

Bird & Bird

Customs valuation update

Uncertainty in view of customs valuation rules discussions

⇒ What is happening to the domestic sale principle?

The outcome of the recent discussions amongst European Union ("EU") Member State representatives of Commission's Customs Expert Group, Valuation Section ("CEG/VAL group") reveals that all references to the *domestic sale* principle in the [EU Guidance on Customs Valuation](#) are to be deleted.

History

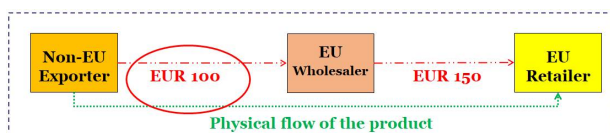
The EU customs legislation (as applicable before May 2016) provided for the possibility to use an "earlier sale" or "first sale" for customs valuation purposes. The current EU customs legislation principally refers to using the sale occurring immediately before the goods were brought into the EU customs territory. This seems to imply using the "last sale", and hence, the abolishment of the "earlier- or first sale" principle.

In addition, the EU Guidance on Customs Valuation, being a legally non-binding document, provided further explanatory notes by stating that the so-called *domestic sale* was not eligible for customs valuation purposes.

The EU Guidance on Customs Valuation defined the *domestic sale* as:

- a sale between two EU established companies;
- which cannot be used as the customs value of goods sold for export to the EU customs territory.

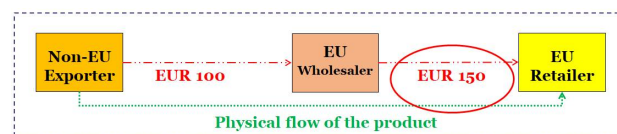
As depicted here below, not being able to use the domestic sale as the customs value resulted effectively to the use of an "earlier sale" or even "first sale" in certain supply chains (leading to a lower customs value of e.g. see below [EUR 100](#)):



What are the consequences of the deletion?

As stated above, the CEG/VAL group has decided to delete the *domestic sale* principle. As a consequence, following the amended EU Guidance on Customs Valuation will lead to an

increased customs duty burden (as shown here below resulting e.g. to a customs value of [EUR 150](#)):



What's next?

Considering that Brexit currently consumes a lot of the capacity in Brussels, the discussion on formally adjusting this guidance in view of the *domestic sale* may take considerably more time than usual.

Since the *domestic sale* definition stems from a legally non-binding guidance and is not defined in the EU customs legislation, EU customs authorities may (already) deviate from such guidance in practice.

⇒ Any update regarding the interpretation of the Hamamatsu court case?

The discussions around the possible implications and consequences of the European Union Court case [Hamamatsu](#) are likely to be put (further) on hold by the CEG/VAL group considering the priorities surrounding the *domestic sale* principle and pending Brexit talks.

Way forward?

All the above mentioned discussions and differences in enforcement in view of customs valuation rules could cause uncertainty for importers as well as a disruption of the level playing field within the EU.

Bird & Bird's international Trade & Customs practice comprises some of Europe's leading trade & customs experts. The team has extensive experience with requesting customs valuation rulings and also maintains close contacts with EU and national competent bodies and authorities regarding the implementation and enforcement of EU customs legislation. If you have any questions or need guidance, please do not hesitate to contact our Trade & Customs team.

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