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Comité de l'évaluation en douane

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NOTIFICATION AU TITRE DE L'ARTICLE 22 DE L'ACCORD SUR LA MISE EN ŒUVRE DE L'ARTICLE VII DE L'ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS ET LE COMMERCE DE 1994

NORVÈGE

La communication ci-après, datée du 13 mai 2009, est distribuée à la demande de la délégation de la Norvège.

Il est fait référence à la disposition de l'article 22:2 de l'Accord sur la mise en œuvre de l'article VII de l'Accord général sur les tarifs douaniers et le commerce de 1994. On trouvera ci-joint une traduction non officielle des éléments pertinents de la nouvelle Loi n° 119 du 21 décembre 2007 de la Norvège sur les droits de douane et la circulation des marchandises (Loi douanière¹), qui est entrée en vigueur le 1^{er} janvier 2009. En cas de divergence, c'est le texte original en norvégien qui l'emporte.

¹ En anglais seulement.

Chapter 7 Basis for calculating custom duty

I. Common provisions regarding the basis of calculation

Section 7-1 *Customs duty based on weight, volume and unit (specific customs duty)*

- (1) If customs duty is payable on the basis of weight pursuant to the Storting resolution on customs duties, the actual net weight of the goods shall be used as the basis, unless it follows from the resolution that the packing of the goods must be included in the basis of calculation when calculating the duty.
- (2) If customs duty is payable on the basis of volume pursuant to the Storting resolution on customs duties, the actual volume of the goods shall be used as the basis of calculation.
- (3) If customs duty is payable on a per-unit basis pursuant to the Storting resolution on customs duties, the actual number of units shall be used as the basis of calculation.
- (4) The Ministry may make regulations concerning specific customs duties pursuant to this section.

Section 7-2 *Customs duty based on value (ad valorem customs duty) – relationship to the WTO Treaty*

If customs duty is payable on the basis of value pursuant to the Storting resolution on customs duties, the value shall be determined pursuant to the provisions of sections 7-10 to 7-20 and in accordance with the WTO Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

Section 7-3 *Objections to weight or quantity – shortage*

After goods have been released, no objections may be raised to the weight or to the quantity that the customs authorities have used as the basis for the customs clearance. If it can be proved that a shortage existed at the time of importation, an objection may nevertheless be raised.

Section 7-4 *Basis of calculation for goods that are re-imported after processing or repair (foreign processing)*

- (1) If goods that have previously been cleared for free circulation or are of Norwegian origin are re-imported after being repaired, processed or used in the manufacture of other goods outside the customs territory, the basis of calculation shall be determined as follows:
 - (a) If customs duty is to be calculated on the basis of value, customs duty shall be payable on the cost of repairing or processing the goods, in addition to the transportation cost;
 - (b) If customs duty is to be calculated on the basis of weight, volume or unit, customs duty shall be payable in the amount of 8% of the basis of calculation as mentioned in (a);
 - (c) If processing has been carried out free of charge, the basis of calculation shall be set at zero.
- (2) The conditions for calculation pursuant to subsection (1) are that:
 - (a) The goods must be re-imported within one year of exportation;

- (b) Re-importation must be carried out by the same physical or legal person that exported the goods;
 - (c) No customs duty was refunded at the time of exportation; and (d) Any demand for a customs refund must be waived.
- (3) The Ministry may make regulations concerning the basis of calculation for goods that are re-imported pursuant to the provisions here, including in regard to the power to grant exemption from the conditions, and regarding the fact that such goods may be imported duty-free on certain conditions.
- (4) In the case of agricultural goods that are re-imported after processing abroad, customs duty shall be payable in accordance with provisions laid down by the Ministry in regulations.

Section 7-5 *Reduction of the basis of calculation when the goods are damaged or spoilt*

- (1) The basis of calculation for customs duty may be reduced if the goods have depreciated due to damage or spoilage:
- (a) During transportation from abroad to a place in the customs territory;
 - (b) in the possession of the customs authorities;
 - (c) during release of the goods by the customs authorities;
 - (d) during forwarding of goods that were under customs control; or
 - (e) while the goods were placed in a warehouse approved for goods not cleared for free circulation.
- (2) The basis of calculation shall be reduced proportionately to the reduction in value caused by the damage or spoilage.
- (3) The Ministry may make regulations concerning the reduction of the basis of calculation pursuant to this section.

Section 7-6 *Setting aside of the declared basis of calculation*

- (1) If the basis of calculation has not been declared, or there is reason to doubt that the declared basis of calculation is correct, the customs authorities may determine the basis of calculation.
- (2) The Ministry may make regulations concerning the power of the customs authorities to determine the basis of calculation pursuant to this section.

II. Special provisions regarding the customs value of the goods

Section 7-10 *Transaction value of the goods*

- (1) The customs value of imported goods is the transaction value, that is the price actually paid or payable for the goods when sold for export to Norway, adjusted in accordance with the provisions of sections 7-17 and 7-18, provided that:

- (a) There are no restrictions as to the disposal or use of the goods by the buyer other than restrictions which:
 - 1. are imposed or prescribed by law or by Norwegian authorities,
 - 2. limit the geographical area in which the goods may be resold, or
 - 3. do not substantially affect the value of the goods.
 - (b) The sale or price is not subject to some condition or consideration for which a value cannot be determined;
 - (c) No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of section 7-17; and
 - (d) The buyer and the seller are not dependent on one another, or when they are dependent on one another, that the transaction value is acceptable for customs purposes under regulatory provisions. The buyer and seller shall be deemed to be dependent on one another if one person directly or indirectly owns, controls or holds 5% or more of the voting shares of both of them. The buyer and the seller shall also be deemed to be dependent on one another if:
 - 1. they are officers or directors of one another's businesses,
 - 2. they are legally recognised partners in business,
 - 3. they are employer and employee,
 - 4. they are members of the same family,
 - 5. one of them directly or indirectly controls the other,
 - 6. they are directly or indirectly controlled by the same third person,
 - 7. they together, directly or indirectly, control a third person.
 - (e) A buyer and a seller who have common financial interests due to the fact/(WTO) are associated in business with one another in that one of them is the sole agent, sole distributor or sole importer for the other shall be deemed to be dependent on one another if they fall within the criteria of (d).
- (2) The price mentioned in subsection (1) shall include all payments that are a condition for the sale of the goods.
- (3) The price mentioned in subsection (1) must be the price that applies in an export sale where the goods are sent to a buyer in Norway.
- (4) The Ministry may by regulations lay down further provisions to supplement subsection (1) (d) regarding the cases in which the transaction value is acceptable for the purpose of calculating the customs value even though a relationship of dependence exists.

Section 7-11 *Transaction value of identical goods*

- (1) If the customs value of imported goods cannot be determined pursuant to section 7-10, the customs value shall be the transaction value of identical goods sold for export to Norway at the same commercial level, and in substantially the same quantity and at or about the same time as the goods being valued.
- (2) "Identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation, and which are produced in the same countries as the goods

being valued. Minor differences in appearance shall not preclude such goods from being regarded as identical.

(3) The Ministry may make regulations concerning the determination of the transaction value pursuant to this section, including in regard to the power to depart from the conditions regarding the same commercial level and the same quantity that are mentioned in subsection (1).

Section 7-12 *Transaction value of similar goods*

(1) If the customs value of imported goods cannot be determined under sections 7-10 or 7-11, the customs value shall be the transaction value of similar goods sold for export to Norway at the same commercial level, and in substantially the same quantity and at or about the same time as the goods being valued.

(2) “Similar goods” means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable.

(3) The Ministry may make regulations concerning the transaction value pursuant to this section, including in regard to the power to depart from the requirements regarding the same commercial level and the same quantity that are mentioned in subsection (1).

Section 7-13 *The declarant's choice between section 7-14 and section 7-15*

(1) If the customs value of the imported goods cannot be determined under the provisions of sections 7-10, 7-11 or 7-12, the customs value shall be determined under the provision in section 7-14, or when the customs value cannot be determined under that section, under section 7-15.

(2) The person declaring the goods to the customs authorities may choose to apply the rule in section 7-15 instead of the rule in section 7-14.

Section 7-14 *Customs value determined on the basis of the selling price in Norway*

(1) If the imported goods or identical or similar goods are sold in Norway in the condition as imported, the customs value shall be determined on the basis of the unit price at which the imported goods or identical or similar goods are sold at the first commercial level in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not dependent on the seller.

(2) The unit price pursuant to subsection (1) shall be subject to deductions for the following:

- (a) Commissions usually paid or agreed to be paid, or the additions usually made for profit and general expenses in connection with sales in Norway of goods of the same class or kind;
- (b) The usual costs of transport and insurance in Norway; and
- (c) Customs duty and other national taxes payable in Norway.

(3) The Ministry may make regulations concerning the determination of customs value pursuant to this section, including in regard to the deductions that may be made in the unit price pursuant to subsection (2).

Section 7-15 *Computed customs value*

- (1) The computed customs value of imported goods shall consist of the sum of:
 - (a) The cost or value of materials, fabrication or other processing employed in producing the imported goods;
 - (b) An amount for profit and general expenses equal to that usually calculated by producers in the country of exportation in sales for export to Norway of goods of the same class or kind; and
 - (c) The costs of transport and insurance for the imported goods to the place of importation, and loading and handling charges associated with the aforementioned transport of the goods, as provided in section 7-17 (1) (e) and (f).
- (2) The Ministry may make regulations concerning computed customs value pursuant to this section.

Section 7-16 *Alternative customs value*

- (1) If the customs value of imported goods cannot be determined under the provisions of sections 7-10 through 7-15, the customs value shall be determined on the basis of data available in Norway and in accordance with the principles set out in sections 7-10 to 7-15.
- (2) The customs value pursuant to subsection (1) shall not be determined on the basis of:
 - (a) The selling price in Norway of goods produced here;
 - (b) A system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - (c) The price of goods on the domestic market of the country of exportation;
 - (d) The cost of production, other than computed values which have been determined for identical or similar goods in accordance with the provisions of section 7-15;
 - (e) The price of the goods for export to a country other than Norway;
 - (f) Minimum customs values; or
 - (g) Arbitrary or fictitious values.
- (3) The Ministry may make regulations concerning the determination of customs value pursuant to this section.

Section 7-17 *Items included in the customs value determined pursuant to section 7-10*

- (1) In determining the customs value pursuant to section 7-10, there shall be added to the price actually paid or payable for the imported goods:
 - (a) The following costs, to the extent that they are incurred by the buyer, but are not included in the price actually paid or payable for the goods:
 1. commissions and brokerage, except buying commissions,

2. the cost of packaging, to the extent such packaging is regarded for customs purposes as part of the goods, and
 3. the cost of packing whether for labour or materials.
- (b) The value of the following goods and services, where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the goods:
1. materials, components, parts and similar items incorporated in the imported goods,
 2. tools, dies, moulds, and similar items used in the production of the goods,
 3. materials consumed in the production of the goods, and
 4. engineering, development, artwork, design work, plans and sketches undertaken elsewhere than in Norway and necessary for the production of the goods.
- (c) Compensation for intellectual property rights related to the goods being valued that the buyer must pay, directly or indirectly, as a condition of sale. If such compensation for intellectual property rights is paid to a person other than the seller, the compensation shall also be added if it is paid to a person who is in a relationship of dependence on the seller;
- (d) The value of the proceeds of any resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- (e) The cost of transport and insurance of the goods to the place of importation;
- (f) Loading and handling charges associated with the transport of the goods
- (2) Additions pursuant to subsection (1) shall be made only on the basis of objective and quantifiable data. No additions shall be made to the price actually paid or payable other than those mentioned in subsection (1).
- (3) The Ministry may make regulations concerning costs included in the customs value pursuant to this section.

Section 7-18 *Items that shall not be included in the customs value determined pursuant to section 7-10*

- (1) The customs value determined pursuant to section 7-10, cf. section 7-17, shall not include the following items, provided they are separate from or can be separated from the price actually paid or payable for the imported goods:
- (a) Compensation for design, construction, installation, maintenance or technical assistance that is carried out in Norway in respect of the imported goods;
 - (b) Compensation for transport or insurance of the goods in Norway;
 - (c) Customs duty and excise taxes in Norway,
 - (d) Interest paid by the buyer under a written financing arrangement for the purchase of the imported goods, regardless of whether the financing is provided by the seller or another person, and the buyer can upon request prove:
 1. that such goods are actually sold at the price actually paid or payable by the buyer, and

2. that the stated rate of interest does not exceed the rate of interest that is usual for such transactions in the country and at the time the financing is provided.
 - (e) Purchase commissions;
 - (f) Compensation for the right to reproduce the imported goods in Norway; and
 - (g) Taxes imposed on the goods in the country of exportation, provided that it can be proved that the goods have been or will be exempted from such taxes in favour of the buyer.
- (2) The Ministry may make regulations concerning costs that shall not be included in the customs value pursuant to this section

Section 7-19 *Rates of exchange*

- (1) If the conversion of currency is necessary for the determination of the customs value, the rates of exchange determined by the customs authorities at any given time shall be used.
- (2) The Ministry may make regulations concerning rates of exchange pursuant to this section.

Section 7-20 *Deferral of final determination of value*

- (1) The customs authorities may in special cases grant permission for a deferral of the final determination of customs value, or for a portion of the customs value to be declared at a later date.
- (2) If permission has been granted for deferral pursuant to subsection (1), the goods may be released to the importer if the importer provides sufficient security for customs duty that may be incurred.
- (3) The Ministry may make regulations concerning deferral of the final determination of value and release of the goods pursuant to this section.
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