

# MEMORANDUM TO CLIENTS

08.27.2014

**STJ awaits new Minister to take office for settling the question concerning the inclusion of customs duties in ports in the calculation basis of Import Duties.**

Recently, the First Panel of the Superior Court of Justice (STJ) continued the trial of the Special Appeal No. 1.239.625, which is about the possibility of including the costs related to expenses incurred after the arrival of ship in a Brazilian port (unloading, loading, transportation and handlings) at the calculation basis of Import Duties (customs value).

The Court discussed whether such values could be included in the customs value, calculation basis of II, or, in view of the impediment of adding values to the price paid, established in the Customs Valuation Agreement, they could remain outside the calculation basis.

The case returned to trial upon request for view of Minister Ari Pargendler, who fully followed the vote of the Narrator, Minister Benedito Gonçalves, understanding that after the customs clearance has occurred with the respective record of import statement, it is not possible to include the value of transportation and handling that occurred in the port, as provided in the Customs Valuation Agreement and the Decree No. 4543/02. Furthermore, the Minister emphasized that the Brazilian law can not go beyond the treaty, adding costs not established in the customs value.

In contrast, the Minister Napoleão accompanied the divergence inaugurated by Minister Sérgio Kukina, once customs duties must integrate the so-called Customs Value, because otherwise, one could say that these costs would not be appropriate in the price of the good after it is internalized.

Before the parity of votes submitted, the Panel suspended the trial of the case and will await the new member of the Panel to take office, to set about the inclusion of costs in the customs value.

We understand that there is a high probability of prevailing the vote of Ministers Benedito and Pargendler, once their arguments are more aligned to customs matters. Moreover, it is likely that the vacancy is taken up by the Minister Regina Helena Costa, who has doctrinal works in the duties department, which will contribute to the understanding of the matter and for the best solution.

Mr./Mme, we are available for any clarification that may be required.

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