

Important Changes to Customs Valuation Rules

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The EU has published a new Modernised Customs Code (“MCC”) which will come into force in full by 2013. The EU is currently drafting an Implementing Regulation for the MCC. The Regulation will include changes to the rules for valuing goods for customs purposes. These changes will remove the current “first sale” arrangements resulting in an increase in duty costs for traders currently using this duty saving arrangement. In addition, the draft significantly changes the rules relating to the duty treatment of royalties, including those for trademarks, which also has the potential to increase the duty costs of traders.

Changes to the duty treatment of Royalty payments

In the draft of the Implementing Regulation, the EU Commission has reduced the number of specific provisions dealing with royalties and licence fees. All royalties and licence fees will be treated in the same manner and the rules for determining if they are dutiable have been broadened. These changes have implications for all types of royalties but will be particularly relevant for many trademark royalties.

Currently, trademark royalties paid to the suppliers of branded products are not dutiable when, inter alia, the buyer is free to obtain such goods from other suppliers unrelated to the seller.

However, in the latest draft implementing proposal, this limitation has been removed. This means that many more trademark royalties will become dutiable if the provisions are adopted.

The other main change proposed is the broadening of the concept of “condition of sale” which determined the overall dutiable status of royalty payments.



Royalties for non trademark intellectual property such as patents, know how, designs and development would, if the draft is adopted, be more likely deemed to be dutiable.

If you import dutiable goods and pay trademark royalties, or royalties or licence fees for other intellectual property, (know how, etc), it is essential that you review the implications of the new proposals and make appropriate representation if the changes are likely to adversely impact your business.

“First Sale”

The draft regulation also proposes a new definition of “sale for export”, i.e. the sale price along the supply chain which can be used as the basis for customs value.

The current customs legislation permits a prior sale in a chain to be used as the value for customs purposes. (For example, Company A sells at €100 to Company B who in turn sells to Company C in the EU at €120. Under “First Sale” Company C, as EU importer, can opt to use the price from Company A to Company B as the customs value i.e. €100 rather than the higher price of €120 from Company B).

The current draft text removes the ability to use this prior (or “first sale”) value. It restricts the value which may be used to the last sale in the commercial chain prior to the goods’ introduction into the EU (i.e. €120).

If you use “first sale” to reduce your duty costs you should consider the implications of the draft proposals and make your views known to the authorities.

How we can help

PwC’s experienced team of Customs specialists can assess the implications of the draft valuation provisions for your business in the context of any royalty or licence fees you may pay and any “first sale” arrangements you may have in place for non-EU imports.

We can also advise on how best to lobby against these proposals if they will have significant impact on your business and advise on what actions you can take to mitigate the impact in the event of the proposals being adopted.

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