waste from fertilisers *(10:30 – 11:00)*

Document (TAXUD/6974702/2019)

Coffee break 11:00-11:15

3.3 Royalties - outward processing procedure *(11:15 – 11:55)*

Document (TAXUD/6974817/2019)

3.5 Revision Conclusion 22 (*11:55 – 12:30)*

Document (TAXUD/6975265/2019)

Lunch 12:30-14:00

3.4 Implementation of the UCC legal package – Update of Guidance on Customs Valuation (Articles 128, 136 and 347 UCC IA)

a) Common session with the Trade Contact Group *(14:00-14:45)*

Presentation by the Trade Contact Group members of their opinion on the update of the Guidance

b) Discussion on the update of the Guidance (MS only) *(14:45-15:45)*

Document (TAXUD/6974934/2019)

Document (TAXUD/7161828/2019)

Coffee break 15:45-16:00

3.6 Controls on valuation (*16:00 – 17:30)*

Information point – Launch of the Project Group

Friday 25 October 2019

3.7 Binding Valuation Information (BVI) Decisions (Customs 2020 Project Group and feasibility study) ***(9:30 - 10:15)***

- Information point – 4th and 5th meeting of the PG

Document (TAXUD/7228736/2019)

Document (TAXUD/7228386/2019);

- Presentation eBTI and Generic Trade Portal

3.8 Low value consignments ***(10:15 - 10:45)***

Information point

Coffee break 10:45-11:00

3.9 WCO Coordination - *49th Technical Committee on Customs Valuation (4-8 May 2019) (11:00-12:30)*

Document (TAXUD/x/2019)

Lunch 12:30-14:00

3.9 WCO Coordination - cont ***(14:00-15:45)***

Coffee break 15:45-16:00

3.10 AOB ***(16:00-17:30)***

3.10.1 Customs Valuation aspects of the EU Excess Emissions Premium (Regulation (EC) No 443/2009 and Regulation (EU) No 510/2011).

Document (TAXUD/6975529/2019)

3.10.2 Customs Valuation of returned Union goods (Art 203 UCC)

Document (TAXUD/697556/2019)

3.10.3 Recent ECJ cases related to customs valuation (C1/18 Oribalt Riga, C-249/18 CEVA Freight)

Information point

3.10.4 Unit prices fruits and vegetables (Annex 23-02 UCC IA) – annual statistics, use of Surveillance2

Discussion point

CUSTOMS EXPERT GROUP - VALUATION SECTION
CEG/VAL/7

Brussels, 24-25 October 2019

ATTENDANCE LIST

Chairperson: European Commission - DG TAXUD E/5

Member States and TR	**Ministry/Perm. Rep**
AUSTRIA	Federal Ministry of Finance
BELGIUM	Ministry of Finance
BULGARIA	Customs agency
CROATIA	Ministry of Finance – Customs Adm.
CYPRUS	Customs & Excise Administration
CZECH REPUBLIC	General Directorate of Customs
DENMARK	Tax & Customs Administration
ESTONIA	Estonian Tax and Customs
FINLAND	Finnish Customs
FRANCE	Ministry of Finance
GERMANY	German Customs Authority
GREECE	Public Revenue Authority
HUNGARY	National Tax and Customs Administration
IRELAND/EIRE	Irish Perm. Rep. and Irish Customs
ITALY	Customs and Monopoly Agency
LATVIA	Latvian Customs Board
LITUANIA	National Customs Department
Luxembourg	ABSENT
MALTA	Maltese Customs Authority
NETHERLANDS	Dutch Customs
POLAND	Ministry of Finance
PORTUGAL	Ministry of Finance
ROMANIA	General Customs Directorate
SLOVAKIA	Slovak Republic Financial Directorate
SLOVENIA	Financial Administration
SPAIN	Customs Department
SWEDEN	Swedish Customs
UNITED KINGDOM	HMRC
TURKEY	Ministry of Finance