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ON CUSTOMS VALUATION AND IS SUBJECT TO APPROVAL BY WCO COUNCIL**

ADVISORY OPINION 23.1

VALUATION OF IMPORTED GOODS PURCHASED IN "FLASH SALES"

1. The question raised was whether Customs should regard the highly discounted price for imported goods purchased during a flash sale as the basis for Customs valuation under Article 1 of the Agreement. If so, the second question was whether Customs should agree to this highly discounted price being used to determine the transaction value of identical or similar goods for which there is no transaction value.

2. The Technical Committee on Customs Valuation has set forth the following views :

Under the Agreement, the Customs value of the imported goods "should be based on simple and equitable criteria consistent with commercial practices." Flash sales are promotional sales offered in the short term and at highly discounted prices to attract potential purchasers. Flash sales can be conducted on the traditional market or through e-commerce. The Agreement continues to be the only international legal framework for Customs valuation. Its provisions must be applied in respect of imported goods purchased both on the traditional market and through e-commerce.

Given that, under Article 1 of the Agreement, the basis for the transaction value is the price actually paid or payable for the imported goods, the discounted price for imported goods purchased during a flash sale is accepted as the basis for Customs valuation. It is noted that in accordance with Advisory Opinion 2.1, the mere fact that a price is lower than prevailing market prices for identical goods should not cause it to be rejected for the purposes of Article 1, subject of course to the provisions of Article 17 of the Agreement. Accordingly, the Customs value of goods purchased during a flash sale is the transaction value of the goods in question, provided the conditions of application laid down in Article 1 are met.

The discounted price of imported goods purchased during a flash sale will be used for the purpose of applying either the transaction value of identical goods or the transaction value of similar goods laid down in Articles 2 and 3 respectively of the Agreement only if these goods fall within a definition set out in Article 15.2 of the Agreement and all the requirements under Article 2 or Article 3 are met.

Articles 2 and 3 state that the Customs value shall be the transaction value of identical or similar goods, as the case may be, sold for export to the same country of importation and exported at or about the same time as the goods being valued. In addition to fulfilling the time criteria, it is necessary to ensure that the same commercial practices and market conditions apply as explained in paragraph 6 of Commentary 1.1 and paragraph 12 of Explanatory Note 1.1.

It is unlikely that the commercial practices and market conditions prevailing under flash sales would exist in situations other than flash sales.

Each case has to be considered on a case by case basis.
