



Recent decisions of the ECJ on assists to be included in the customs value

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In brief

On 10 September and 9 July, the European Court of Justice (ECJ) issued two decisions on customs valuation matters, both relating to components that have to be included in the customs value. The most recent case [C-509/19](#) 'BMW Bayerische Motorenwerke AG' (BMW) deals with EU developed software incorporated in electronic components, whereas the earlier case [C-76/19](#) 'Curtis Balkan' EOOD' (Curtis Balkan) concerns the inclusion of royalties paid for manufacturing know-how for post-importation production with imported components.

In detail

What can this possibly mean for your company?

Companies should be aware that the value of software developed in the EU and made available to the manufacturer free of charge to be incorporated in imported components as well as manufacturing know-how for post-importation production with imported components may have to be included in the customs value of the components upon importation into the EU.

If your company is importing goods into the European Union, you are required to ascertain that the correct customs value is declared. In this context, it is of utmost importance that all circumstances are known, evaluated and if applicable to include in the declared customs value, royalty payments and the values of software incorporated in the imported products.

Recent decisions on customs valuation

Both BMW and Curtis Balkan have imported components that they have used for their production within the EU and both used the sales price actually paid to the suppliers for determining the customs value.

The customs authorities assessed additional customs duties after examining the customs value which had been reported in the import entries. In the case of BMW, the additional customs duties related to the costs of EU developed software that BMW provided to its suppliers free of charge. In the Curtis Balkan case, the additional duties related to royalty payments made by the importer for know-how on its production in the EU.

With respect to the software, the ECJ ruled that the software constitutes an integral part of the end products, since it is connected to, or incorporated in, them and make it possible for them to function or improve the way in which they function. In addition, they add new functionality to those end products and thus contribute significantly to the value of the imported goods. In this respect the ECJ made reference to guidance provided in conclusions of the Customs code committee.

For the royalty payments made for the production know-how, the ECJ decided that such royalties should be included in the customs value when they can be qualified as being paid as a condition for the purchase of the components and have not already been included in the customs value.

The takeaway

The judgments in the BMW and Curtis Balkan cases demonstrate the complex nature of customs valuation for which not only the legal regulations are relevant, but also the guidance provided in conclusions, opinions and commentaries on specific valuation topics.

We can help you identify and correctly determine the customs value of imported goods so as to ensure that the customs value declared by your company complies with customs regulations thus to avoid incurring additional customs duties and penalties.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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