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WCO ADVISORY OPINION ON VALUATION OF IMPORTED GOODS PURCHASED IN FLASH SALES

During its 48th Session held from 13 – 17 May 2019, the WCO Technical Committee on Customs Valuation (TCCV) has adopted Advisory Opinion 23.1 with respect to the valuation of goods purchased in flash sale.

As a reminder, the TCCV is the body responsible for ensuring harmonized implementation of the WTO Agreement on Customs Valuation, and makes technical decisions that are published as instruments in the form of commentaries, cases studies, advisory opinions, explanatory notes or studies. These instruments, although not having binding force of law, are helpful tools for interpreting national rules on customs valuation in countries that have ratified and implemented the WTO Agreement on Customs Valuation.

The two issues submitted by a member to the TCCV in this Advisory Opinion 23.1 were whether a highly discounted price of goods purchased could be accepted as the basis for customs valuation under Article 1 and whether the discounted price could be used to determine the transaction value of identical or similar goods for which there is no transaction value.

ICC attends with a status of observer. DS Avocats belongs to the ICC Delegation which gives us a better chance to understand the customs approach of complex valuation issues specially in case of new business models.

Here, while some WTO members expressed during the debates their desire to limit this instrument to e-commerce sales, it was eventually decided to also extend it to more traditional sales.

TCCV reaffirmed transaction value as the primary basis of valuation under the Agreement on Implementation of Article VII of the GATT 1994 and concluded that the highly discounted price is acceptable for Customs valuation purposes provided that the provisions of Article 1 are met. On the second issue, TCCV also found that the transaction value in a flash sale may be used when applying Article 2 or Article 3, as the case may be, if all the requirements of these Articles are satisfied (similarities of products, same importing countries, operations of import made at or about the same time, etc.)

Important: This Advisory Opinion will be submitted to the WCO Council for approval at its Sessions of June 2019.

CONTACT US :

salva@dsavocats.com

dscustomsdouane@dsavocats.com

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