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Fluctuating Currencies – Some Customs and Trade Considerations

Over the past year or so, the dollar has strengthened against most other currencies. For example, the dollar has appreciated about 20% against the Euro (€) and the Japanese Yen (¥) while the Swiss Franc (CHF) has appreciated against the dollar by some 10%. When a particular foreign currency appreciates against the dollar, U.S. imports from that country become more expensive and U.S. exports to that country become cheaper. Conversely, where the U.S. dollar appreciates against a particular foreign currency, U.S. imports from that country become cheaper and our exports to that country become more expensive. Governments are well aware of the effect the value of a country's currency has on its balance of trade, so countries manage (some say "manipulate") the value of their currencies in order to affect their import and export volumes. More on this, below.

Where a contract to purchase imported goods is denominated in a foreign currency, the importer's actual dollar cost of goods can change significantly between the date goods are ordered and the date they are imported. Where the particular foreign currency in the purchase contract has depreciated against the dollar between date of contract and date of payment, the merchandise has become cheaper for the U.S. importer because fewer dollars are needed to purchase the equivalent amount of the foreign currency. For example, a year ago, the dollar cost of purchasing €1,000,000 worth of goods from Germany was about \$1,332,000, while today the same number of Euros can be purchased for about \$1,080,000, a difference of \$252,000. Conversely, a year ago, the cost of purchasing goods for CHF 1,000,000 was about \$880,000, while today the same 1,000,000 Swiss francs would cost about \$970,000. In these circumstances, it is not unusual for buyers and sellers to attempt to limit their exposure to losses due to currency fluctuations. One way to do this is to peg the foreign currency to a specific number of dollars. Another way is for the seller or buyer to hedge their currency needs in the forward market.

For contracts expressed in a foreign currency, U.S. Customs converts the foreign currency into U.S. dollars using the exchange rate in effect on the date of export. Thus, the converted invoice value of the goods reflects the true dollar value of the goods at the time of export and the proper

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dutiable value of the goods. In some instances, however, the parties may agree to share the risk of fluctuating currency. Let us assume that on April 1, 2014, a U.S. importer purchased a German machine for €1,000,000, with shipment of the machine and payment scheduled for April 1, 2015. As illustrated in the example above, from a dollar standpoint, the U.S. importer's costs decreased by some \$252,000. However, if the parties agreed to share the risk of currency, the U.S. importer would have to pay the German exporter the Euro equivalent of \$126,000, which is half the amount the Euro depreciated against the dollar in this time frame. Typically, currency sharing payments are not reflected in the invoice value of the goods, but are made by separate payment. In an instance such as this, the importer is required to report the currency sharing arrangement to Customs and add the \$126,000 payment to the dutiable value of the goods.

Parties may also agree to use an agreed upon rate of exchange for a foreign currency. When this is done, the dutiable value of the goods imported into the U.S. is not determined by the exchange rate on the date of export, but is figured at the rate agreed upon by the parties.

Currency fluctuations also may be taken into account in more informal ways. For example, unrelated parties may agree to make compensating payments where one of the parties to the transaction has incurred losses due to exchange rate movements. This often occurs where parties have longstanding relationships. This also occurs between related parties, and may consist of lump sum year-end payments designed to preserve targeted profit margins. These kinds of payments are perfectly permissible, but they must be reported to Customs and appropriate adjustments must be made to dutiable value. In general, U.S. Customs requires the tender of additional duties where post-importation price increases occur, but will not refund duties where post-importation price reductions have occurred. An important exception exists where post-importation price decreases occur between related parties pursuant to a formula that the importer uses in filing its income tax returns.

For certain commodities (e.g., glassware, tableware), changes in dutiable value can have significant effects on duty rates that are based on price breaks. For example, certain glassware valued between \$0.30 and \$3.00 is dutiable at the rate of 30%. However, the same glassware valued between \$3.00 and \$5.00 is dutiable at 15%, and is dutiable at 7.2% if valued over \$5.00. In some instances, it makes sense to voluntarily agree to pay the supplier more for the goods in order to obtain the benefit of the lower duty rate.

The appreciation of the U.S. dollar against foreign currencies also can have substantial effects on whether, for antidumping purposes, foreign goods are being sold at less-than-fair-value. Under U.S. law, dumping occurs when foreign goods are sold in the home market at prices higher than what they are sold for to the U.S. and such less-than-fair-value sales injure or threaten to injure a U.S. industry. When a foreign currency depreciates against the U.S. dollar, the price of foreign

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goods sold to the U.S. drops, while the price in the country of export remains the same or increases somewhat, but less than the price reduction realized by the U.S. purchaser. This acts to widen the price differential between the foreign market and the U.S. market, thereby creating less-than-fair-value sales or increasing the existing margins of goods already sold at less-than-fair-value. This is often referred to as “Exchange Rate Dumping.” This factor, coupled with the large excess production capacity of many foreign producers (e.g., steel, aluminum, olive oil) could very well result in the filing of an increased number of antidumping cases.

Finally, some lawmakers in both political parties believe that currency manipulation should be subject to countervailing duties. Countervailing duties are imposed to offset subsidies given to foreign producers by their governments in order to promote exports. This subject has been raised in recent trade negotiations and also has been the subject of proposed legislation.

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