

# New EU definition of transaction value & 1<sup>st</sup> sale

April 21, 2015

## In brief

In March 2015, the final draft EU's *Union Customs Code* was finally published after several iterations and much discussion regarding whether 1<sup>st</sup> sale would survive or be eliminated. This final draft still leaves significant questions as to how these changes will be interpreted.

## In detail

The timing and issuance of the EU's *Union Customs Code* (UCC) final draft is a prerequisite for the UCC to come in to effect in the month of May 2016 and, as we understand it, is subject to inter-services consultation within the EU Commission departments. These consultations are expected to conclude in the month of April 2015. The expectation is that these consultations will not result in substantive changes and/or adjustments to the wordings of the current draft. The Implementing Act, in which most of the articles on customs valuation are included, will then follow the Committee procedure and be subject to one overall final approval.

While many aspects of agreement pertaining to the implementing provisions were already in place, there continues to be elements / articles that

appear to be incomplete and subject to debate.

In this update, we are focussing on the wording of the articles that define the transaction value as the basis of appraisal for customs valuation. The actual text as now included in the proposed text for the implementing act — article IA-II-3-02 states:

1. *For the purposes of article 70(1) of the Code, the transaction value of goods shall be determined at the time of acceptance of the customs declaration on the basis of the **sale occurring immediately before the goods are brought into the customs territory of the Union.***
2. *Where goods have not been sold for export to the customs territory of the Union before having been brought into that customs territory, the transaction*

*value shall be determined on the basis of their sale at the moment the goods are in temporary storage or placed under a special procedure other than internal transit, end use or outward processing.*

### What does this mean?

Looking at this draft text for the definition of transaction value, an initial observation is that the changes are not very clear and leave room for significant interpretation. The meaning of the phrase **sale occurring immediately before the goods are brought into the customs territory** could be crucial to how a company will decide to operate. The fundamental change from the present customs valuation regulation and policy in the EU is that there no longer will be a possibility to choose a transaction value in a chain of sales. Only the sale that takes place immediately before the

goods are physically brought into the territory will qualify.

As a result, this interpretation will lead to the potential abolishment of the use of earlier or first sale whereby many EU importers for decades have been benefiting from basing the calculation of duty due on a sale that took place before the last sale upon which the goods entered the customs territory of the EU. However, based on this wording, if Customs were to take a restrictive reading and interpretation of the phrase “immediately before”, even instances where there is only one sale upon which the goods entered the customs territory of the EU, challenges could arise.

It is clear that it is the intention of the EU to narrow/eliminate the option to use the transaction value from any qualifying bona-fide arm's length sale for export to the EU in a chain of sales, to only one sale. The current wording is not sufficiently clear and therefore the question that remains is whether this change fits its intended purpose.

#### **Who will be impacted by these changes?**

Obviously, those importers that are applying an earlier or first sale where there are multiple sales prior to entry into the EU will be impacted.

In addition, without clarification and guidance on how to interpret the phrase “immediately before”, the changes could impact many unintended importers. For example, there may be only one sale prior to entry and that sale may take place months before the entry occurs. Whether Customs will accept a sale prior to entry regardless of how long before entry the sale occurs and regardless of the entities involved

(EU or non-EU importers) is an open question.

Furthermore, this final draft does not address the scenario when the sale immediately before entry into the EU is to a non-EU company. While this scenario was raised as a concern by the drafters, the current language may still be interpreted to allow these transactions as long as the sale from the non-EU buyer/importer to an EU seller occurs after the goods have entered the EU. In discussions, the drafters have stated that they also intended to eliminate this opportunity, but this will depend on their interpretation of the new language since it is not specifically addressed.

In addition to this lack of clarity, many other questions are still unanswered including but not limited to what about companies that consolidate shipments before final transport to the EU; what about EU importers that have pre-orders from EU customers? For many importers it is still a waiting game until clarification on these issues is released.

#### **Transition arrangement relief?**

New in the latest version of the draft regulations is a transition arrangement. This *temporary alternative rule on transaction value* intends to create a grace period for the application of first sale until 31 December 2017. However, a closer look into the actual wording of the provision reveals that it may not achieve its objective:

1. *For the purposes of Article 70(1) of the Code, the transaction value of the goods may be determined on the basis of a sale occurring before the sale referred to in Article IA –11-3-02 (1), where*

*the declarant is bound by a contract concluded prior to the entry into force of this Regulation and referring to that sale to determine the price paid or payable, and can prove it to the satisfaction of the customs authorities.*

2. *This Article shall apply until 31 December 2017*

The article makes the transition arrangement only available where a contract makes reference to the first or earlier sale to be used as the basis for the customs value. Such clauses are uncommon and unlikely as the seller typically would not have any contractual interest in the manner in which the buyer will report his customs value.

Therefore, in our view, the transition arrangement (*'sunset clause'*) may not be applicable in most of the regular import flows where first sale currently applies.

### **The takeaway**

In view of the lack of clarity on which transaction should/can be used as the basis for the customs value upon import into the EU, **all importers** are advised to review their customs valuation processes and verify whether adjustments may be required on the basis of the new proposed legislation.

While reviewing the customs value position, you can seek assistance from your regular customs advisor or a PwC customs expert and / or liaise with the local customs authorities in the country of importation to verify how they will interpret and apply the revised legislation and where possible obtain confirmation from your local customs authorities.

## ***Let's talk***

For more information about any of the issues outlined in this Newsalert or how we can assist you with any other trade matters please contact one of our customs and international trade specialists below:

### ***Customs & International Trade***

Domenick Gambardella, *New York*  
+1 (646) 471-3791  
[domenick.gambardella@us.pwc.com](mailto:domenick.gambardella@us.pwc.com)

Anthony Tennariello, *New York*  
+1 (646) 471-4087  
[anthony.tennariello@us.pwc.com](mailto:anthony.tennariello@us.pwc.com)

Maytee Pereira, *New York*  
+1 (646) 471-0810  
[maytee.pereira@us.pwc.com](mailto:maytee.pereira@us.pwc.com)

Mathew S Mermigousis, *New York*  
+1 (646) 471-2371  
[mathew.s.mermigousis@us.pwc.com](mailto:mathew.s.mermigousis@us.pwc.com)

Mark Truchan, *New York*  
+1 (646) 471-2102  
[mark.truchan@us.pwc.com](mailto:mark.truchan@us.pwc.com)

Craig Pinkerton, *Los Angeles*  
+1 (213) 356-6037  
[craig.j.pinkerton@us.pwc.com](mailto:craig.j.pinkerton@us.pwc.com)

Dennis Forhart, *Seattle*  
+1 (206) 398-3179  
[dennis.forhart@us.pwc.com](mailto:dennis.forhart@us.pwc.com)

**Stay current and connected.** Our timely news insights, periodicals, thought leadership, and webcasts help you anticipate and adapt in today's evolving business environment. Subscribe or manage your subscriptions at:

[pwc.com/us/subscriptions](http://pwc.com/us/subscriptions)

© 2015 PricewaterhouseCoopers LLP, a Delaware limited liability partnership. All rights reserved. PwC refers to the United States member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.

#### SOLICITATION

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.