



European Semiconductor Industry Association

# Comments on the Guidance on Customs Valuation

Brussels, 19 December 2019

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## Introduction

The European Semiconductor Industry Association (ESIA) understands that the EU Guidance on Customs Valuation is currently under revision and is pleased to provide the European Commission with its inputs. We refer to the working document '*Update on the Guidance document on some selected issues published upon entry into application of the UCC Package – Examples Art 128 UCC IA*' (hereinafter 'the working document').

## A sale between two EU residents should be allowed as a sale for export

Annex I of the working document illustrates several situations where Article 128 UCC IA (paragraphs (1) and (2)) commonly applies.

Situation 1 in the working document describes a case where goods are sent from a third country to the EU. They are sold (sale 1) to the EU importer only after being declared for warehousing and resold by the EU importer to a buyer (customer in the EU) before being declared for free circulation (sale 2). The working document concludes that *"In this case, in application of Article 128(2) UCC IA, the relevant sale for the determination of the transaction value is sale 1, because sale 2 (occurring between two EU residents) is a domestic sale and cannot be considered as a sale for export."*

ESIA would like to highlight that the above conclusion appears not to be in line with the Guidance on Customs Valuation currently in force, i.e. with the conclusions on its page 6 quoted in ***bold italics*** below:

*"Usually a seller is located in a country of exportation and a buyer is located in the Union. However, it should be underlined that the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the WTO Valuation Agreement) does not contain provisions relating to a country where parties of a sale*

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*transaction are to be located, in order to recognise the sale as the sale for export to the country of importation. In this context, it is useful to note the ruling dated 6 June 1990 issued by the ECJ (C-11/892) where the court underlines that The price stipulated in a contract of sale concluded between persons established in the Community may, therefore, be regarded as the transaction value (...)*”

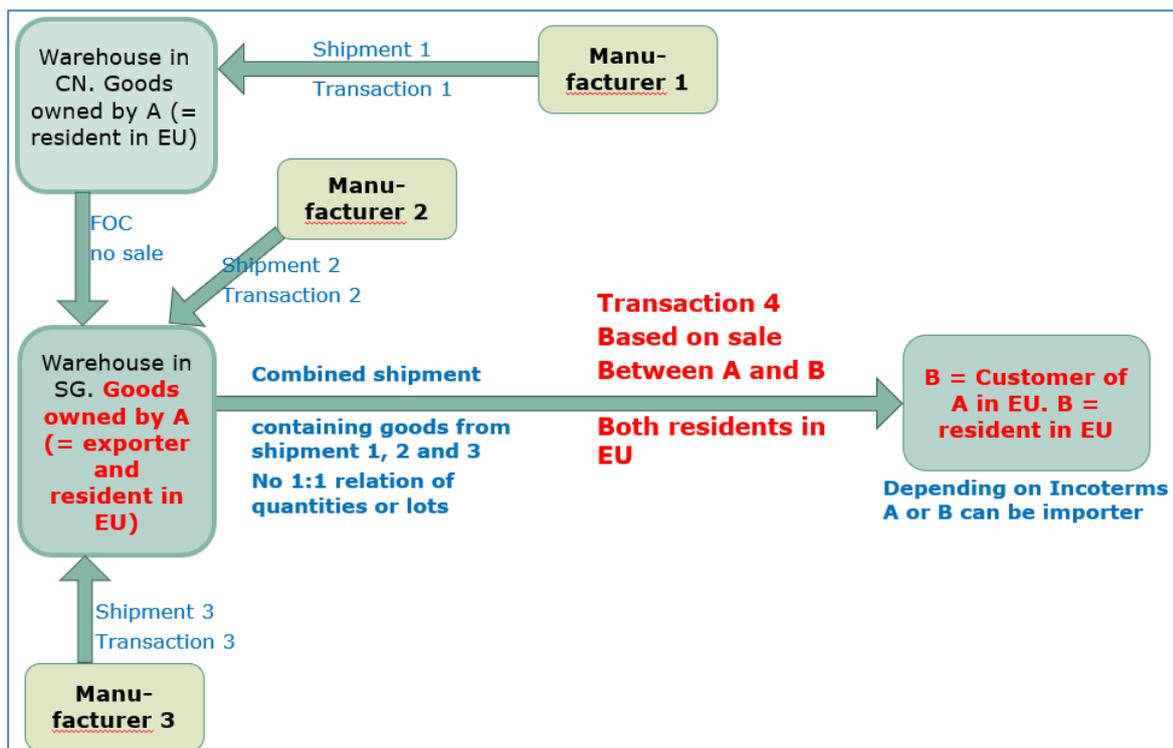
It is clear that the current Guidance on Customs Valuation allows a sale for export between two EU residents – or a ‘domestic sale’ - to be considered as a sale for export. This rule has been maintained also in the revised Guidance, dated 10 October 2019 and which was tabled for discussion on 24 October 2019 at the joint Trade Contact Group/Customs Expert Group meeting. ESIA would like to underline that keeping this current rule is of utmost importance for semiconductor companies as these operate in a highly globalised in manufacturing supply chain.

In addition, ESIA would like to note that current Member States’ guidances<sup>1</sup> on customs valuation also allow a sale for export between two domestic residents to be considered as a sale for export.

## Practical Examples

ESIA would like to offer here below two practical examples concerning the application of Article 128 UCC IA. In the example, a transaction between two EU residents is the relevant sale for export into the EU:

### Example 1:

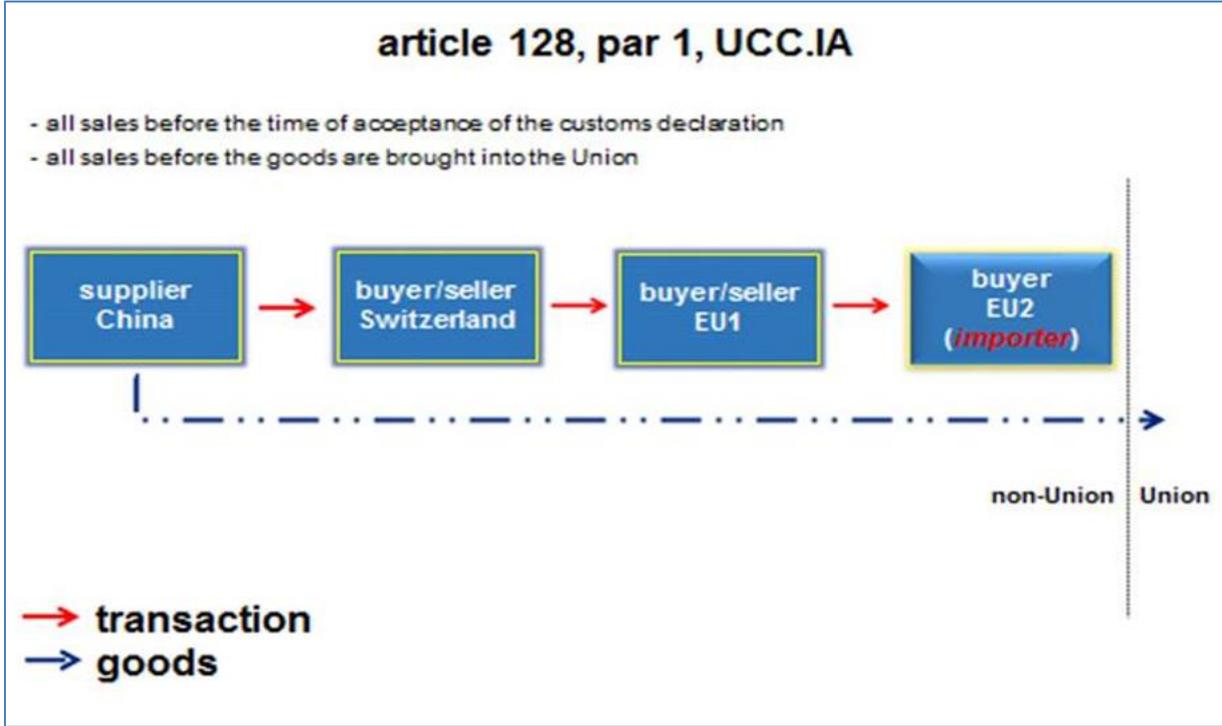


<sup>1</sup> Cf. for example Manual on Customs Valuation by the Germany Ministry of Finance, 2017

Transaction 4 in Example 1 is the relevant transaction to be declared at import in the European Union, because based on this transaction the goods are brought into the EU. This transaction happens between two EU residents because of reasons of accounting and inventory responsibility. The goods, which are being manufactured and purchased in Asia and thereafter warehoused in a distribution centre in Singapore are owned by a European multinational company, which is registered in Singapore and acts as exporter of goods. These goods are shipped and exported into the EU upon a purchase order from another not related company also located in the EU.

Similar cases happen frequently in industries such as semiconductors, characterized by highly globalised manufacturing and supply chains and international business. As such, ESIA suggests replacing the example in Situation 1 in the working document with the above practical case.

**Example 2:**



Example 2 represents a very frequent case in today’s trade. ESIA supports that the transaction between EU1 company and EU2 company be considered as sold for export to the customs territory of the Union (in the current situation this is a ‘domestic sale’).

## Conclusion

ESIA recommends maintaining in the Guidance for Customs Valuation the current rule, based on which a transaction between two EU residents can be considered as the relevant sale for export in the EU.

In order to clarify through examples what transaction to apply in subsequent sales before the goods enter the EU, ESIA recommends including in the relevant Annex to the Guidance existing examples reflecting common practice and which are in line with the current Guidance, as explained above.

ESIA thanks the European Commission for the opportunity to contribute with its views to the revision of the Guidance on Customs Valuation and looks forward to further cooperation.

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## **ABOUT ESIA**

*The European Semiconductor Industry Association (ESIA) is the voice of the semiconductor industry in Europe. Its mission is to represent and promote the common interests of the Europe-based semiconductor industry towards the European institutions and stakeholders in order to ensure a sustainable business environment and foster its global competitiveness. As a provider of key enabling technologies, the industry creates innovative solutions for industrial development, contributing to economic growth and responding to major societal challenges. Being ranked as the most R&D-intensive sector by the European Commission, the European semiconductor ecosystem supports approx. 200.000 jobs directly and up to 1.000.000 induced jobs in systems, applications and services in Europe. Overall, micro- and nano-electronics enable the generation of at least 10% of GDP in Europe and the world.*