



Tax News Flash

- Customs

December 2022

Samjong KPMG provides readers Customs related recent local issues and trends. This newsletter is a monthly publication of Samjong KPMG. If you need more detailed explanation, please feel free to contact Key contacts.



The following is recent Customs related news in Korea

1. Whether the liquidated damage paid by the buyer for non-fulfillment of the annual minimum purchase quantity of the contract is included in the price actually paid under Paragraph 1 of Article 30 of the Customs Act [Decision 22-01-01 by the Council of Customs Valuation & Classification Institute]

1) Facts

According to the terms of the contract, the importer must purchase 1,000 tons of the item in question per year, and if the importer fails to purchase the contracted quantity, 2.5 USD/kg must be paid for the item not purchased as liquidated damage.

2) Issue

If the buyer fails to purchase the annual minimum purchase quantity of the item under the contract, the liquidated damage paid by the buyer to the seller for the items below the minimum quantity by the terms of the contract corresponds to *the price actually paid for the imported goods* prescribed in Paragraph 1 of Article 30 of the Customs Act.

3) Decision

The liquidated damage payable to the seller when the buyer does not meet the minimum purchase quantity is included in the price actually paid or payable by the buyer to the seller since it relates to the imported goods as part of the supply contract of goods between the buyer

and the seller and corresponds to the amount payable by the buyer to the seller as a condition of sale for the imported goods.

Whether the price paid by the buyer as liquidated damage is included in the price actually paid under the Customs Act is to be determined considering whether the liquidated damage belongs to the seller and whether such payment is a condition of sale of the imported goods, etc., but the nature of the price (liquidated damage) and the relevance to the price originally paid by the buyer for the imported goods does not be considered.

The amount paid by the buyer when the minimum purchase quantity is not fulfilled belongs directly to the seller for the seller's benefit and is a condition of sale for imported goods, considering the terms for the payment of the liquidated damage in the original purchase contract.

In addition, since there is no transaction of goods, services, or intangible assets between the buyer and the seller other than that of imported goods, even if it is a nominal liquidated damage, it corresponds substantially to a payment for the imported goods.

Moreover, just because the amount of payment in question is calculated based on the quantity below the minimum purchase quantity, it cannot be regarded as a payment for non-imported goods (i.e., unpurchased shortfall); it is only a matter of calculation method and does not affect the determination of whether the liquidated damage is included in the price actually paid for imported goods.

Therefore, the amount paid by the buyer to the seller for failing to meet the minimum purchase quantity (liquidated damage) is not only related to the imported goods as part of the supply contract of goods between the buyer and the seller, but also corresponds to the total amount paid or payable to the seller as a condition of the sale for the imported goods, which should be included in the price actually paid under the Customs Act.

4) KPMG's Comment

When a person making an import declaration has doubts about the price actually paid or payable by a buyer, additional elements, deduction elements, conditions for denying transaction price, or customs valuation method for the goods between related parties, the taxpayer can apply for ACVA (Advance Customs Valuation Arrangement) program and seek pre-consultation on customs valuation to Head of Customs Service before the price declaration as per Article 37 of the Customs Act.

As there is a risk of additional collection by the customs authorities if the contents of the price declaration do not meet the legal requirements, it is necessary to apply for the ACVA program and discuss with the customs authorities the appropriate customs valuation method, to respond to the possible risk in advance.

Category	ACVA for 3rd party transaction	ACVA for related party transaction
Applicable Subject	Imported goods in 3 rd party transaction	Imported goods in related party transaction
Review Period	30 days	1 year
Applicant	All taxpayers having transactions with foreign exporters	Taxpayers having a continuous transaction with foreign headquarter and related parties
Main Review Points	<ul style="list-style-type: none"> - Price actually paid or payable by a buyer, elements to be added to or deducted from the import price - Whether the import price satisfies the requirements for a transaction price - Whether the transaction satisfies "sales for export" - Customs valuation by methods 	<ul style="list-style-type: none"> - Whether the transaction value is affected by a related party - Whether the customs valuation method requested by the applicant is adequate for the subject transactions - Elements to be added to or deducted from the import price - Adequacy of customs value



Key Contacts

Samjong KPMG Transfer Pricing & Customs Service Group



Gil-Won Kang
Head of TAX 6
T. +82-2-2112-0907



Seung-Mok Baek
TP Partner
T. +82-2-2112-0982



Sang-Hoon Kim
TP Partner
T. +82-2-2112-7939



Tai-Joon Kim
TP Partner
T. +82-2-2112-0696



Yong-Jun Yoon
Head of TAX 6
T. +82-2-2112-0277



Tae-Joo Kim
Customs Partner
T. +82-2-2112-7448



Hyeon-Man Kim
Customs Partner
T. +82-2-2112-7542

home.kpmg/socialmedia



home.kpmg/kr/ko/home/services/tax.html

[Privacy](#) | [Legal](#)

27th Floor, Gangnam Finance Center, 152, Teheran-ro, Gangnam-gu, Seoul, Korea

© 2022 KPMG Samjong Accounting Corp., a Korea Limited Liability Company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.