

Duty Assessment on Wine

Duty Assessment

1. Duty for dutiable commodities is payable in accordance with Reg.10 of the Dutiable Commodities Regulations, Cap. 109. It stipulates that:

“Duty shall be paid upon dutiable goods-

(a) if imported and not removed to a warehouse, before the goods are removed from the ship, aircraft, train or vehicle on which they were imported;

(b) if grown, produced or manufactured in Hong Kong and not removed to a warehouse, before the goods are removed from the premises on which they were grown, produced or manufactured;

(c) (Repealed 16 of 1989 s.6)

(d) if in a warehouse and not removed for export or to another warehouse, before the goods are removed from the warehouse.”

In other words, deferred payment of duty is allowed when dutiable goods are stored in warehouse.

2. Under s.2 of the Dutiable Commodities Ordinance, “warehouse” means –

“a place set apart for storing dutiable goods and specified by the Commissioner as –

(a) a general bonded warehouse;

(b) a public bonded warehouse; or

(c) a licensed warehouse,

but does not include a Customs and Excise warehouse.”

3. The Customs and Excise Department (C&ED) makes duty assessment at the time when an application for duty payment is received from a trader. The determination of value of goods are based on s.26A of Dutiable Commodities Ordinance, Cap. 109. S.26A(1) stipulates that:

*“for the purpose of assessing and calculating duty of by reference to the **value of any goods**, the value shall be the normal price which the goods would fetch, at the **relevant time**, on their sale in the open market between a buyer and a seller independent of each other.”*

4. S.26A(8)(a) defines “**relevant time**”. It refers to –

“(a) in the case of imported goods the time such goods are removed from the premises of the seller for the purpose of export”.

This is what we commonly refer to as the ex-factory price.

Invoice dated over 12 months before duty assessment

5. S.26A(4) of the Ordinance stipulates that:

*“For the purpose of subsection (1), the Commissioner or any officer authorized by him in that behalf may, subject to subsection (5) and (5A), accept the **value of the goods** as stated in the contract of sale, invoice or other document, relating to the goods and produced under section 27, if the date of the contract of sale, **invoice** or other document precedes the date on which the duty is assessed **by not more than 12 months.**”*

6. Accordingly, in respect of a sale which was concluded proximate to the “relevant time”, the Commissioner of Customs & Excise may, by virtue of section 26A(4), accept the invoice price as the value of the goods in accordance with section 26A(1) unless he considers that such price is not the normal price in the open market (e.g. by reason of the fact the price is not the sole consideration or the fact that the parties to the sales are related.)

7. However, if the invoice price was in respect of a sale which was concluded more than 12 months before the date of assessment, by reason of the long lapse of time between the sale and the “relevant time”, the price would unlikely be indicative of its value at the relevant time. Indeed, under section 26A(4), the Commissioner of Customs & Excise is not empowered to accept such price as the value in accordance with section 26A(1) for duty assessment purposes.

8. If the invoice price is in respect of a sale which was concluded more than 12 months, s.26A(5)(c) comes into play, which provides that the

“Commissioner or officer authorized may fix a value which shall be deemed to be the value of the goods for the purpose of assessing and calculating duty”.

C&ED will fix the value having regard to the prevailing price which the goods would fetch, at the relevant time, on their sale in the open market between a buyer and seller independent of each other, in other words, in accordance with s.26A(1)/ C&ED fixes the prevailing price having regard to the weighted average prices of identical products imported by other traders in the past 12 months.

9. Section 26A was added to the Dutiable Commodities Ordinance in 1984 to provide for the manner in which the value of dutiable goods may be ascertained for

the purpose of assessing and calculating duty. The provisions followed the valuation arrangements in the UK Customs and Excise Act 1952 and the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the GATT Valuation Code). The section was amended in 1994 when the price basis for duty assessment was changed from cost-insurance-freight price to ex-factory price.

10. In 1999, 2000, 2001 and the first four months in 2002, there were nine companies involving 60 permits where C&ED fix the prevailing price for the purpose of duty assessment. These include cases where the invoice prices were over 12 months from the time of duty assessment.

Finance Bureau and Customs & Excise Department
May 2002