



THE DUTABLE CUSTOMS VALUE OF EXTRA-EU SUPPLIES



When a software is granted free of charge or at a reduced cost to an extra-EU supplier, in order for the latter to produce the finished product or component to be imported in the EU, the value of the software must be included in the customs base for the payment of import duties, even if Article 71 of the Union Customs Code ("UCC") does not expressly mention it among the elements to be considered for the calculation of the dutiable customs value.

This principle was established by the EU Court of Justice in its judgment of 10th of September, 2020 regarding a case where a well-known German car manufacturing company outsourced the production of control units to extra-EU suppliers, to whom the software necessary for the operation of the control units was granted free of charge, and then the customs value of the control units at import in the EU was disputed by the German customs authorities.

The German customs authorities challenged the customs value of the control units declared at import by maintaining that the software development costs incurred by the German car manufacturing company should have been included in the customs value of the control units imported, although the software was provided free of charge to the extra-EU suppliers.

The car manufacturing company importing the control units opposed the arguments of the German customs authorities by counterarguing that the software is an intangible asset that is not expressly mentioned by Article 71 of the UCC among the tangible assets to be considered for the calculation of the customs value of the finished products/components imported in the EU and, therefore, must not be subjected to customs duties.

The EU Court of Justice has instead ruled that the customs value must reflect the real economic value of imported goods and therefore must be determined on the basis of the price actually paid or payable for the imported goods (Article 70 of the UCC) as adjusted to account for the value of both tangible and intangible goods and services incorporated into the imported goods (if not already included in the price), as long as they are necessary for the production and functioning of the imported goods.

By its decision, therefore, the EU Court of Justice ruled that Article 71 of the UCC, which expressly makes reference to "*materials, components, parts, and similar items incorporated into the imported goods*", cannot be interpreted as excluding intangible assets from the customs value of imported goods, since this exclusion does not result from either the wording or the scope of this provision.